

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.564 OF 2018**

Savita Manish Chaudhari ...Applicant

versus

1. The State of Maharashtra

2. Sunita Shrikant PatreRespondents

Mr. Viresh Vishwanath Purwant, advocate for the applicant.

Mr. K. V. Saste, APP for the State.

**CORAM : RANJIT MORE &
SMT. BHARATI H. DANGRE, JJ.**

DATE : 24th JULY, 2019.

P. C. :

On 9th December, 2015, CR No.212 of 2015 came to be lodged by the husband of the petitioner in Washi Police Station, District Osmanabad for the offences punishable under Sections 450 and 307 of the Indian Penal Code, 1860 (for short “the IPC”). The allegation was that an infant, child of the complainant was administered poison in form of insecticide and resultantly, the infant was taken to the hospital for medical treatment.

2. The second FIR viz. CR No.450 of 2015, which is sought to be quashed in the present writ petition, came to be filed by one Sou. Sunita Shrikant Patre with Faujdar Chawadi Police Station, District Solapur and the said FIR discloses that the present petitioner – Savita Manish

Chaudhari who was the mother of the infant attempted to kill the child with boulder on roadside. This incident had taken place when the infant was admitted and undergoing treatment in Ashwini Hospital, Solapur, and it is alleged that at the relevant time, the applicant-mother took the child of three months and brought him outside the hospital and abandoned him in front of the house of one Mr. Ratilal Gandhi. The FIR alleges that the applicant tried to kill the infant with boulder and she ran away and this Sou. Sunita Shrikant Patre, who had witnessed the incident, lodged the 2nd FIR pursuant to which an investigating machinery was set into motion and the applicant was apprehended.

3. The subject matter of the FIR, which was filed with Washi Police Station, District Osmanabad, was the subject matter of criminal application before a Bench at Aurangabad in criminal application No.6833 of 2016. The Division Bench, while dealing with the said application, made a reference to the second incident, which resulted into CR No.450 of 2015 being registered and which is the subject matter of the present application.

4. Mr. Purwant, learned counsel for the applicant, invited our attention to the order passed by the Division Bench on 27th March, 2017. In the said order, the Division Bench has taken into consideration the circumstances revolving around the first FIR as well as the second FIR.

The defence that was taken by the applicant and which was believed by the Hon'ble Court was in respect of mental illness "postpartem depression". Necessary papers relating to the psychiatric treatment, which the applicant was undergoing at the District Hospital through Civil Surgeon, were placed on record and the medical expert on examination of the applicant had certified that she was suffering from mental illness known as "postpartum depression" which is generally caused to women post delivery.

5. The Division Bench, relying on the said explanation offered and which was sought to be taken as defence under Section 84 of the IPC, had observed that there would be no propriety in continuing the criminal proceedings against the applicant. The husband of the applicant as well as the relatives of the applicant placed on record their affidavits admitting the fact that the applicant was suffering from mental illness which had caused the incident which is registered in the form of two FIRs. It is to be noted that in respect of the first FIR, the applicant was arrayed as an accused. The Division Bench had, therefore, observed in paragraph 14 of the said order that there would be no propriety in continuing with the prosecution, and moreover to restore the family life of the applicant involving her husband and child and in order to secure the ends of justice, it would be expedient to quash the said proceedings pending before the Sessions Case No.15 of 2016 pending on the file of learned Additional

Sessions Judge, Bhoom, District Osmanabad and, accordingly, it allowed the criminal application.

6. On perusal of the said order passed by the Division Bench, we are of the view that the same analogy, which was adopted by the earlier Division Bench, would apply in the present case when the applicant had specifically stated her case in the said application and took defence under Section 84 of the IPC, in respect of the second incident on the basis of which the FIR is registered and which is the subject matter of the instant application, hinges on the same analogy of private defence. In such circumstances, we would proceed with the same reasoning which the Division Bench at Aurangabad had recorded in its order dated 27th March, 2017 and we are also of the firm opinion that since the applicant is presently residing with her husband and family members along with the infant who is 3 ½ year old as on date, we are inclined to quash and set-aside the proceedings of Sessions Case viz. RCC No. 341 of 2016 pending before learned JMFC, Solapur, District Solapur, and allow the application in terms of prayer clause (a). No order as to costs.

7. The criminal application stands disposed off.

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]