

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

CRIMINAL APPLICATION NO. 6883 OF 2016

Savita Manish Chaudhari,
Age: 25 years, Occu: Household
R/o : Ramnagar, Taluka Washi,
District Osmanabad.

...APPLICANT

versus

1. The State of Maharashtra
Through Washi Police Station, Washi,
Taluka Washi, District Osmanabad.

2. Manish Dnyandeo Choudhari,
Age: 42 years, Occu. Service,
R/o Washi, Tq. Washi,
Dist. Osmanabad.

...RESPONDENTS

....

Mr. S.S. Jadhavar, Advocate for applicant
Mr. P.G. Borade, APP for Respondent No. 1
Mr. Pradeep G. Tambade, Advocate for Respondent No. 2

....

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

RESERVED ON : 24th MARCH, 2017.

PRONOUNCED ON : 27th MARCH, 2017.

ORAL JUDGMENT :- (Per : K.K. Sonawane, J.)

1. Rule. Rule made returnable forthwith. The matter is taken up for final hearing with the consent of parties.

2. The applicant - Savita W/o Manish Chaudhari moved the present application under section 482 of the Criminal Procedure Code (for short "Cr.P.C.") for exercising the inherent jurisdiction of this Court to quash and set aside the First Information Report (for short "FIR") bearing crime No. 212 of 2015 registered at Washi Police Station, Tahsil Washi, District Osmanabad for the offence punishable under section 450 and 307 of the Indian Penal Code (for short "IPC") and resultant proceedings bearing Sessions Case No. 15 of 2016 pending on the file of Additional Sessions Judge, Bhoom, District Osmanabad.

3. It is contended that applicant - Savita is married woman and mother of two children residing at Ramnagar Washi along with her husband- Manish Chaudhari and other family members. Her husband was employed as Agricultural Assistant in Agricultural Department, Washi. The father, namely, Dnyandeo Chaudhari of respondent No. 2 Manish, after retirement, was serving as Assistant Teacher in the Secondary School. The sister of respondent No. 2- Manish was employed in Zilla Parishad as a clerk. According to prosecution, on 09-12-2015 when husband - Manish, his father and sister, all had been to their places of avocation for duties, that time husband - Manish received phone call from one Mr. Balu Kawade and he informed to come immediately to the hospital as his newly born three months old minor son was admitted in the hospital. Husband - Manish immediately rushed to the hospital and saw the critical plight of his minor son. On

enquiry, he came to know that one unknown person forcibly administered poisonous insecticide to the minor baby and escaped from the spot. The cloths of white shirt, Dhoti and Cap were on his person. The applicant - Savita raised shout, on hearing the noise, neighbourer thronged at the spot. Thereafter, minor infant of three months old was taken to Hospital for medial treatment. Being Medico Legal Certificate' case, husband - Manish filed the report to the Police of Washi Police Station against unknown culprit.

4. Pursuant to FIR of the husband- Manish, the Police of Washi Police Station, District Osmanabad registered the crime No. 212 of 2015 for the offence punishable under sections 450 and 307 of the IPC and set the investigation into motion. During investigation, the Investigating Officer has recorded statements of the witnesses acquainted with the facts of the case. The Police collected relevant documents for the sake of investigation. The plight of minor -victim became worsened. The victim minor-infant of three months old was shifted to the hospital of Dr. Jagdale Mama at Barshi and thereafter in the Ashwini Hospital at Solapur. The minor - victim was admitted in the ICU. The concerned doctors took efforts to resuscitate the victim i.e. minor infant of applicant - Savita.

5. It has been further alleged that when medical treatment was going on in Ashwini Hospital, Solapur the applicant - Savita lifted her newly born minor son of three months and took him out side the

hospital. She abandoned the minor baby near scrap building material lying in the open space, in front of the house of one Mr. Ratilal Gandhi. The applicant Savita also attempted to kill minor-infant with boulder. Thereafter, applicant – Savita escaped from the spot. The denizens of the area, Smt. Sunita Patre and others received the opportunity to watch the spectacle. She immediately, called her husband and thereafter the spouses escorted the minor- infant to the Police Station, Solapur for requisite action and care of newly born baby. On the basis of complaint of Sau Sunita Patre, Police of Faujdar Chawadi Police Station, Solapur, registered the another crime No. 450 of 2015 against the applicant Savita and Swung into action. The witness Smt. Sunita Patre identified the applicant being an culprit.

