

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO. 259 OF 2022

Shrikant Dattatray Sagaonkar ...Applicant
Versus
The State of Maharashtra and Anr. ...Respondents

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Mr. Shekhar Jagtap with Ms. Sairuchita Chowdhary i/by J. Shekhar & Co. for Applicant.

Ms. P. N. Dabholkar, APP for Respondent-State.

Ms. Syed Shabana M. Ali, Advocate for Respondent No.2.

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CORAM : PRAKASH D. NAIK, J.

DATE : 14th July 2023

PC :

1. Applicant challenges the order dated 6th January 2022 passed by learned Special Judge, Kolhapur below Exhibit-7 in Special Case No. 65 of 2020 which is arising out of C.R. No. 85 of 2019 registered with Shahuwadi Police Station for offences punishable under Sections 176, 312, 376 of Indian Penal Code. Sections 3 and 4 of Medical Termination of Pregnancy Act, 1971 and Sections 4 and 8 of Protection of Children from Sexual Offences Act, 2012 (for short "POCSO" Act).

2. The prosecution case in short is that, the daughter of first informant was studying in class 10 and she informed her that, on the

way to school she went to Government Hospital due to immense stomach pain. Doctor told her that, she was pregnant. Victim further disclosed that, her cousin used to threaten her from last six months and had sexual relation with her which caused her pregnancy. Due to threat, she did not disclose about it to anyone. The first informant along with her daughter, accused Sagar Patil and Tukaram Patil went to doctor Khutale's Clinic for sonography. It was revealed that, she was pregnant for five months. On 22nd February 2019, the victim and others went to hospital of applicant. The victim was taken to room for abortion. She was administered saline and given tablet inside her vagina. She suffered abdominal pain and she was informed that, the pregnancy would be terminated within short time. Police visited the hospital. The victim was under pain. She was taken to C.P.R. hospital for further medication. First Information Report was registered on 24th February 2019. Applicant was arrested. On completing investigation, charge-sheet was filed.

3. The applicant preferred application for discharge before the trial Court, which was rejected by order dated 6th January 2022.

4. Learned Advocate for the Applicant submitted that, the applicant has no connection with the relationship of the victim with co-accused Sagar Patil. The applicant is charged for offence under Section 312 of IPC. There is no evidence to establish the said charge.

The offence under Sections 3 and 4 of the Medical Termination of Pregnancy Act is not made out. The applicant had bonafide intentions while providing the treatment and medication to victim girl. There is no evidence that the applicant had terminated the pregnancy of victim. The victim girl was admitted in hospital under the representation that, she was aged around 19 years. The applicant waited for necessary documents to confirm the age of the victim. However, the Respondent No.2 avoided furnishing the document and gave undertaking that, she would provide such documents. The Respondent No.2 had also misrepresented victim's marital status before the hospital and failed to provide necessary documents for sonography and USG reports. Respondent No.2 concealed that, the victim was taken to several hospitals before she was admitted to the applicant's hospital. The Chemical Analysis report based on the vaginal swab test and the blood test of victim to prove that, Misoprostol, Mifepristone, Ceftriaxone and Bupivacaine tablets which are used to cause the termination of pregnancy were not found in the body of victim. The tablets viz. Misoprostol Tablets IP MISO-GYN 200, Combipack of Mifepristone Tablets IP and Misoprostol Tablets IP A-Care, Ceftriaxone for Injection IP Troyaxone, Bupivacaine Hydrochloride IN Dextrose Injection JSP Anawin recovered from the applicant's clinic, were not found in the body of

the victim. The prosecution case is that, the medicine uterone given to victim was the reason for termination of pregnancy. However, according to medical science, the medicinal drug was administered by the applicant is used to maintain the pregnancy in cases of habitual or threatened abortion which can be substantiated from the documents on record submitted by prosecution.

5. Learned APP and learned Advocate for Respondent No.2 submitted that, there is sufficient evidence against the applicant. The submissions advanced by learned Advocate for the applicant cannot be considered at this stage. Prima facie case is made out to frame charge. The defence of the accused cannot be considered at this premature stage. The victim was admitted in the hospital of the applicant. She was given medication. Investigation revealed involvement of the applicant. No case is made out for discharge.

6. The case relates to the offence under Section 376 of IPC and termination of pregnancy. The victim was minor. She was student of 10th standard. She was subjected to physical relationship by the co-accused. She was pregnant. She was admitted in the hospital of the applicant. Statement of the victim girl refers to the fact that, after it was found that she was pregnant, she was taken to hospital of the applicant. She was kept on saline. Some tablets was administered in her private part. She was given injection. Victim suffers pain. She

informed about it to her mother. Doctor informed her that, pregnancy would be terminated within short time. Police visited the hospital. They made inquiry with the mother of victim. The victim was taken to CPR hospital. The victim delivered premature baby in CPR hospital. FIR was registered. Initially, the doctor, who had conducted sonography found that, minor girl was pregnant for five months. Although, the victim has allegedly provided her age as 19 years and she was married and gave accused No.1 as her husband. Without Aadhar Card and Birth Certificate, further steps were taken by accused. Contention of the applicant is that, treatment was given only for maintaining the pregnancy and not for abortion. The applicant was arrested as information was received that the minor is admitted for illegal abortion in the hospital and therefore raid was conducted. The victim was found in the hospital. She delivered premature baby in CPR hospital. The contention of the applicant that, the delivery was in CPR hospital and he is not in hospital for termination of pregnancy cannot be accepted at this stage. The statement of victim and mother of the victim mentions that the accused Nos. 1 and 2 took the victim for termination of pregnancy without disclosing her age. She showed her as married girl. The defence of the applicant is that, he gave tablets in maintaining pregnancy. This has proved in evidence. During the raid, minor girl

was found in the hospital and thereafter immediately abortion. Prima facie offence is made out. The issue raised by the applicant cannot be adjudicated at this stage.

ORDER

- (i) Criminal Revision Application is rejected;
- (ii) The amount of Rs.25,000/- deposited by Applicant vide order dated 17th February 2023 in Registry towards fee of appointed Advocate for Respondent No.1 be paid to the appointed Advocate Ms. Syed Shabana M. Ali. Registry is directed to do the needful within two weeks from the date of uploading of this order;
- (iii) All concerned to act on an authenticated copy of this order issued by High Court Registry.

(PRAKASH D. NAIK, J.)