

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1169 OF 2020

Mrs.Dhanshree Devendra Thakur @ Sapana
Ghanashyam Patil, Aged 35 years,
Occ.Housewife, R/o.At At Post Narwade,
Tal.Panvel, Dist. Raigad.

Applicant

versus

1. Devendra Parshuram Thakur,
Age 35 years, Occ. Real Estate,
R/o. Room No.251, Audhumber Niwas,
Near Rationing Shop, Sect. 5,
Sanpada Gaon, Navi Mumbai.
2. The State of Maharashtra.

Respondents

Mr.Indrajeet Kulkarni, Advocate for applicant.
Mr.Rajendra Sorankar, Advocate for respondents.

CORAM : PRAKASH D. NAIK, J.

DATE : 19th July 2022

PC :

1. The petitioner has challenged the order dated 3rd February 2020 passed by Court of Sessions, Thane in Criminal Revision Application No.41 of 2019 setting aside order dated 18th December 2018 passed by Court of learned Judicial Magistrate, First Class, Vashi in R.C.C No.904 of 2014.

2. The petitioner is the first informant in C.R No.19 of 2014 registered with Turbhe Police Station for offences under Sections 498A, 406, 323, 504, 506, 114 r/w 34 of Indian Penal Code. The FIR was registered against respondent no.1 and others on 11th February 2014. In the FIR is alleged that petitioner's marriage was

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performed with respondent no1 on 12th December 2009. The petitioner was harassed after marriage and ill-treated by the accused. In April-2010 petitioner was pregnant and she was advised bed rest. On 10th April 2010 petitioner felt weakness on account of physical and mental torture. She was weak. Since she did not perform work, her mother-in-law and sister-in-law abused and assaulted her. She went for medical check up. She had to abort the child. She went to her parental home. She was pregnant for second time. Due to assault by in-laws, she suffered bleeding. She was taken to hospital. She was advised bed rest. She went to matrimonial home during Ganesh Chaturthi. The accused was taunting her. She was assaulted. On medical advise she was to terminate her pregnancy. The FIR was registered for aforesaid offence.

3. Charge was framed against accused. Thereafter petitioner preferred application u/s.216 of Cr.PC on 17th March 2018 for adding charge u/s.315 of Cr.PC. Learned JMFC vide order dated 18th December 2018 allowed the application and directed that charge be altered/added by including Section 315 of IPC as per Section 216 of Cr.PC and matter be added committed to Court of Session.

4. The aforesaid order was challenged by respondent no.1 before the Court of Session by preferring Criminal Revision Application No.41 of 2019. Learned Additional Sessions Judge, Thane by order dated 3rd February 2020 allowed the said application and set aside the order dated 18th December 2018 passed by learned JMFC.

5. The petitioner-complainant has challenged the order of Sessions Court reversing the order of learned Magistrate before this

Court. Learned advocate for petitioner submitted as under :-

(i) The Sessions Court has committed an error in setting aside the order passed by learned JMFC allowing the application u/s.216 of Cr.PC;

(ii) Section 315 of IPC is attracted in this Case. The FIR itself makes out the offence under the said offence. There was no illegality in the order passed by learned Magistrate dated 18th December 2018 adding charge u/s.315 of Cr.PC;

(iii) Section 216 of Cr.PC confers jurisdiction on all Courts to add any charge framed earlier based on averments and statements made in the complaint;

(iv) The complaint and medical case papers filed in the charge sheet clearly indicate that accused has committed offence u/s.315 of IPC;

(v) Learned Magistrate has assigned reasons for allowing the application u/s.216 of Cr.PC. The Sessions Court has set aside the said order without any reason;

(vi) The offence is of serious nature and the prosecution should be given an opportunity to try the accused with the said offence;

(vii) The prosecution has supported the application of petitioner seeking addition of charge u/s.315 of Cr.PC;

(viii) The order of Sessions Court is contrary to law and evidence on record.

6. Learned advocate for petitioner relied upon decision of Supreme Court in the case of **Dr.Nallapareddy Sridhar Reddy Vs. State of Andhra Pradesh and others**¹.

¹ (2020)12-SCC-467

7. Learned advocate for respondent no.1 Mr.Sorankar submitted as follows :

(i) There is no infirmity in the impugned order. Section 216 of Cr.PC cannot be invoked mechanically;

(ii) The FIR was registered belatedly. On completing investigation charge sheet was filed for offences u/s.498A, 406, 323, 504, 506, 114 r/w 34 of IPC. Charge was framed u/s.498A, 406, 323, 504, 506 of IPC. Application for framing charge u/s.315 of IPC was made belatedly;

(iii) There is no material on record to add charge u/s.315 of IPC. Medical case papers included in the charge sheet does not make out offence u/s.315 of IPC.

8. There are matrimonial disputes between petitioner and respondent no.1. The FIR has been registered by petitioner on 11th February 2014 for the offences stated hereinabove. The offence was not registered u/s.315 of IPC. The FIR or the charge sheet does not make out offence u/s.315 of IPC. Said application was not moved by State. Th said application was moved on 17th March 2018. Prior to that, charge was framed vide Exhibit-27 u/s.498A, 406, 323, 504, 506 r/w 114, 34 of IPC. The endorsement of learned APP on the said application indicate that APP has agreed with the prayers in the application. It was urged in the said application that perusal of the charge sheet, medical record filed along with it revealed that abortion was due to assault by accused. Medical certificate denotes the date of admission and date of discharge. Hence offence u/s.315 is made out. Say was filed by accused opposing said application and contending that charge sheet does not indicate making out of charge

u/s.315 of IPC. There has to be clear statement of complainant that intention or act of the accused was in such a manner that it caused the prevention of the child to be born alive or caused it to die after birth. There is no single word stated in the medical certificate that miscarriages were because of physical or mental torture by the accused. The word primigravida means a women is pregnant for the first time and gravid II means that a women is pregnant for the second time. Written submissions were filed on behalf of State and it is stated that Section 216 of Cr.PC is clear which gives considerable power to Court to alter and add any charge. Learned Magistrate allowed the application mechanically. It was observed that medical report issued by consulting Obstetrician and Gynaecologist shows that complainant caused primigravida with 16 weeks inevitable abortion. She was admitted for treatment from 23rd August 2010 to 24th August 2010. The Court also referred to the allegations referred to in the FIR. Learned Sessions Judge set aside the order on the ground that prosecution has not produced on record prima facie evidence to show that the child was aborted. Except surmises there is no evidence on record to substantiate charge u/s.315 of IPC. In the decision relied upon by petitioner in the case of Dr.Nallapareddy Sridhar Reddy (supra), it is observed that u/s.216 of Cr.PC the Court is authorized to alter or add to the charge.

9. The medical case papers are part of this petition. I do not find any evidence to substantiate the charge u/s.315 of IPC. Section 315 of IPC reads as follows :-

“315. Act done with intent to prevent child being born alive or to cause it to die after birth.- Whoever before the birth of any child does any act with the intention of

thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both."

10. The statement of witnesses, medical case papers and charge sheet in no manner supports charge u/s.315 of IPC. Similarly on the inferences which are not supported by any evidence, charge cannot be altered mechanically, although the Court is empowered to alter charge at any stage before end of trial. The discretion cannot be exercised mechanically. Hence, I do not find any infirmity in the impugned order. The petition deserves to be dismissed.

ORDER

(i) Criminal Writ Petition No.1169 of 2020 stands rejected and disposed off.

(PRAKASH D. NAIK, J.)

MST