

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

MONDAY, THE 5TH DAY OF JANUARY 2015/15TH POUSHA, 1936

CrI.MC.No. 483 of 2013 ()

CC. NO.320/2011 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, KOYILANDY.

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PETITIONERS/ACCUSED 1 & 2:

- 1. SIMI, D/O.LATE RAJAN,
AGED 33 YEARS, MEETHALE VALAPPIL HOUSE,
SHIJIL NIVAS, MADAPPALLY COLLEGE P.O, VADAKARA.**
- 2. DEVI, W/O.RAJAN,
MEETHALE VALAPPIL HOUSE, SHIJIL NIVAS,
MADAPPALLY COLLEGE P.O, VADAKARA.**

**BY ADVS.SMT.K.DEEPA (PAYYANUR),
SRI.V.R.NASAR.**

RESPONDENT(S):

- 1. LATHEESH. C.P., S/O.SIVADASAN,
CHEENAM PALLIPARAMBIL VEEDU,
SREESHYLAM, KOYILANDY, KOZHIKODE.**
- 2. THE STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

**R1 BY ADVS. SRI.P.S.SREEDHARAN PILLAI,
SRI.T.K.SANDEEP,
SRI.ARJUN SREEDHAR,
SRI.JOSEPH GEORGE(MULLAKKARIYIL),
SRI.ARUN KRISHNA DHAN.**

R2 BY SR. PUBLIC PROSECUTOR SMT.SAREENA GEORGE. P.

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 05-01-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S ANNEXURES:-

- | | |
|-------------------|---|
| ANNEXURE A | COPY OF THE DISABILITY CERTIFICATE OF AGNEY. |
| ANNEXURE B | COPY OF THE MEDICAL CERTIFICATE OF THE CHILD AGNEY. |
| ANNEXURE C | CERTIFIED COPY OF THE PRIVATE COMPLAINT FILED BY THE 1ST RESPONDENT BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT, KOYILANDY. |
| ANNEXURE D | CERTIFIED COPY OF THE CHARGE IN CRIME NO.947/2008 OF KOYILANDY POLICE STATION. |
| ANNEXURE E | COPY OF THE STATEMENT MADE BY THE REGISTERED MEDICAL PRACTITIONER WHO CONDUCTED THE ABORTION, DR.CHANDRAMATHY. |
| ANNEXURE F | COPY OF THE JUDGMENT DATED 20/10/2010 IN O.P. NO. 1015/2009 ON THE FILE OF THE FAMILY COURT, KOZHIKODE. |
| ANNEXURE G | COPY OF THE JUDGMENT DATED 22/08/2012 IN O.P. NO. 779/2011 ON THE FILE OF THE FAMILY COURT, THALASSERY. |

RESPONDENT'S ANNEXURES:- **NIL.**

//TRUE COPY//

P.S. TO JUDGE

rs.

P.UBAID, J.

Crl.M.C..No.483 OF 2013

Dated this the 5th day of January, 2015

O R D E R

The petitioners herein are daughter and mother. The first petitioner has been residing away from her husband for years. A mentally retarded son born in the wedlock is now with the first petitioner. Her husband lodged a complaint before the learned Judicial First Class Magistrate, Koyilandy, on the allegation that, with the assistance of the second petitioner, the first petitioner aborted her pregnancy on 20/2/2006 in a hospital at Shornur. The said complaint was forwarded to the police. After investigation, the police submitted final report under Section 312 of IPC. Cognizance on the final report was taken by the learned Magistrate in C.C. No.320/2011. The petitioners now seek orders quashing the said prosecution on the ground that it is legally unsustainable because the alleged

abortion of pregnancy was done in an authorised medical centre by a qualified and competent Gynecologist. Petitioners have also produced copy of the statement given by the said doctor to the police during investigation.

2. What is made punishable under Section 312 of IPC is not miscarriage voluntarily done in good faith for the purpose of saving the life of a woman. Termination of pregnancy is dealt with under the Medical Termination of Pregnancy Act 1971. Section 3 of the Act authorises termination of pregnancy by registered medical practitioners, and Section 4 of the Act provides that no termination of pregnancy shall be made in accordance with the Act at any place other than a hospital established or maintained by Government, or a place for the time being approved for the purpose of the Act by the Government or a District Level Committee constituted by the Government with the Chief Medical Officer or District Health Officer as the Chairperson of the said Committee. Section 3 also provides the circumstances in which termination of pregnancy can be made. Clause (b) therein provides that if the

medical officer is of the opinion, on examination of the pregnant lady that the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health, or there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped, abortion can be done.

3. The first petitioner herein is a lady who has already a mentally retarded son, now aged 10 years. She now stands abandoned and deserted by her husband, and the care and maintenance of the said mentally retarded son is on her shoulders. When she conceived for the second time in a circumstance of unhappy matrimony, she thought of aborting the pregnancy on the advise of the medical practitioner. Annexure C statement given by the medical practitioner to the police will show that the doctor advised termination of the pregnancy on the ground of possible abnormalities, physical or mental. This statement shows that the medical officer was justified in terminating the pregnancy of the first petitioner, and such

termination was done in a good faith. It is not known how the police proceeded further and submitted a final report under Section 312 of the IPC in spite of the definite statement given by the Medical Practitioner explaining the clear circumstance in which the first petitioner's pregnancy was aborted. I find that this is a mischievous prosecution at the hands of her husband who has been staying away from her due to some dispute in matrimony. The lady, who underwent termination of pregnancy on medical ground, is now facing prosecution under Section 312 of IPC. It is really unfortunate that in spite of the clear statement given by the medical officer explaining the circumstances of the alleged abortion, the police proceeded to submit final report. Much might be said on the bona fide of the prosecution here, but I restrain myself. If the petitioners proceed against the concerned police officer in civil or criminal action, he will definitely have to face the consequences.

In the result, this petition is allowed. The prosecution against the petitioners in C.C. No.320/2011 of the judicial First Class Magistrate, Koyilandy, will stand quashed under Section

482 of the Code of Criminal Procedure. Accordingly, the petitioners will stand released from prosecution and the bail bond, if any, executed by them will stand discharged.

**Sd/-
P.UBAID, Judge.**

dpk

/True copy/ PS to Judge