6. The police of Washi Police Station after investigation of crime No. 212 of 2015 procured the documents of crime No. 450 of 2015 registered at Faujdar Chawadi Police Station, Solapur, and filed the consolidated charge-sheet against the applicant for the offence under section 307 of the IPC before the learned Judicial Magistrate First class, Washi. The offence punishable under section 307 of IPC was triable by the Court of Sessions. Therefore, the matter was transmitted to the Court of Sessions, Bhoom for the trial of the accused/applicant within the ambit of law. Accordingly, the Sessions Case No. 15 of 2016 came to be registered and same is pending on the file of learned Additional Sessions Judge, Bhoom for trial of the applicant – Savita. Pending the

trial, applicant approached to this Court and preferred the present application for quashing the proceedings bearing Sessions Case No. 15 of 2016 pending on the file of Additional Sessions Judge, Bhoom, District Osmanabad initiated pursuant to FIR bearing crime No. 212 of 2015 registered at Washi Police Station, Tahsil Washi. The applicant seek relief by invoking remedy under section 482 of Cr.P.C.

7. The applicant submits that during relevant period of commission of crime, she was suffering from mental illness known as '*postpartum depression*' which generally caused to the woman after the delivery. The behaviour of mother during the pregnancy and after the delivery would change owing to psychiatric disorder. The applicant is innocent of the charges pitted against her. She had not committed any crime with ill intention, but alleged act of attempt to kill her own minor infant son, was under the attack of psychiatric disorder. Therefore, she has not committed any crime with ulterior motive. Her husband and family members as well as other witnesses also conceded about the mental illness of the applicant. They had filed affidavit before the concerned Sessions court as well as before this High Court at the time of releasing the present applicant on bail. This High Court while dealing with bail petition was pleased to refer the applicant to the Civil Surgeon, District Hospital, Osmanabad. The concerned medical expert also certified that during relevant period the applicant was suffering from mental ailment. Thereafter, the bail application of applicant came to be

allowed. According to applicant, she committed crime under the fit of mental ailment. At this juncture, she has been fully recovered from the disease and her family members also taking care of herself and her minor son. Therefore, she prayed to allow the application for quashing the impugned proceedings initiated against her.

8. The learned counsel appearing for the applicant fervidly contended that the entire family members of the applicant have no any complaint or grievance about the conduct and behaviour of the applicant – Savita. During the relevant period, she was suffering from mental illness and in the fit of mental ailment she committed the crime, which is not an offence as envisaged under the general exception of section 84 of IPC. He drawn attention towards affidavits of husband, in-laws and other witnesses filed on record in support of the applicant. The first informant – husband Manish, his family members and witnesses in their respective affidavits admitted the circumstances of mental ailment of applicant after her second delivery as well as her medical treatment. They have no complaint about behaviour and conduct of applicant. They furnished the undertaking that their entire family are ready to take care of the applicant and her minor son. Therefore, the complainant – Manish (husband of applicant), his parents, all have no objection to quash and set aside the proceedings bearing Sessions Case No. 15 of 2016 pending against the applicant on the file of Additional Sessions Judge, Bhoom, District Osmanabad and

consequently the FIR bearing crime No. 212 of 2015 registered at Washi police Station, Tahsil Washi. The learned counsel prayed to allow the application.

9. We have considered the submissions advanced on behalf of learned counsel for the applicant, learned APP for respondent No.1 State and learned counsel for respondent No. 2. We have also perused the relevant documents and medical treatment papers of the applicant -Savita. Admittedly, applicant -Savita is arraigned for an offence under section 307 of the IPC in the Sessions case No. 15 of 2016 pending before the learned Additional Sessions Judge, Bhoom. It has been alleged that she attempted to commit murder of her own newly born minor baby of three months old by forcibly administering poisonous substance to the child. Thereafter, on another occasion she abandoned the baby at deserted place and attempted to kill the infant with stone. The Police of Washi Police Station carried out the investigation and after procuring relevant documents of another FIR registered at Solapur, filed the charge-sheet which came to be registered as Sessions case No. 15 of 2016, before the Sessions Court at Bhoom.

