



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.01.2018

Orders reserved on 07.06.2017

CORAM:

THE HON'BLE Mr.JUSTICE A.M.BASHEER AHAMED

Crl.R.C.(MD)No.17 of 2017

and

C.M.P.(MD)No.135 of 2017

Dr.Manivannan

... Petitioner

Vs.

The State of Tamil Nadu,
Rep.by the Inspector of Police,
CBCID,
Pudukkottai,
Camp at Sivagangai.
(in Crime No.2 of 2015)

... Respondent

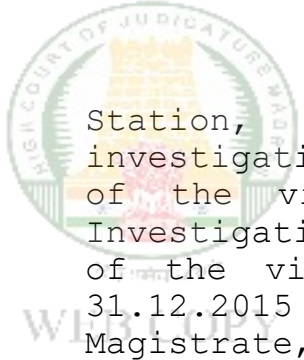
Prayer: The Criminal Revision case filed under Sections 397 and 401 Cr.P.C., against the order dated 18.11.2016 in Cr.M.P.No.682 of 2016 passed by the Sessions Judge, Fast Track Mahila Court, Sivagangai.

For Petitioner	:	Mr.C.Arul Vadivel Alias Sekar
For Respondent	:	Mr.APG.Ohm Chairma Prabhu Government Advocate (Crl.Side)

ORDER

This Criminal Revision Case is filed against the order dated 18.11.2016 in Cr.M.P.No.682 of 2016 passed by the Sessions Judge, Fast Track Mahila Court, Sivagangai.

2.On the date of occurrence, the victim girl was aged about 17 years. On the basis of the written complaint of one Selvi, the case in Crime No.10 of 2015 was registered on 04.06.2015 by All Women Police Station, Sivagangai against two named persons and others. The said two accused are father and brother of the said victim girl. The case was taken up by the Investigating Officer of the said police station at the first instance. The statement of the victim girl was recorded under Section 164 Cr.P.C. on 09.06.2015 by the learned Principal District Munsif cum Judicial Magistrate, Karaikudi. The statement and further statement of the victim girl were recorded under Section 161(3) Cr.P.C. on 04.10.2015 and 11.10.2015 respectively, by the Investigating Officer of All Woman Police Station, Sivagangai. Thereafter, the said investigation of the case was transferred to the respondent Police and the same was registered on 14.10.2015 as Crime No.2 of 2015 on its file. The contents of both the FIR are one and the same, except the Police



Station, Crime and date of registration. During further investigation, conducted by the respondent Police, further statement of the victim girl was also recorded on 22.10.2015 by the Investigating Officer of the respondent Police. Again the statement of the victim girl under Section 164 Cr.P.C. was recorded on 31.12.2015 by the learned Principal District cum Judicial Magistrate, Karaikudi. After completing the investigation by the respondent Police, final report / charge sheet was filed before the Mahila Fast Track Court, Sivagangai against 8 accused and cognizance was taken and the same is pending in Special S.C.No.19 of 2016 in its file.

3.The petitioner herein is arrayed as the 7th accused. The alleged charges mentioned in the charge sheet against the petitioner / A7 is that the victim girl was brought to the Karthik Clinic running by the petitioner / A7 in the year 2014. The accused person namely, Namasivayam / A4 and the petitioner / A7 aborted the victim girl twice and hence, the petitioner / A7 had committed the offences punishable under Sections 312 and 313 IPC and Section 5(2) of the Medical Termination of Pregnancy Act, 1971 (herein after called the Act).

4.The petitioner / A7 has filed a petition in Cr.M.P.No.6821 of 2015 seeking discharge of the petitioner / A7 from the case registered under Section 227 Cr.P.C. and the said petition was dismissed by the learned Sessions Judge, Fast Track Mahila Court, Sivagangai in its order dated 18.11.2016. Aggrieved by the order of dismissal, the petitioner / A7 has preferred this Criminal Revision Case.

