

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 32 OF 2016

Kranti w/o Vinayak Sirsat,
Age: 41 years, Occ: Medical Practitioner
& Associate Professor in M.I.M.S.R.
Medical College, Latur,
R/o. Ashtavinayak Vihar, Old Ausa Road,
Near Shivaji High School, Latur,
Tq. & Dist. Latur. ...Applicant

versus

The State of Maharashtra
Through Police Station,
Ambajogai (City), Dist. Beed. ...Respondent

.....
Mr. M.R. Jadhav, Advocate for applicant
Ms. R.P. Gour, A.P.P. for respondent
.....

CORAM : N.W. SAMBRE, J.

DATE : 29th MARCH, 2016

ORAL ORDER :

Heard finally, with the consent of respective Counsel.

2. Present revision application is by the applicant-accused questioning the legality and validity of the order passed by learned Additional Sessions Judge, Ambajogai below Exhibit-13, application for discharge in Sessions Case No. 63 of 2015 for an offence punishable under Sections 312, 316, 201 read with Section 34 of the Indian Penal Code and under Sections 3,4 and 5 of the Medical

Termination of Pregnancy Act, 1971. The applicant has also prayed for discharge.

3. Present applicant is accused No. 6 in the above referred offence.

4. The facts, as are necessary for deciding the present revision application, are as under :-

On 01/05/2015, other accused Dhanashri Chate, who is an employee of Mandakini Hospital, Ambejogai, owned by present applicant, extended treatment to one Sunita Pathakrao in the matter of illegal termination of her pregnancy thereby causing miscarriage with the help of other accused. It is then claimed that present applicant, who is an employee of the Government Hospital i.e. Associate Professor, is no way connected in the crime in question.

5. It is claimed that one of the accused Sunita had fall during her pregnancy resulting into miscarriage and as such, was hospitalized in the hospital of present applicant. It is the case of the applicant that the said Sunita, on 05/08/2015 has given a statement that she had been to Someshwar hospital and underwent sonography. According to the applicant, the said accused Sunita has

stated that as she underwent sonography at Someshwar hospital, there is no connection whatsoever with the hospital owned by the present applicant to the crime in question. It is then claimed that the statement of the witnesses if are given cumulative effect, no offence of alleged illegal termination of pregnancy could be established. The applicant cannot be termed as abettor or conspirator of the crime in question.

6. Mr. Jadhav, learned Counsel for the applicant, while trying to make out a case for quashing, would submit that the reply given by present applicant to the authorities was not properly appreciated and at the relevant date i.e. 30/04/2015 and 01/05/2015 the applicant was on Government duty at Latur and not in the hospital at Ambejogai. He would then submit that the applicant herein has already co-operated with the investigating agency and based on the above referred statement of the witnesses, the ingredients of the offence could not be satisfied as against the applicant. It is then claimed that it is other accused named who are held responsible at the most.

7. Mr. Jadhav, learned Counsel for the applicant would urge that Section 34 of the Indian Penal Code as is claimed to have been attracted by the prosecution in the present case is contrary to the

very scheme of Section 34 of the Indian Penal Code, as according to him, the applicant was not present at the time of commission of offence at the actual spot of incident. So as to substantiate that Section 34 of the Indian Penal Code is not attracted in the present case, he relied upon the judgment of the Apex Court in the matter of ***Shreekantiah Ramayya Munipalli and another vs. State of Bombay*** reported in ***AIR 1955 SC 287***, particularly paragraph-22, which reads thus :

"22. We now turn to the appeal of accused 1. He has been convicted under S. 409, I.P.C. read with S. 34. The main point here concerns a vital misdirection in the charge to the jury about S. 34. The learned Additional Sessions Judge misunderstood the scope and content of this Section and so misdirected the jury about the law."

8. The second limb submission of Mr. Jadhav is, confession as is recorded in the present case under Section 164 of the Code of Criminal Procedure cannot be read against the present applicant, as Section 30 of the Evidence Act provides that the confession bounds confessor and other other accused. He would rely upon the judgment of the Apex Court in the matter of ***Suresh Budharmal Kalani alias Pappu Kalani vs. State of Maharashtra*** reported in ***AIR 1998 SC 3258***. Paragraph-6 of the said judgment was sought to be relied upon, which reads thus :

"6. Thus said, we may turn our attention to the confession made by Dr. Bansal and Jayawant Suryarao. Under Section 30 of the Evidence Act a confession of an accused is relevant and admissible against a co-accused if both are jointly facing trial for the same offence. Since, admittedly, Dr. Bansal has been discharged from the case and would not be facing trial with Kalani his confession cannot be used against Kalani. The impugned order shows that the Designated Court was fully aware of the above legal position but, surprisingly enough, it still decided to rely upon the confession on the specious ground that the prosecution was not in any way precluded from examining Dr. Bansal as a witness in the trial for establishing the facts disclosed in his confession. This again, was a perverse approach of the Designated Court while dealing with the question of framing charges. At that stage the Court is required to confine its attention to only those materials collected during investigation which can be legally translated into evidence and not upon further evidence (dehors those materials) that the prosecution may, adduce in the trial, which would commence only after the charges are framed and the accused denies the charges. The Designated Court was, therefore, not at all justified in taking into consideration the confessional statement of Dr. Bansal for framing charges against Kalani."

