

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

SR. No.221

CRM-A-71-MA-2017 (O&M)

Date of decision:28.08.2023

Gurvinder Singh

...Applicant

Versus

Dupinder Kaur and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Mr. Vivek K. Thakur, Advocate,
for the applicant.

Mr. Sandeep Sharma, Advocate,
for respondent No.1.

Mr. Bhanu Pratap Singh, Advocate,
for respondent No.2.

N.S. SHEKHAWAT, J.

1. The applicant-complainant has filed the present application under Section 378 (4) Cr.P.C. with a prayer to grant leave to appeal against the impugned judgment dated 27.10.2016 passed by Additional Sessions Judge, Jalandhar, whereby respondents No.1 and 2 were ordered to be acquitted of charges framed against them.

2. The applicant-complainant Gurvinder Singh moved an application dated 16.07.2013 to Chief Medical Officer, Civil Hospital, Jalandhar for taking an action against his wife Dupinder Kaur on the allegations that his marriage was solemnised with her on 15.06.2008, without any dowry articles and a daughter, namely, Harleen Kaur was born

parents of Dupinder Kaur, her brother Kulwinder Singh Hakiki and maternal uncle Satnam Singh, got her pregnancy terminated by hatching a conspiracy, at the back of the applicant and the applicant came to know about the said fact, when a document of Prakriti Hospital, Mohalla No.4, Jalandhar Cantt. came to his notice. He enquired from Dupinder Kaur about the same, but she refused to disclose anything to him. The pregnancy of Dupinder Kaur was got terminated by the above accused with the connivance of the doctor. Dupinder Kaur was married earlier also twice and left the boys and their lives were spoiled. The accused got the pregnancy terminated, in order to harass the applicant. On the application moved by the complainant, the action was taken in the present case and the FIR was got registered by the applicant.

3. Learned counsel for the applicant submitted that the trial Court had failed to take into consideration the fact that the pregnancy of respondent No.1 was illegally terminated by respondent No.2. Even the trial Court failed to take into consideration the fact that a Board of Doctors was constituted to enquire and the enquiry report was sent in a sealed cover to Prakriti Hospital as the termination of pregnancy of respondent No.1 was illegally done by respondent No.2, as proved by PW-5 Dr. R.L.Bassan by providing the letter Ex. PW5/A, documents Ex.PW2/B to Ex.PW2/D and opinion Ex. PW5/B by Board of doctors.

4. On the other hand, learned counsel for the respondents vehemently argued that the impugned judgment is based on correct appreciation of facts and the evidence on record, and thus, the same is liable to be upheld by this Court.

5. I have heard the learned counsel for the parties and perused the case file minutely.

6. In fact, the only argument raised by the learned counsel for the applicant was that as per the findings of the Enquiry Board, the termination of pregnancy was illegally done by respondent No.2. The termination of pregnancy was done after obtaining the consent of accused Dupinder Kaur. The said consent was obtained by accused Dr. Shalini Pal Johar at the time of her pregnancy under the MTP Act. In fact, Form 'C' regarding the consent given by accused Dupinder Kaur to Dr. Shalini Pal Johar under the MTP Act was also taken into possession by the IO in her presence. Even PW-5 Dr. R.L. Bassan also admitted in his cross-examination that the consent of the lady i.e. Dupinder Kaur was obtained at the time of termination of her pregnancy under the MTP Act. Consequently, the consent was obtained from accused Dupinder Kaur, as per law.

7. Still further the trial Court has rightly held that the age of pregnancy in the present case was six weeks old i.e. the length of pregnancy does not exceeds 12 weeks at the time of its termination. Thus, the termination of the pregnancy which was of six weeks old does not amount to causing the death of a quick unborn child punishable under Section 316 IPC. Hence, the causing of termination of 6 weeks long pregnancy of accused Dupinder Kaur by accused Dr. Shalini Paul Johar after obtaining her consent under MTP Act does not amount to the commission of an offence punishable under Section 316 IPC as the length of pregnancy of Dupinder Kaur was less than 12 weeks at the time of termination as discussed above.