5.Mr.C.Arul Vadivel alias Sekar, learned counsel for the petitioner would submit that totally there are 8 accused in this case and the petitioner is arrayed as A7 and he is a registered medical practitioner and he is charged under Sections 312 & 313 IPC and Section 5(2) of the Medical Termination of the Pregnancy Act, 1971. He would further submit that absolutely there is no prima facie materials has been found against the petitioner / A7, except the inconsistent statements of the victim girl recorded under Section 161 Cr.P.C.

6.Adding further, the learned counsel appearing for the petitioner would submit that after enactment of the said Act, the provisions of Indian Penal Code relating to miscarriage, have been sub-surveillant to it, because of the non obstantic clause in Section 3 of the said Act, which permits abortion / miscarriage by a registered medical practitioner under certain circumstances. There is no evidence to show that the alleged act said to have been committed by the petitioner was not under the exemption enumerated in the said Act and as such, the Trial Court miserably failed to take note of the statutory bar and the privilege and protection given to the petitioner.



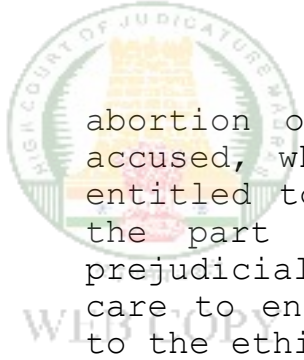
7.As per Section 5(2) of the said Act, only a person, who is not a registered practitioner, alone can be prosecuted. Even if the petitioner aborted the victim girl, as per prevailing clause to the said Act, the petitioner has to be necessarily presumed to discharge his duty in a bonafide faith under the exemption of the said Act and as such, by no stretch of imagination, the petitioner can be roped by brushing the criminal colour. Further, the respondent has not recovered any incriminating materials so as to connect the petitioner with the alleged commission of offence and in the absence of the same and only on the basis of the statements, recorded under Section 173(3) Cr.P.C., in which also, there is no averment to form mere suspicion, no useful purpose would be served, if the trial is conducted. Therefore, the petitioner is entitled to be discharged under Section 227 Cr.P.C.

8.Continuing further, the learned counsel for the petitioner would submit that the charges should be specific with necessary particulars namely, date, time and place of commission of offence. The charge sheet does not disclose any date or time and the complaint was preferred belatedly after a period of one year. Except the two vague and inconsistent statements of the victim girl recorded under Section 164 Cr.P.C., absolutely, there is no material available on record to proceed further against the petitioner.

9.In support of the contention, the learned counsel for the petitioner has relied on a decision of the Hon'ble Supreme Court reported in 1992 Supp. (1) SCC 335 (*State of Hariyana and others Vs. Bhajan Lal and others*) and 1960 Cri.L.J.1239 : AIR 1960 SC 866 (*R.P.Kappur Vs. State of Punjab*) and also a decision of this Court reported in 2001 MLJ (Cri.) 855 (*David Pon Pandian and others Vs. State through the Inspector of Police, Crime Branch CID Head Quarters, Chennai*).

10.Mr.C.Mayilvahana Rajendran, learned Additional Public Prosecutor appearing for the respondent Police would submit that the non seizure of the incriminating material will no way make dent in the prosecution case, as the efflux of time would make absolutely impossible to recover any incriminating materials. He would further submit that there is no legal bar in the Medical Termination of the Pregnancy Act, to proceed against the medical practitioner, who with impunity has committed a crime based on the request of the accused person namely, Namachivayam and the said person is not a guardian of the victim girl, but he is the friend of the petitioner / A7. Since prima facie materials are available, the Trial Court came to the conclusion on the basis of the settled proposition of law that there are enough materials available to frame charges against the petitioner / A7, which shall not be tripled with on triviality.

11.Moreover, the petitioner / A7 being a medical practitioner is not expected to traverse the same by doing the act unbecoming of the conduct of the professional, the fact that he was alleged to do



abortion on a minor girl twice being brought to him by another accused, who was not a lawful guardian of the victim girl, is not entitled to the discretion relief of this Court and the action on the part of the respondent Police will no way be termed as prejudicial. The petitioner / A7 ought to have exercise sufficient care to ensure the conduct of the medical professional by sticking to the ethics and code of conduct as envisaged in the medical code.

