

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1313 OF 2014**[Dr.Manoj s/o Radhakisanji Malpani vs The State of Maharashtra and ors.]**

Office Notes, Office
Memoranda of Coram,
appearances, Court's
orders or
directions and
Registrar's orders

Court's or Judge's orders

Shri B.S.Shinde, advocate h/f
Shri V.P.Latange, advocate for the petitioner
Shri V.H.Dighe, A.P.P. for respondent

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CORAM : V.M.DESHPANDE, J.**DATED : 5th February, 2015****PER COURT :-**

1] The Writ Petition is moved by the petitioner since the petitioner is aggrieved by the order, dated 13.10.2014, passed by the learned Judicial Magistrate, First Class, Sailu, below Exh.34 in Regular Criminal Case No. 91 of 2011, by which the learned Magistrate allowed the application filed on behalf of the prosecution under Section 311 of the Code of Criminal Procedure and thereby recalled PW 1 Dr. Babasaheb Rodge the complainant for a limited purpose for proving the contents of disputed documents on record.

2] The present petitioner is facing the prosecution under the relevant provisions of Preconception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 2003.

3] It is not disputed by the learned counsel for the petitioner that attested copies of the register and F form were already filed on record along with the complaint.

4] The application was required to be moved by the prosecution, since due to oversight when the complainant was in the witness box the documents were not exhibited by producing the originals on record. It was pointed out in the application that the mistake occurred due to over sight and there was no intention on the part of the prosecution.

5] The application was opposed by the present petitioner before the learned trial court on the ground that the prosecution has already examined the complainant and if permission is granted it will be nothing but filling up the lacuna in the prosecution case.

6] Learned Judge of the court below has considered the objection raised by the present petitioner in detail. The learned Judge, in my opinion, has rightly observed in the impugned order

that the documents were already filed on record, and therefore, if permission is granted to recall the witness, no prejudice will be caused to the present petitioner and it cannot be said that the petitioner is taken aback and it is an attempt on the part of the prosecution to fill up the lacuna.

7] It is to be noted that the powers under Section 311 of the Criminal Procedure Code can be exercised by the court at any point, if the court is of the opinion and view that it is required to be exercised for the just decision of the case.

8] The learned counsel was unable to point out any mistake apparent on the face of record necessitating this court to exercise the writ jurisdiction under Article 227 of the Constitution of India.

9] Hence, Criminal Writ Petition is rejected.

[V.M.DESHPANDE, J.]