

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2929 OF 2018

Ganesh Chandrakant Zirpe and others	Petitioners
versus	
The State of Maharashtra	Respondent

Mr.Mahindra B. Deshmukh for petitioners.
Mr.A.R.Patil, Additional P.P. for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 14th August 2018

PC :

1. The petitioners are facing prosecution vide RCC No.3 of 2018 which is pending before the competent Court. The petitioners are aggrieved by order dated 25th May 2018 passed by Additional Sessions Judge, Sangli issuing process against the petitioners for offence u/s 313 of Indian Penal Code ('IPC').

2. The brief facts of the prosecution case are as follows :

(a) The marriage between petitioner no.1 and original complainant Aarti Ganesh Zirpe was performed on 30th April 2016. Thereafter she joined matrimonial home with petitioner no.1. She alleged that the in-laws started ill-treating her on the ground that at the time of marriage the in-laws were not treated properly and in-laws started demanding money. Since she could not fulfill their demand, she was harassed. The complainant further alleged that she was conceived in the month of August-2016 and this fact was known

to the accused. Despite that, her sister-in-law (petitioner no.3) pushed her from the staircase and that resultantly she suffered bleeding and stomach pain. After two days since she was undergoing sever pain, petitioner no.1 took her to hospital and after check-up the doctor found that the complainant had suffered miscarriage and she was advised to undergo curating. Thereafter in the month of October-2016, the complainant was taken to maternal home for the treatment and rest. On 5th February 2017 the complainant lodged the complaint with Sahakar Nagar Police Station, at Pune for the offences punishable u/ss.498A, 312, 406, 323, 504 and 34 of Indian Penal Code. The said complaint came to be transferred to Kadegaon Police Station as the alleged offence took place within the jurisdiction of said police Station. Kadegaon Police Station registered the complaint vide CR No.34 of 2017 for offences punishable u/ss.498A, 312, 406, 323, 504 and 34 of IPC on 11th March 2017. The investigating officer conducted the investigation of the offence and filed the charge sheet before the Court of JMFC at Kadegaon on 12th January 2018.

3. The investigation was completed and charge sheet was filed against petitioners-accused for offence under Sections 498A, 312, 406, 323, 504 read with Section 34 of Indian Penal Code. By order dated 19th January 2018 the Trial Court called upon the investigating officer and assistant public prosecutor to file say on the point of offence u/s 312 and 316 of IPC. Learned APP filed say on 6th February 2018 stating that prima facie charge u/s 316 of IPC is applicable in the case. The investigating officer, however, submitted a report on 27th January 2018 stating that charge u/s 316 of IPC could not be added on account of lack of medical evidence. The

investigation was conducted and charge sheet was filed u/ss.498A, 312, 406, 323, 504, 34 of IPC. It was also stated that medical officers who were interrogated had not stated categorically that the abortion was caused on account accident or it was a natural process. After receipt of said report and the say filed by APP, the Court passed order dated 26th February 2018 observing that the fact of pregnancy was known to accused. She was intentionally pushed over from the staircase which resulted in injury. The incident was followed by abortion. Hence, charge u/s 316 is attracted in stead of Section 312. Learned Magistrate then proceeded to take cognizance of offence u/s 498A, 312, 406, 323, 504 read with Section 34 of IPC and hence process was issued against the accused nos.1 to 5 for the said offences.

4. The petitioners preferred revision application before the Sessions Court challenging the order dated 26th February 2018 passed by learned Magistrate. The revision application was opposed by the prosecution by filing say. The learned Sessions Judge partly allowed the revision application by modifying order dated 26th February 2018 and directed that process be issued against accused nos.1 to 5 for commission of offence punishable u/s 498A, 313, 406, 323, 506 r/w Section 34 of IPC. The petitioners have challenged the said order.

5. Mr.Deshmukh appearing for petitioners submitted that there is no evidence to proceed against the petitioners-accused for offence u/s 313 of IPC. The investigating officer after conducting investigation filed charge sheet u/ss.498A, 312, 406, 323, 504 r/w Section 34 of Indian Penal Code. During the course of investigation

documents in the nature of medical certificates, opinions of medical officers were collected by police and therefore on the basis of available material on record the charge sheet was filed for the said offences. There was no reason to deviate from the offences for which the charge sheet was filed. The investigating officer had filed a report and supported the charge u/s 312 of IPC. It is submitted that without any evidence on record, the petitioners cannot be prosecuted for the charge u/s 313 of IPC. The said offence is triable by the Court of Sessions. The medical evidence on record does not support charge u/s 313 of IPC. The reasons assigned by the Sessions Court for issuing process u/s 313 of IPC are contrary to provisions of law.