8. Apart from that, the prosecution could not bring on record any evidence to show that the pregnancy of Dupinder Kaur was terminated wrongly by Dr. Shalini Pal Johar-respondent No.2. Even though the ultrasound machine of Dr. Shalini Pal Johar was sealed and her licence was suspended, still for a short period, but the said step was taken by the authorities due to some technical irregularities and not because of the reason of termination of pregnancy of Dupinder Kaur, in an illegal manner. Even PW-5 Dr.R.L.Bassan also admitted in his cross-examination that only the consent of the lady was essential for the termination of her pregnancy and not of her husband under the MTP Act and since the consent of Dupinder Kaur had already been taken by Dr. Shalini Pal, it was not a case of illegal abortion as per the provisions of the MTP Act. Only few technical irregularities were found by the Office of Civil Surgeon, Jalandhar, while checking the hospital on 19.08.2013 and the same were apparent from the statement of PW-5 Dr.R.L.Bassan.

9. Further the trial Court, while recording the acquittal of the respondents, held that the Ultra Sound machine was sealed due to the above said irregularities by the checking team of Civil Surgeon Office, Jalandhar as is apparent from the report and the statement given by PW-5 Dr. R.L. Bassan in this regard. It is correct that the FIR in this case was registered after getting the matter inquired through ACP Balwinder Iqbal Singh Kahlon (PW6) and obtaining the opinion of DA (Legal) Ex.PW6/B, but ACP Balwinder Iqbal Singh (PW-6), while conducting inquiry has not taken into consideration the report of District Appropriate Authority Civil Surgeon, Jalandhar Ex.DY and intimation Ex.DZ given to Civil Surgeon, Jalandhar by

Prakriti Hospital on 03.09.2012 regarding the cases of termination of pregnancy under the MTP Act conducted by her in the month of August 2012. He has also not taken into consideration the age of foetus at the time of termination of pregnancy of Dupinder Kaur by Dr. Shalini Paul Johar under the MTP Act. Mere sealing of Ultra Sound Machine of the hospital of Dr. Shalini Paul Johar by hatching a criminal conspiracy with Dupinder Kaur committed the offence punishable under Section 316 read with Section 120-B of IPC by terminating her pregnancy. So, inquiry report Ex.PW6/A given by ACP Balwinder Iqbal Singh Kahlon is not sufficient to hold accused Dupinder Kaur and Dr. Shalini Paul Johar guilty under Section 316 and 120-B IPC.

10. It has been held by the Hon'ble Supreme Court in the matter of ***"Bhaskarrao and others Vs. State of Maharashtra", 2018 AIR (Supreme Court) 2222; 2018 (5) RCR (Criminal) 228*** as follows:-

"14. As the trial court and High Court, having appreciated the evidence on record, has come to diametrically opposite conclusions, mandating herein to observe certain witness statements which may have an important bearing in this case. In the processes of appreciating the evidence at the appellate stage, we need to keep in mind the views of this court as expressed in Tota Singh and Anr. v. State of Punjab, 1987(2) RCR (Criminal) 35 : 1987 CriLJ 974 - "The High Court has not found in its judgment that the reasons given by the learned Sessions Judge for discarding the testimony of PW2 and PW6 were either unreasonable or perverse. What the High Court has done is to make an independent reappraisal of the evidence on its own and to set aside the acquittal merely on the ground that as a result of such reappraisal, the High Court was inclined to reach a conclusion different from the one recorded by the

learned Sessions Judge. This Court has repeatedly pointed out that the mere fact that the Appellate Court is inclined on a reappreciation of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal. jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterized as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is plausible one, the Appellate Court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous."

11. Keeping in view the above referred discussion and the law laid down by the Hon'ble Supreme Court, it can be safely concluded that the impugned judgment by the learned trial Court is based on sound reasons and there does not seem to be any illegality or perversity in the impugned judgment. Accordingly, the present application is ordered to be dismissed, being devoid of any merits. Pending application(s), if any, shall also stand disposed off, accordingly.

(N.S. SHEKHAWAT)
JUDGE

28.08.2023
mks

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO