

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4991 OF 2015

The State of Maharashtra,
Through PSI, Rahuri Police Station,
Tq-Rahuri, Dist-Ahmednagar.

...APPLICANTS

VERSUS

- 1) Dr. Swapnil Madhavrao Mane,
Age-31 years, R/o-Birobanagar,
Tq-Rahuri, Dist-Ahmednagar,
- 2) Chandrakant Ramdas Bachkar,
Age-19 years, R/o-Wawrath,
Tq-Rahuri, Dist-Ahmednagar,
- 3) Jarina Alam Pathan,
Age-40 years, R/o-Malharwadi Road,
Tq-Rahuri, Dist-Ahmednagar.

...RESPONDENTS

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Mr. A.A. Jagatkar, A.P.P. for Applicant.
Mr. A.S. Gandhi Advocate for Respondent Nos.
1 and 3.

...

CORAM: S.S. SHINDE AND
K.K. SONAWANE, JJ.

DATE : 30TH NOVEMBER, 2016

ORDER :

. Heard the learned counsel appearing for the State and learned counsel appearing for Respondent Nos. 1 and 3. With their able assistance, we have perused the notes of evidence and also the findings recorded by the trial Court.

2. It is not in dispute that the pregnancy of victim was of more than twelve weeks. The law mandates that opinion of two medical practitioners is necessary in case of the termination of the pregnancy. Admittedly, in the present case there is no opinion of two medical practitioners. However, the learned trial Court has placed reliance on the provisions of Section 5 of the Medical Termination of Pregnancy Act and concluded that in the facts of the case Respondent No.1, keeping in view the urgency, without waiting for opinion of the medical practitioners, proceeded for carrying out the abortion. Therefore, the said

part of the findings recorded by the trial Court needs to be re-appreciated. Apart from said aspect, the evidence of PW-4 Gauri Sunil Sonawane and other prosecution witnesses also needs re-appreciation.

3. So far as Respondent No.2 - Chandrakant Ramdas Bachkar and Respondent No.3 - Jarina Alam Pathan are concerned, it would be futile exercise to allow this Application seeking leave to Appeal in view of the observations of the trial Court in Para 22 of the Judgment. The trial Court observed that there is no evidence on record to show that accused No.2 Chandrakant Ramdas Bachkar and accused No.3 Jarina Alam Pathan are involved in either the abortion of the victim or maintenance of the record of the hospital of accused No.1. It is further observed that, even the learned A.P.P. has also conceded that there is no such evidence against accused Nos.2 and 3 to show that they have either helped in abortion or maintenance of record

of the victim and hence the accused Nos.2 and 3 (present Respondent Nos.2 and 3) are not guilty of committing any offences as alleged against them.

4. In the light of above, the Application is partly allowed and stands disposed of.

5. Appeal is **Admitted** qua Respondent No.1 - Dr. Swapnil Madhavrao Mane. Mr. Gandhi, learned counsel waives service of notice for Respondent No.1, on admission of the Appeal.

6. Leave is declined as against Respondent No.2 - Chandrakant Ramdas Bachkar and Respondent No.3 - Jarina Alam Pathan.

7. Mr. Gandhi, learned counsel appearing for Respondent No.1, on instructions, gives oral undertaking that as and when presence of Respondent No.1 - Dr. Swapnil Madhavrao Mane is necessary or in the event of directing his

presence by this Court, Respondent No.1 will appear before this Court.

8. In the light of oral undertaking given by the learned counsel appearing for Respondent No.1, action under Section 390 of the Code of Criminal Procedure is not necessary in the peculiar facts of this case.

[K.K. SONAWANE, J.]

asb/NOV16

[S.S. SHINDE, J.]