

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 354 OF 2019

PETITIONER :- Syed Idris Syed Akbar,  
aged abut 62 years,  
Occ: Agriculturist, R/w Ward No.13,  
Nababpura, Nerparsopant, Tq.Ner,  
Dist.Yavatmal.

...VERSUS...

RESPONDENTS :- 1. The State of Maharashtra, through PSO  
Wani, Tq.Wani, Dist.Yavatmal.

2. Syed Shahin Syed Irfan, R/o Bail Bazaar,  
Pimpalgaon Road, Gadchandur,  
dist.Chandrapur,Tq.Korpana.

**WITH**

CRIMINAL WRIT PETITION NO. 355 OF 2019

PETITIONER :- Syed Sabir Syed Akbar,  
aged abut 55 years,  
Occup. Agriculturist,  
R/o Ward No.13, Nababpura,  
Nerparsopant, Tq.Ner,  
Dist.Yavatmal.

...VERSUS...

RESPONDENTS :- 1. The State of Maharashtra, through PSO  
Wani, Tq.Wani, Dist.Yavatmal.

2. Syed Shahin Syed Irfan, R/o Bail Bazar,  
Pimpalgaon Road, Gadchandur,  
Dist.Chandrapur.

---

Mr.M.N.Ali, counsel for the petitioner in both Writ Petitions.  
Ms.H.N.Jaipurkar, APP for the respondent-State in both Writ  
Petitions.

---

**CORAM : SUNIL B.SHUKRE &  
AVINASH G. GHAROTE, JJ.**

**DATE : 05.03.2021.**

**O R A L J U D G M E N T** (Per : Sunil B.Shukre, J.)

Heard.

2. Rule. Rule made returnable forthwith. Heard finally  
by consent of the learned counsel appearing for the parties.

3. Criminal Writ Petition No.354 of 2019 has been filed  
by Syed Idris Syed Akbar, who is father of Syed Shehajad with  
whom the complainant is alleged to have established physical  
relations 5 years ago of the date of filing of the complaint  
03.08.2017. Syed Sabir Syed Akbar is the petitioner in Criminal  
Writ Petition No.355 of 2019, who is the uncle of Syed Shehajad.  
Syed Idris Syed Akbar and Syed Sabir Syed Akbar are the accused  
persons in Crime No.888 of 2017 registered on the basis of the

complaint filed by Syed Shahin Syed Shehjad on 03.08.2017, which was registered for the offences punishable under Section 376 and 313 of the Indian Penal Code at Police Station Wani on 05.08.2017. Both these petitioners have sought quashing of the First Information Report so registered against them and therefore, these petitions are being disposed of by this common order.

4. One Syed Shahin Syed Shehjad filed a complaint against Syed Shehjad Syed Idris on 03/08/2017 alleging that about five years before filing of the complaint, she had established physical relations with Syed Shehjad Syed Idris and as the physical relations went on unabated for sometime, the complainant has further alleged that Syed Shehjad also gave a promise to her that he would marry her provided she sought divorce from her husband. The complainant has further alleged that believing in the promise, about three years prior to the date of the complaint, her marriage with her husband Syed Irfan Syed Jakir was dissolved. She has then alleged that about one and half years prior to the date of the complaint, she got pregnant from Syed Shehjad Syed Idris, but Syed Shehjad refused to marry her. She has alleged that Syed Shehjad advised her to abort the fetus which she refused. She has further alleged that thereafter,

Syed Sabir, the uncle of Syed Shehjad made a phone call to her and asked her to abort the fetus and also assured her that if she aborted the fetus, he would see that her marriage was solemnised with Syed Shehjad. Then, the complainant has alleged that since about last five years, Syed Shehjad had established sexual relations with her, but refused to marry her and therefore, she was cheated by Syed Shehjad and also induced her to give a consent for establishing sexual relations with Syed Shehjad on the false promise of marriage.

On the basis of such report, Wani, Police registered offences punishable under Sections 376 and 313 of the Indian Penal Code, initially against Syed Shehjad. Later on during the course of the investigation, these offences were also registered against both these petitioners.

5. Now, if we consider the allegations made in the First Information Report, it would be absolutely clear that these allegations do not fulfill the requirements for the offences punishable under Sections 376 as well as 313 of the Indian Penal Code qua the petitioners. No role has been attributed to both these petitioners as regards the unabated sexual relations between

the complainant and Syed Shehjad. There is only one allegation against Syed Sabir, the uncle of Syed Shehjad that he had made a phone call to the complainant and advised her to abort the fetus. Giving of advise cannot be equated with any act of forcing a person to abort the fetus. We have also gone through, the case diary. The case diary does not reveal any material or circumstances showing involvement of both these petitioners or either of them in *prima facie* commission of the offences so registered against them.

6. There is however one circumstance which has surfaced in this case during the course of the investigation, which we feel needs to be adverted to by us. There is a statement of one Siraj Idris Miya, who says that he is a friend of accused Syed Shehjad. This statement has been recorded by the concerned Judicial Magistrate, First Class on 31.08.2017. This statement refers to one incident of 22.08.2017. According to Siraj Idris, he had received a phone call from the complainant at about 5.30 p.m. of 22.08.2017 and it appears that the complainant had called Siraj Idris to clinic of one doctor and accordingly, Siraj Idris had reached there at about 6.00 p.m. Siraj Idris states that at that time, the complainant started weeping after she saw Siraj Idris

and therefore, Siraj Idris asked her what was the matter about and then the complainant told him that Syed Shehjad and his father Syed Idris both had approached her and gave her a glass of milk mixed with some substance which she drank and fell unconscious and thereafter, as she started bleeding severely, the main accused Syed Shehjad had taken her to the hospital, where abortion of fetus was carried out. These facts are not stated at the time of filing of the First Information Report. There is a statement recorded under Section 164 of the Criminal Procedure Code by the concerned Magistrate of the complainant Syed Shahin. This statement recorded under Section 164 of the Criminal Procedure Code shows that Syed Shahin had made the allegation of giving of a glass of milk mixed with some mysterious substance to her with a view to carry out abortion of the complainant was against Syed Shehjad and his uncle and not his father. Then it is also not stated by the complainant as to on what date the said glass of milk was given to her. These circumstances, which have come on record, during the course of the investigation, are inconsistent with each other and also what has been stated by the complainant, when she lodged the First Information Report in this matter.

7. Thus, we find that this is a case, where there are no allegations worth the name made against both these petitioners which would warrant continuation of the investigation in this case and the proceedings being taken to their logical end. A few allegations do have come to the fore during the course of the investigation, but, these allegations are vague and also inconsistent with the story put forth by the complainant initially against both these petitioners.

8. In such circumstances, we are of the view that any continuation of the investigation against both these petitioners would nothing but be the abuse of the process of law.

9. In the result, we are inclined to allow both these petitions and they are allowed accordingly in terms of prayer clause (a).

Rule is made absolute in these terms.

**JUDGE**

**JUDGE**