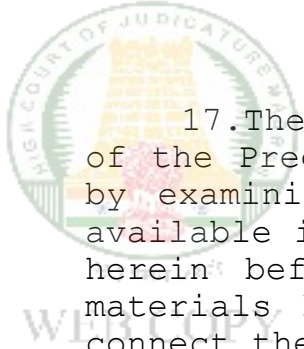
12. In support of his contention, the learned Additional Public Prosecutor relied on a decision of the Hon'ble Supreme Court in *State of Rajasthan Vs. Fatehkaran Mehdu* reported in 2017 (2) SCC (Cri.) 40 and in *P.Kartikalakshmi Vs. Sri Ganesh and another* reported in 2017 (2) SCC (Cri.) 84.

13. Perused the materials on record, heard and considered the rival submissions advanced by either side.

14. Admittedly, the petitioner is a registered medical practitioner, having a clinic namely, Karthik Clinic at Sivagangai. The victim girl along with A4 has approached the petitioner's clinic in the year 2014 for doing abortion. Accordingly, the petitioner aborted the victim twice.

15. No new complaint was received for registration of the case by the respondent. Only the contents of the earlier FIR have been incorporated, after transferring the investigation to the respondent Police, a new crime number has been assigned. Therefore, the petitioner cannot gain on this ground. On perusal of the statements under Section 161(3) and 164 Cr.P.C. of the victim girl recorded by the Investigating Officer and also by the learned Judicial Magistrate respectively, the victim girl has spoken about the petitioner, to whom the victim was brought by A4 for abortion at the petitioner's clinic. The existences of the said hospital / clinic, in which, the petitioner is the medical practitioner, is not in dispute. However, no record is produced by the prosecution to show that the petitioner had done abortion twice to the victim and also she was treated as patient in that clinic.

16. The learned counsel for the petitioner submitted that L.W.47 Maharaja is hearsay witness in respect of the abortion made in the said hospital. The statements of the victim girl under POCSO Act are sufficient material to show a prima facie case against the petitioner to connect him in this case. The petitioner at liberty to raise his defence at the time of Trial. The validity of the two confession statements of the victim girl can be evaluated only at the time of trial. The said confession can be appreciated only on the examination of the said witness / victim during the time of trial. The co-accused namely, Namachivayam, who brought the victim girl to the petitioner's clinic for abortion, is not a guardian of the said victim. This Court cannot come to the conclusion at this stage that implicating the petitioner as an accused in this case is motivated by the victim or by prosecution.



17.The grounds mentioned in Section of the Medical Termination of the Pregnancy Act, can be looked into only at the time of trial by examining the concerned witnesses. Prima facie materials are available in this case for proceeding further against the petitioner herein before the Trial Court. It is to be seen whether the materials brought on record in the charge sheet would reasonably connect the petitioner with crime.

18.Considering all the above facts and circumstances of this case, this Court is not inclined to interfere with the order dated 18.11.2016 in Cr.M.P.No.682 of 2016 passed by the Sessions Judge, Fast Track Mahila Court, Sivagangai, for discharging the petitioner.

19.In the result, this Criminal Revision case is dismissed. Consequently, connected C.M.P. is closed.

Sd/-

Assistant Registrar(ADI)

/True Copy/

Sub-Assistant Registrar

To

1.The Sessions Judge, Fast Track Mahila Court, Sivagangai.

2.The Inspector of Police,
CBCID,
Pudukkottai,
Camp at Sivagangai.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+One cc to Mr.C.Arul Vadivel @ Sekar, Advocate, SR.No.44874

nbj

RL/5C/5P/JC/SAR1/27/2/2018

Order made in

Cr1.R.C.(MD) No.17 of 2017

30.01.2018