

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.357 OF 2019

Anjana Annasaheb Patil & ors.

... Petitioners

Vs.

The State of Maharashtra & anr.

... Respondents

Mr.U.R. Mankapure for the Petitioners
Mr.N.B. Patil, APP, for the Respondent – State
Mr.A.S. Shirke with S.V. Khaire for Resp. No.2

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: MARCH 15, 2018

P.C.:

1. In this matter filed under Article 227 of the Constitution of India and under section 482 of the Criminal Procedure Code, the orders dated 6.1.2018 below exhibit 27 and order dated 7.1.2019 below exhibit 89 in R.C.C. No.311 of 2016 passed by the learned JMFC, Sangli, are challenged. Petitioner No.1 is the mother in law and petitioner Nos.2 and 3 are the sisters in law of respondent No.2 and petitioner No.4 is the husband of petitioner No.3. All the petitioners are facing prosecution under section 498A, 323, 506 and 504 r/w 34 of the Indian Penal Code. The evidence of the complainant i.e., respondent No.2, is over. Thereafter, the learned

trial Judge added charges below exhibits 269 and 270 against accused Nos.1, 2 and 3 by passing order below exhibit 27.

2. The original complainant has moved application that her husband was suffering from a 'dangerous disease', namely, AIDS before their marriage and this fact was within the knowledge of accused Nos.1, 2 and 3. However, accused Nos.1, 2 and 3 had concealed this fact from respondent No.2 and her relatives and, therefore, the petitioner Nos.1, 2 and 3 have caused in spreading the dangerous disease. The learned Judge allowed the said application and framed charge under sections 269 and 270 of the Indian Penal Code. Subsequently, the trial proceeded and thereafter, the advocate for the complainant moved application under section 311 of the Criminal Procedure Code and, therefore, it is necessary to examine the witnesses from the medical field which may throw light on the averment that the late Anil was suffering from AIDS since the time of their marriage.

3. The learned Judge allowed the said application by order dated 7.1.2019 and hence, this Writ Petition.

4. Heard submissions of both the sides. The issue is short and hence, by consent, it is being disposed of finally at the stage of admission.

5. Section 269 states about the negligent act likely to spread infection of disease dangerous to life. It states as follows:

269. Negligent act likely to spread infection of disease dangerous to life.—Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

6. Section 270 states malignant at likely to spread infection of disease dangerous to life. It is reproduced as follows:

270. Malignant act likely to spread infection of disease dangerous to life.—Whoever maliciously does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

7. It is to be noted that these two sections are covered under Chapter XIV, which is pertaining to the offences affecting the public health, safety, convenience, decency and morals. After bare

reading of both the sections and considering the ingredients of these two sections, *prima facie*, the offences under the relevant sections is not at all constituted. It is necessary to bring the facts on record to justify this conclusion. The marriage between the parties took place on 29.5.2001. Anil died in 2012. Thus, respondent No.2 i.e., the original complainant and Anil had a married life of about 11 years. During this 10 to 11 years, the complainant / wife neither lodged any complaint nor initiated any proceedings or even made any allegations against the deceased husband in respect of spreading of AIDS. The complaint was lodged in 2016 against the mother in law, the sisters in law and the husband of sister in law. On query with the learned Counsel for the complainant i.e., Respondent No.2, it is informed that the wife has never suffered from AIDS.

8. Under such circumstances, there is no material to frame charge under sections 269 and 270 of the Indian Penal Code. Hence, both the orders passed by the learned Magistrate are quashed and set aside.

9. Writ Petition is disposed of accordingly.

(MRIDULA BHATKAR, J.)