

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO.48 OF 2023

Sachin s/o Babasaheb Patil
Age 36 years, Occu. Agril.,
R/o. Prashant Nagar, Ambajogai,
At present R/o Shirsav, Tq. Paranda,
Dist. Osmanabad.

..Applicant

Versus

The State of Maharashtra
Though, Police Station Officer
Ambajogai City Police Station,
Ambajogai, Dist. Beed.

..Respondent

...

Mr. S. J. Salunke h/f Mr. A. D. Gade, Advocate for the Applicant.
Mr. S. P. Deshmukh, APP for Respondent-State.

...

CORAM : S. G. CHAPALGAONKAR, J.

DATE : 11th SEPTEMBER, 2023.

ORDER:-

1. The applicant impugns the order dated 17.03.2017 passed by the learned Additional Sessions Judge, Ambajogai in Session Case No.02/2016, by which the prayer of the applicant for discharge has been rejected.

2. Briefly stated facts leading to the present Criminal Revisions Application are as under:

On information given by one Savitribai alleging that the daughter of the informant was deaf and dumb. Taking advantage of her situation, unknown person had established sexual relations with her and due to which she conceived pregnancy. Therefore, she was taken to Dhanvantri Hospital at Ambajogai where pregnancy was aborted, how-

ever, such abortion was defective and partial. In pursuance of the aforesaid information, Crime No.66/2012 was registered with Ambajogai City Police Station for the offences punishable under Sections 313, 337, 338 r/w 34 of the Indian Penal Code and Sections 8(1), 17(2), 18(1), 18(2) of Pre-Conception & Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 Act (for short 'PCPNDT Act') as well as Sections 3 and 5 of the Medical Termination of Pregnancy Act, 1971 (for short 'MTP Act'). After due investigation, Charge-sheet No.51/2013 was filed against in all six accused persons in the Court of Judicial Magistrate First Class at Ambajogai. Pertinently, except applicant all the accused persons have been discharged by various orders passed by this Court. Only applicant is the accused in the charge-sheet.

3. Mr. Salunke, learned Advocate for the applicant would submit that perusal of the charge-sheet would show that the role attributed against applicant is regarding discharge of his duties in the hospital of Dr. Somwanshi. He would submit that the allegation is made against the applicant that he is operator of Sonography machine and based on the report of the Sonography, further termination of pregnancy was given effect. Pertinently, this Hon'ble Court has already discharged Dr. Nandkishor Somwanshi, so also Dr. Sujata Somwanshi, who are owners and proprietors of Sonography Centre and Dhanvantri Hospital. Even, other accused persons are discharged holding that the provisions of Indian Penal Code or PCPNDT Act does not attract in the facts of the present case. Mr. Salunke would, therefore, submit that no case can be made out against the applicant for the offences as per charge-sheet. He further submits that the applicant had moved an application seeking discharge before the learned Additional Sessions Judge at Amajogai in Session Case No.02/2016 below Exhibit-36. However, his prayer for discharge came to be rejected by the impugned order.

4. The learned APP however opposes the prayer on the ground that the important role is attributed against the applicant that he operated Sonography machine, so also assisted Dr. Somwanshi in termination of pregnancy.

5. Having considered the submissions advanced, apparently the charge-sheet has been filed against in all six accused persons. Gist of the allegation is that the deaf and dumb daughter of the informant had conceived pregnancy. She was taken to the Dhanvantri Hospital at Ambajogai owned by accused no.1 where some medical tests were carried and without taking consent of the victim she was subjected to termination of pregnancy, as such, accused persons have committed offences under MTP Regulations and PCPNDT Act, so also under Section 313, 337, 338 and 34 of the Indian Penal Code.

6. The accused no.1, who is medical practitioner and owner of the Dhanvantri Hospital alongwith his wife-accused no.3 had approached this Court under Section 482 of the Criminal Procedure Code praying for quashing of the proceeding vide Criminal Application No.1560/2016. This Court observed that the complainant admitted that she had consented for medical termination of pregnancy, as such, the offence punishable under Section 313 of the Indian Penal Code or the offences under provisions of PCPNDT Act does not attract. Accordingly, the proceeding against those applicants is quashed. Similarly, accused no.6-Vishwas Chobe had also approached this Court vide Criminal Application No.4880/2014, who was laboratory assistant in the hospital of Dr. Somwanshi. The role almost similar to that of the applicant is attributed against him. This Court allowed his applicant and quashed the proceedings against him.

7. It is the matter of record that the proceeding is quashed against all the accused persons, except applicant. If the role of the applicant is considered that he operated Sonography machine when the victim was brought to the Hospital of Dr. Somwanshi for medical termination in light of fact that this Court with observation that the provisions of PCPNDT Act does not attract, quashed the proceeding against Dr. Nandkishor Somwanshi so also Dr. Sujata Somwanshi, who are owners of the Sonography Centre, no independent case can be made out against the applicant. At this stage, reference can be given to the guidelines laid down by the Supreme Court of India in case of ***Union of India Vs. Prafulla Kumar Samal and Another***¹, which states as under:

“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under [section 227](#) of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the

1 (1979) 3 SCC 4.

documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

8. Similarly, in case of ***Kanchan Kumar Vs. The State of Bihar*** while interpreting the scope of Section 227 of the Criminal Procedure Code, the Supreme Court of India observed that at the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible and find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

9. Taking into consideration the aforesaid guidelines, even the contents of the charge-sheet are taken as it is, no case can be established against the applicant/accused for any of the offence charged. In that view of the matter, the learned Sessions Court ought to have allowed the application below Exhibit-36. The learned Sessions Court although not oblivious of the orders passed by this Court did not consider the observations made while quashing the proceedings against other accused persons. Once it is observed by this Court that the provisions of PCPNDT Act are not applicable and once the proceeding has been quashed against the owner of the Sonography centre, the applicant, who

was employee working under him cannot be prosecuted for any such offence.

10. Going by allegations against the applicant, no offence under Indian Penal Code or MTP Act can be made out. On overall consideration of the charge-sheet and the previous orders passed by this Court in relation to co-accused, in light of the guidelines laid down by the Supreme Court of India regarding exercise of powers by the Court under Section 227 of the Criminal Procedure Code to discharge accused, case is made out to cause interference in the impugned order and also allow the prayer of the applicant for discharge. Resultantly, following order is passed:

ORDER

- a. Criminal Revision Application is allowed.
- b. The order dated 17.03.2017 passed by the learned Additional Sessions Judge, Ambajogai below Exhibit-36 in Sessions Case No.02 of 2016 is quashed and set aside.
- c. The application below Exhibit-36 is allowed.
- d. Consequently, the applicant stands discharged in Session Case No.02/2016 under Section 227 of the Criminal Procedure Code for the offences punishable under Sections 313, 337, 338 r/w 34 of the Indian Penal Code and Sections 8(1), 17(2), 18(1), 18(2) of Pre-Conception & Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 Act as well as Sections 3 and 5 of the Medical Termination of Pregnancy Act, 1971.
- e. Bail bond, surety bond shall stand discharged.

f. Intimate the learned Additional Sessions Judge, Amabajogai accordingly.

11. Criminal Revision Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/September-2023