6. Learned APP submitted that the accused are liable to be prosecuted for the said offence. There is substantive evidence on record to proceed against the accused for the offence u/s 313 of IPC. Learned Sessions Judge has assigned reasons for issuing process for the said offence. The accused had knowledge that the victim is pregnant and deliberately pushed her down the staircase which has resulted in the abortion and thereby they have committed the alleged offence. It is further submitted that the Trial Court after recording the evidence would decide whether the charge u/s 313 is tenable or not and at this stage interference is not called for. The first information report and statements of the witnesses make out the case against the petitioners-accused for the said charge.

7. I have perused the documents on record. The FIR was lodged on 11th March 2017. The alleged incident with regards to miscarriage had occurred on 15th September 2016. It is alleged that one of the accused had pushed the complainant from the staircase.

The documents on record indicate that the complainant was treated by doctors and it is opined that it was a case of abortion. The medical evidence, however, does not indicate that miscarriage was the result of victim being pushed from the staircase or hurt was caused to the victim. The medical documents also indicate the history which is given by the victim to the doctor when she was being treated, that the injuries were sustained on account of fall from stool. The investigating officer after conducting the investigation in the form of statements of witnesses, collection of medical papers; had opined that the charge u/s 312 of IPC and other offences is made out and hence charge sheet was filed. Learned Magistrate, however, called upon the prosecution to explain the stand with regards to charge which has given rise to this controversy. I have perused the certificate issued by Dr.Jethmalani and also other medical papers which did not indicate or support the charge u/s 313 of IPC. Although the medical certificates and other case papers were collected, statement of Dr.Jethmalani was not recorded.

8. Section 313 of IPC reads as follows :

“313. Causing miscarriage without woman's consent.- Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

9. On reading the said provision it is apparent that the offence relates to miscarriage without woman's consent. The medical evidence also does not support the said charge. The provision clearly indicate that whoever commits the offence defined in the last

preceding section without the consent of the woman, whether the woman is quick with the child or not, shall be punished with imprisonment for life. The Sessions Court, however, drawn inference and proceeded to issue process for the said offence. In the impugned order it is observed that the complainant had stated in the FIR that she had sustained bleeding and stomach pain after the incident. Therefore, whether the miscarriage was a result of fall or there was any reason for that, is a matter of evidence which will be decided at the time of trial. It is pertinent to note that the alleged incident had occurred on 15th September 2016. The victim was thereafter treated in the hospital with various doctors, who had issued certificates. The FIR was thereafter lodged on 11th March 2017. From the medical certificate dated 26th May 2017 issued by the Accident Hospital and Maternity Home, Karad, it is apparent that the victim had visited the said hospital and she was diagnosed as the case of complete abortion. She was an OPD patient and treated as such. She was not admitted in the hospital. The report issued by Bharti Hospital and Research Centre University Hospital, Pune refers to the impressions after the diagnosis wherein it is mentioned that patient approached the said hospital with pains in left hypochondrium (abdominal pains). To rule out exact cause of abdominal pains, patient was advised to undergo ultrasonography pelvis. The USG report reveals Endometrial Thickness 12.5 mm, 16x9 mm complex right adnexal cystic lesion corpus luteum cyst. In the circumstances there was no reason for the Sessions Court to issue process u/s 313 of IPC.

10. In the light of aforesaid circumstances, the impugned order dated 25th May 2018 is required to be set aside. Hence, I pass following order :

ORDER

- (i) Criminal Writ Petition No.2929 of 2018 is allowed;
- (ii) The impugned order dated 25th May 2018 passed by Sessions Judge, Sangli in Criminal Revision application No.48 of 2018 issuing process u/s 313 of Indian Penal Code is set aside;
- (iii) The Trial Court shall proceed with the matter in accordance with law.

(PRAKASH D. NAIK, J.)

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