

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

938 CRIMINAL APPLICATION NO.1519 OF 2021
IN APPLN/1560/2016

VILAS SHIVAJI TONDE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

.....
Advocate for Applicant : Mr. Thorat Nanabhau R
APP for Respondent-State: Mr. S. S. Dande
.....

**CORAM : V. K. JADHAV AND
SANDIPKUMAR. C. MORE, JJ.
DATED : 31st MARCH, 2022**

PER COURT:-

1. By consent of the parties, heard finally at admission stage.
2. Deceased Jayashree was deaf and dumb girl. She got married with one Laxman Bade. However, her husband died six months after the marriage. Since then Jayashree was residing with her parents. However, in the year 2012, deceased Jayashree has conceived. The parents of deceased Jayashree took her to hospital of Dr. Somwanshi and in his hospital, pregnancy was detected. However, after termination of pregnancy she had trouble and pains and in consequence of which she was taken to Government Hospital, Ambejogai where the parents were informed that deceased Jayashree had suffered incomplete process of abortion. Thereafter, mother of Jayashree viz. Savitribai has lodged a complaint against unknown person for having committed rape on her daughter

Jayashree, who is deaf and dumb and also making certain allegations against Dr. Nandkishor Somwanshi. In consequence of which, crime No. 66 of 2012 for the offence punishable under Sections 313, 337, 338 r.w. 34 of I.P.C., under Sections 8(1), 17(2), 18(1), 18(2) of P.C.P.N.D.T. Act and under Sections 3 and 5 of Medical Termination of Pregnancy Act, came to be registered with Ambejogai (City) police station.

3. The said Dr. Nandkishor Somwanshi and others have filed criminal application No. 1560 of 2016 for quashing of F.I.R. under Section 482 of Cr.P.C. By order dated 26.7.2016 this court (Coram: A.V. Nirgude and V.L. Achliya JJ.) in para 3 has observed that dispute came to be settled between the parties. However, before disposing of said criminal application finally, by order dated 24.6.2016 this court has directed that the applicant No.1 Dr. Nandkishor Somwanshi to deposit a cheque of Rs.4,00,000/- (Rupees Four lacs) in favour of respondent No.2 Jayashree. This Court has further directed that the amount shall be invested in a fixed deposit for five years with facility of withdrawal of quarterly interest. It is further directed that the said amount or any part so deposited shall not be withdrawn unless a specific permission is sought from this Court. The deposit be renewed after five years. As stated above, by order dated 26.7.2016 this Court has disposed of the application and quashed the F.I.R. on the basis of settlement and earlier order regarding deposit of the amount and payment of interest shall

continue till further orders.

4. The mother of said Jayashree viz. Savitribai died on 4.9.2012 and her father died on 16.6.2012. The victim Jayashree also died on 14.8.2020. Learned counsel for the applicant submits that the applicant is only legal heir of deceased Jayashree. Death certificate of deceased Jayashree is placed on record at Exh. "C" page 11 of the application. Learned counsel has also pointed out that the applicant has obtained succession certificate from learned C.J.J.D. Dharur. The copy of said certificate is also annexed to the application at Exh. "D" page 12. This application is filed with a prayer to allow the applicant to withdraw the amount as legal heirs of victim deceased Jayashree.

5. By order dated 17.1.2022 we have granted leave to the applicant to add original applicant No.1 Nandkishor Laxmanrao Somwanshi in criminal application No. 1560 of 2016 as party respondent to this criminal application. However, despite service of notice and even notice of final disposal, the said respondent Dr. Nandkishor Somwanshi remained absent and none appears for him.

6. The applicant has filed additional affidavit before us. It has been specifically mentioned in the said additional affidavit that the applicant being real brother of deceased Jayashree has maintained and taken care of his deaf and dumb sister victim Jayashree till her

death and also paid all charges of the hospital.

7. In view of above, since despite service none appears for respondent No.3, we are inclined to allow this application. Hence we proceed to pass the following order:-

O R D E R

- I. Criminal application is allowed in terms of prayer clauses "B" and "C".
- II. Criminal application is accordingly disposed of.

(SANDIPKUMAR. C. MORE, J.)

(V. K. JADHAV, J.)

rlj/