10. At this juncture, the scrutiny of the attending circumstances coupled with relevant documents of medical treatment of the applicant – Savita as well as affidavits of her husband in-laws and other witnesses filed on record in support of the applicant reflects that the applicant Savita attempted to commit alleged offence in a fit of her

mental illness known as "*postpartum depression*". It is also an admitted fact that while dealing with bail petition of the applicant, she was referred to the psychiatric of District Hospital as well as to the Civil Surgeon Osmanabad. They both medical experts clinically examined the applicant and certified that the applicant was suffering from mental illness, which is generally caused after delivery of the woman.

11. It is also the fact that victim was the minor newly born baby of three months old son of the applicant herself. Obviously, being, a sucking child each and every mother including the applicant - Savita would have love and affection towards own newly born child. The applicant being mother of child must have taken care and precaution for his wellbeing and safety. Therefore, she being in such state of mind, could not have thought of committing such gruesome act to snuff out the life of her own sucking child. Taking into consideration the love and affection of the mother towards her own newly born child/baby it would be cumbersome to appreciate that the applicant -Savita, mother of newly born baby would intentionally and with ulterior motivation attempt to kill her own baby without any reasonable cause. These circumstances are also sufficient to draw inference that the applicant - Savita must have committed alleged offence under the influence of psychiatric disease i.e. mental disorder. Therefore, it would be unjust and improper to fasten the guilt on the applicant/accused.

12. The another aspect of the matter is pertains to provision of general exception under section 84 of the IPC. It has been categorically laid down in section 84 of IPC that "*nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.*"

The aforesaid provision of Sec.84 of IPC provides protection to the person of unsound mind from considering his act or wrong as an offence under the law. The inference of mental condition of the accused can be drawn from the conduct and demeanor of the accused, motive of the crime, consciousness of his guilt and efforts to avoid detection etc.

13. In the instant case, the circumstances available on record categorically demonstrate that applicant was not capable to understand the nature of seriousness of her act at the relevant time of commission of crime. She was not mentally conscious to realize the consequences of her act. She was not knowing that she was doing wrong which is contrary to law. She was not in mental condition to think about the repercussion of her act owing to unsoundness of mind. Therefore, we do not find any impediment to arrive at the conclusion that whatever the act committed by the applicant would not be an offence as envisaged u/sec. 84 of the IPC.

14. In the above premises, we would reiterate that recently, prior to three months of the incident, the applicant gave birth to a male child and as per statement of her family members since the day of delivery she was suffering from mental illness known as '*postpartum depression*' disorder with psychiatric features. It would seen from the conduct and behaviour of applicant that she was incapable to realize the nature and consequences of her act. Therefore, in view of general exception under section 84 of the IPC, the act which she had committed to kill her minor newly born baby would not be appreciated as an offence under the IPC. Hence, there would not be any propriety for continuation of criminal proceedings against her. There are remote chances of success of the prosecution in this case. The material witnesses of the prosecution who are husband, in laws etc., all stated about the mental illness of the applicant. Therefore ultimately, the result in Sessions Case would be acquittal of applicant and consequently the continuation of criminal proceeding would be an exercise of futility and would dissipate precious time of court. It would be an abuse of process of law. Therefore, there would not be any propriety to rebuff the relief sought in the present application. Definitely, it would sub-serve the purpose to restore the family life of applicant and her husband children etc. It would meet the ends of justice. We have no hesitation to exercise the inherent powers under section 482 of the Cr.P.C. to quash and set aside the proceedings bearing Sessions Case No. 15 of 2016 pending on the file of Additional Sessions Judge, Bhoom, District Osmanabad and consequently its FIR

bearing crime No. 212 of 2015 registered at Washi Police Station, Tahsil Washi as against applicant – Savita. In sequel, the applicant stands allowed in terms of prayer clause “B”. Rule is made absolute accordingly.

Sd/-

[K.K.SONAWANE]
JUDGE

Sd/-

[S.S. SHINDE]
JUDGE

MTK