9. Learned A.P.P. submits that there is sufficient material on record to connect the present applicant to the crime in question. He

would then invite my attention to the confessional statement of accused Dhanashri, which specifically narrates the role of present applicant in the crime in question. Learned A.P.P. would then submit that the applicant though was present at Latur, however has permitted other co-accused to use her hospital for commission of alleged crime. The applicant, at this stage, should not claim that she is not responsible or in any way involved in the crime in question.

10. It is brought to my notice by learned A.P.P. that during the investigation the material was collected, which depicts that the hospital of the present applicant namely Mandakini Hospital was used by other accused Dr. Chamnar and Dr. Kendre for the commission of alleged crime.

11. Upon consideration of rival submissions, it is required to be noted that the victim Sunita claimed that she had a fall, while cleaning floor, resulting into bleeding. She claimed to be hospitalized initially in Someshwar hospital and thereafter she was taken to Mandakini hospital of the present applicant. The said Sunita then underwent abortion/removal of foetus at the hands of other co-accused persons. The ownership of the hospital and permission given by the present applicant to other Doctors and Staff to use the hospital is clearly established from the investigation papers.

12. The entire investigation papers depicts that in a most inhuman manner the accused persons have tried to remove foetus, which has resulted into remaining certain parts of the foetus inside the womb. It is then required to be noted that the victim and her husband are also implicated as an accused in the crime in question. Accused Sunita because of medical complication was required to shift to Mumbai for further treatment.

13. The statement of victim Sunita will be of hardly any assistance to the present applicant being co-accused in the crime. It is then to be noted that the confessional statement of accused Dhanashri, nurse from the applicant's hospital speaks voluminous about involvement of the applicant-accused in crime in question.

14. It is not the case of present applicant that she is no way connected with Mandakini hospital or has not at all operating the said hospital. Nothing could be inferred from the available documents that the applicant is no way connected with Mandakini hospital but *prima facie* it depicts that she is owner and operator of the hospital where the alleged crime is committed. From the perusal of the charge sheet, particularly confessional statement of Dhanashri, *prima facie* involvement of the accused in crime in question could be inferred.

15. So far as the issue of bindness of the confession given by one of the co-accused namely Dhanashri, a nurse, working in the hospital of present applicant named as an accused with a specific role, on the applicant is concerned, it is required to be noted that the applicant-accused and said Dhanashri, both are shown to have been accused in the present crime. If the judgment relied upon by the learned Counsel for the applicant in the matter of **Suresh Budharmal Kalani alias Pappu Kalani** (supra) is concerned, it is required to be noted that in paragraph-6 of the said judgment, in view of provisions of Section 30 of the Evidence Act, the Apex Court has observed that a confession of an accused is relevant and admissible against a co-accused if both are jointly facing trial for the same offence. The wording of paragraph-6 are amply clear on the said issue. As such, the said submission that the confession would not bound the present applicant is liable to be rejected.

16. The next limb of submission of Mr. Jadhav is that Section 34 of the Indian Penal Code would not attract in the present case, as the applicant was not present at the scene of incident.

17. Upon perusal of the investigation papers, no doubt, it is brought on record by the applicant that on the date of alleged

incident, she was not present in her hospital but was on Government duty at Latur, the fact remains that to what extent, truth and probability piece of evidence is required to be gone into at this stage, particularly when the Supreme Court time and again has observed the probability of offence cannot be tested in the light of involvement of accused at the stage of quashing. What is required to be considered is, whether there is enough material available on record to frame charge if all the investigation papers as were placed before the Court are admitted as it is for the said purpose. It is then required to be noted that even if the claim as is sought to be put forth as regards non attraction of Section 34 of the Indian Penal Code by relying upon the judgment in the matter of ***Shreekantikah Ramayya Munipalli and another*** (supra), it will be inappropriate for this Court to appreciate the said aspect at the stage of quashing when there is enough material available on record to infer that the applicant, who is owner of Mandakini hospital, was most inhuman manner, co-accused Sunita underwent abortion.

18. In view thereof, the said submissions are also liable to be rejected.

19. It is then required to be appreciated that the scope as is provided qua interference in the matter of quashing as is claimed by

the present applicant in the present case is very narrow. The entire investigation papers if perused, *prima facie* depicts the involvement of the applicant as an accused in the crime, particularly when the fact about place of incident is hospital owned by the present applicant.

20. For the aforesaid reasons, in my opinion, no case for interference in revisional jurisdiction is made out. As such, the criminal revision application fails and stands rejected.

[N.W. SAMBRE, J.]

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