

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

CRIMINAL APPLICATION (APL) NO. 1180 OF 2021

[Vinod Shivakumar Vs. State of Maharashtra, through P.S.O. Dharni, Distt. Amravati
and anr.]

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Dr. (Mr.) Harshvir Pratap Sharma, Senior Advocate assisted by Mr. A.
C. Jaltare, Advocate for the applicant
Mr. M. K. Pathan, A.P.P. for the State/respondent 1
Mr. R. D. Wakode, Advocate for respondent 2

CORAM: ROHIT B. DEO AND M. W. CHANDWANI, JJ.
DATE: 30th JUNE, 2023.

Applicant Mr. Vinod Shivakumar is charged
for offences punishable under Section 306, 312, 504
and 506 of the Indian Penal Code (IPC).

2. The substantive prayer in the instant
application reads thus :

*“(a) quash and set aside the impugned Charge Sheet
No. 250/2021 dated 21.05.2021 now ST No.
52/2021 pending before the learned Sessions
Judge at Achalpur, District Amravati arising out
of the impugned FIR No. 211/2021 dated
26.03.2021 registered at Police Station Dharni,
District Amravati.”*

3. We heard learned Senior Counsel
Dr. Sharma and learned Additional Public Prosecutor

Mr. Pathan for some time. In the midst of hearing, learned Senior Counsel Mr. Sharma stated, on the basis of instructions received from applicant Mr. Shivakumar, who is present in Court, that the application seeking quashing of the charg-sheet is restricted to the offence punishable under Section 312 of the IPC, and as regards the other offences with which the applicant is charged, the contentions may be left open and liberty be reserved with the applicant to agitate the contentions at an appropriate stage. We have therefore restricted the consideration to ascertaining whether even if entire material is taken at face value, offence punishable under Section 312 of IPC is not made out.

4. Broad facts are that Mrs. 'D', who was working as Range Forest Officer, unfortunately committed suicide by shooting herself with the service revolver at the Harisal Quarter where she was residing along with her mother. Mrs. 'D' penned three suicide notes addressed to Mr. Reddy, Additional Principal Chief Conservator of Forest, her husband and her

mother. On the basis of the complaint lodged by the husband of the deceased, FIR 211/2021 was registered at Police Station, Dharni, District Amravati. It would not be necessary to delve deeper in the allegations levelled in the complaint or in the material collected during investigation. Suffice it would, if the statements and circumstances on the basis of which the applicant is charge-sheeted for offence punishable under Section 312 of the IPC are noted.

5. The applicant was working as Deputy Conservator of Forest. In the suicide note addressed by Mrs. 'D' to Mr. Reddy, there is no allegation that the applicant committed any act which is even remotely responsible for the miscarriage which she suffered. The suicide note addressed to the husband is also silent on the said aspect. In the suicide note which Mrs. 'D' addressed to her mother, all that she says is that it is due to the harassment which she suffered from the applicant that the pregnancy had to be terminated.

6. Learned Additional Public Prosecutor Mr. Pathan would submit that since despite being aware about the pregnancy of Mrs. 'D', the applicant made her to visit the deep forest areas, which involved trek, is sufficient to attract the offence punishable under Section 312 of the IPC. Mr. Pathan would invite our attention to certain statements to buttress the submission that the material would suggest that the applicant was informed that Mrs. 'D' was pregnant, and that the applicant nonetheless asked Mrs. 'D' to visit the forest particularly Malur Village for rehabilitation purpose. Referring to the statements of medical practitioners, Mr. Pathan would submit that the abortion could be the consequence of the exertion and physical trauma caused by the treks, which the visits to the deep forest area involved.

7. In our considered view, the rationale underlying the charge under Section 312 of the IPC is inexplicable. Section 312 of the IPC reads thus :-

312. Causing miscarriage. - *Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*

Section 312 deals with the causing of miscarriage **with consent of the woman.** It is Section 313 which deals with causing miscarriage without woman's consent. Section 313 of the IPC reads thus :-

313. Causing miscarriage without woman's consent. - *Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.*

Section 312 is clearly not attracted in as much as it is not even the case of the prosecution that it was with the consent of Mrs. 'D' that the miscarriage was

caused. Even if, we grant every latitude to the prosecution and assume that the prosecution intended to invoke Section 313 of the IPC, with which the applicant is not charged, we find that even if the entire material in the charge-sheet is accepted as gospel truth, no offence punishable under Section 313 of the IPC is made out.

8. It is not the case of the prosecution that the applicant issued any illegal order. As Range Forest Officer, it certainly was the duty of Mrs. 'D' to make visits to the village located in the deep forest for rehabilitation purpose. Mrs. 'D' did have the option and choice of proceeding on medical leave, if she apprehended that such visits would take a heavy toll on her health and the foetus in the womb may have to be aborted. In our considered view, the submission of Mr. Pathan that since the applicant forced Mrs. 'D' to undertake arduous trek to reach the village located in deep forest despite having knowledge that Mrs. 'D' was pregnant, *prima facie* offence punishable under Section

312 or 313 of the IPC is made out, is too far fetched to merit further consideration.

9. We are satisfied that even if the entire material in the charge-sheet is taken at face value, ingredients of Section 312 and 313 of the IPC are not established.

10. We reiterate that the applicant is charged only for offence punishable under Section 312 of the IPC, which in any event deals with situation in which the miscarriage is caused with the consent of the woman.

11. We therefore, quash Crime 211/2021 registered at Police Station, Dharni, District Amravati and Charge-sheet 250/2021 to the extent the applicant is charged for offence punishable under Section 312 of the IPC.

12. We accept the statement of learned counsel for the applicant that the application is not pressed as

regards the other offences. However, all contentions are kept open for the applicant to agitate at an appropriate stage and in appropriate proceedings.

(M.W. Chandwani, J.)

(Rohit B. Deo, J.)

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