

CRM-M-12323-2012
CRM-M-13682-2012
CRM-M-15671-2012
CRM-M-16450-2012

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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

(I) CRM-M-12323-2012 (O&M)
Date of Decision : 18.09.2017

Gurdev Kaur

....Petitioner

Versus

State of Punjab and another

....Respondents

(II) CRM-M-13682-2012 (O&M)
Date of Decision : 18.09.2017

Amanjeet Kaur

....Petitioner

Versus

State of Punjab and another

....Respondents

(III) CRM-M-15671-2012 (O&M)
Date of Decision : 18.09.2017

Dr. Rashmi Jain

....Petitioner

Versus

State of Punjab and others

....Respondents

(IV) CRM-M-16450-2012 (O&M)
Date of Decision : 18.09.2017

Dr. S.L. Singla

....Petitioner

CRM-M-12323-2012
CRM-M-13682-2012
CRM-M-15671-2012
CRM-M-16450-2012

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Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Jasdeep Singh, Advocate,
for the petitioners in
CRM-M Nos.12323 and 13682 of 2012.

Mr. Lalit Thakur, Advocate,
for the petitioner in CRM-M-15671-2012.

Mr. HPS Ishar, Advocate,
for the petitioner in CRM-M-16450-2012.

Mr. N.K. Banka, DAG, Punjab.

JITENDRA CHAUHAN, J (ORAL)

This common judgment shall dispose of batch of four petitions, captioned above, having been filed with the common prayer of quashing FIR No.48 dated 16.02.2006, registered under the Medical Termination of Pregnancy Act, 1974 (for short, 'the MTP'); and Sections 313 and 120-B of the Indian Penal Code (for short, 'the IPC'), at Police Station, Phase I, Mohali, and all consequential proceedings arising therefrom.

It is the case of the prosecution that petitioner Amanjeet Kaur got terminated her pregnancy illegally, in connivance with co-accused/petitioners, after having come to know that it was a female

foetus.

It is contended that the allegations levelled against the petitioners are without any basis. As petitioner, Amanjeet Kaur, was suffering from serious and life-threatening medical problems during pregnancy, pre-mature delivery was conducted, wherein, she delivered a dead foetus. The petitioner-wife and her husband were having matrimonial discord and the instant FIR has been registered only to harass and humiliate her. The medical evidence shows that dead foetus was delivered by the petitioner. After detailed investigation, twice cancellation reports were prepared and presented before the trial Court, however, the same were rejected on both the occasions.

The learned State counsel does not dispute the factual aspect of the matter with regard to investigation.

Heard.

As per record, during the pendency of the investigation in the matter, the petitioners Amanjeet Kaur and Gurdev Kaur submitted representation for getting conducted an independent probe in the matter. Accordingly, the inquiry was conducted by DSP(D), S.A.S. Nagar, Mohali, and after a thorough inquiry, it was concluded that the pregnancy was terminated in order to save the life of Amanjeet Kaur as she was carrying a dead foetus. Accordingly, cancellation report was prepared and presented, however, the same was rejected by the trial Court and re-investigation was ordered. Thereafter, investigation was

again conducted after associating the complainant and cancellation report was again presented. Once again, the trial Court rejected the cancellation report and summoned all the accused to face trial.

In order to prove that an offence under Section 313 IPC has been committed, it has to be proved that such miscarriage was not caused in good faith for the purpose of saving the life of the woman.

In the instant case, investigation was conducted twice and during investigation, opinion from the Department of Obstetrics and Gynaecology, PGIMER, Chandigarh, was sought. In response thereto, a report dated 15.09.2006 (Annexure P-3), was received, which reads thus:-

“As per the records of different Nursing Homes, ultrasound report as well as post mortem report of foetus, the pregnancy was of 27-28 weeks gestation. It seems, she started bleeding per vaginum due to low lying placenta and later also had pain abdomen and delivered a dead foetus. Ultrasound done before the delivery had confirmed dead foetus. Based on all the records, this does not seem to be a case of MTP rather a preterm delivery of a 27-28 weeks 950 gm foetus with 340 gm of placenta.”

It has been the consistent stand of the petitioners that the condition of petitioner-Amanjeet Kaur was deteriorating and in order to save her life, pre-mature delivery was conducted. The medical evidence confirms that the foetus had already died prior to the

operation.

Furthermore, it is apparent from the record that petitioner-Amanjeet Kaur was 27/28 weeks pregnant at the time of the alleged termination of pregnancy. Had there been any intention of petitioner-Amanjeet Kaur to avoid the birth of a female child, she could have terminated pregnancy much earlier.

Even if for the sake of argument, it is held to be a case of medical termination of pregnancy, viewed from any angle, it is crystal clear that petitioner-Amanjeet Kaur, the mother to be, was a consenting party. This Court in *Dr. Mangla Dogra v. Anil Kumar Malhotra (P&H) : 2012(1) R.C.R.(Criminal) 836:-*

“18. The argument of the Ld. counsel for the husband/ respondent has been rejected in view of the medical termination of pregnancy Rules, 1975. Rule 8 provides as under :-

"8. Form of Consent- The consent referred to in sub section (4) of Section 3 shall be given in Form C."

Form C is prescribed as under :-

FORM C

(see rule 8)

I..... daughter/wife of aged
about.....years of

.....(here state the permanent
address).....at present residing
at.....do hereby give my consent of the
termination of my pregnancy at.....

.....

(State of name of place where the
pregnancy is terminated)

.....

Signature

Place.....

Date.....

19. This form is to be signed by the wife only, showing her willingness to have the pregnancy terminated or aborted. The Medical Termination of Pregnancy Act, 1971(34 of 1971), nowhere provides for the express or implied consent of the husband. The wife is the best judge and is to see whether she wants to continue the pregnancy or to get it aborted. The husband has unsuccessfully brought an action for perpetual injunction restraining the wife to get the pregnancy terminated, but the suit was dismissed as withdrawn.

20. When the husband has no right to compel her wife not to get the pregnancy terminated, he has no right to sue her wife for compensation. The husband also has no cause of action against her wife on this account. Keeping in view the strained relations between the husband and wife, the decision of the wife to get the termination of unwanted foetus was

right. It was not the act of termination of pregnancy, due to which relation became sour, but the relations between the husband and the wife were already strained. So, keeping in view the legal position, it is held that no express or implied consent of the husband is required for getting the pregnancy terminated under the Act.”

In view of the above discussion, this Court is of the considered opinion that continuation of proceedings in the instant case against the accused-petitioners is absolutely unwarranted and would be an abuse of the process of law resulting into grave injustice to them.

Consequently, the instant petitions succeed; FIR No.48 dated 16.02.2006, registered under the MTP Act and Sections 313 and 120-B IPC, at Police Station, Phase I, Mohali, and all consequential proceedings arising therefrom, are hereby quashed, qua the present petitioners.

18.09.2017
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No