



Judgment

apl 1258.23

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION (APL) NO. 1258/2023

Smt. Asha Dinesh Wanjalkar,
aged about 70 yrs., Occ. Household,
R/o. Mahavir Nagar, Deshpande Plot Nagar,
Amravati, Tal. Amravati, Dist. Amravati.

... **APPLICANT**

VERSUS

1. The State of Maharashtra,
through Police Station Officer,
Police Station, Paratwada,
Dist. Amravati.
2. Smt. Priti w/o Sagar Wanjalkar,
Aged Major, Occ. Housewife,
R/o. Gupta Nagar, Kandli, Achalpur,
Dist. Amravati.

... **NON-APPLICANTS**

Mr. Pankaj Navlani, Advocate for applicant.
Mrs. S.S. Jachak, APP for non-applicant No.1.

CORAM : VINAY JOSHI AND
MRS. VRUSHALI V. JOSHI, JJ.

DATE : 10.09.2024.

ORAL JUDGMENT (PER: VINAY JOSHI, J.) :

Heard.

2. **Admit.**

3. By this application, the applicant is seeking to quash and set aside prosecution bearing Sessions Trial No. 173/2019 arising out of Crime No. 466/2016 registered with Police Station Paratwada, Dist. Amravati for the offence punishable under Section 308 read with Section 34 of the Indian Penal Code.

4. The facts of the case are quiet unusual, where daughter-in-law has lodged report against her husband, parents-in-law, brother-in-law, wife of brother-in-law alleging that they have attempted to commit her culpable homicide not amounting to murder. It is informant's contention that her husband as well as other relatives of husband were aware that her husband was detected to be infected with Human Immunodeficiency Viruses ("HIV") positive. All of them have concealed the said vital information from her at the time of

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marriage and they committed an offence of attempt to commit culpable homicide.

5. The informant lady got married with co-accused Sagar (“deceased”) on 28.12.2013. During regular medical check up, it was revealed that her husband (Sagar) was affected to be HIV positive. The informant has verified the medical papers and found that her husband was made aware about his infectious disease on 20.02.2013 itself. She has questioned to her husband as to why by concealing the disease, he got married, on which her husband replied that at the instance of his parents, he has performed marriage. Informant stated that her husband as well as other family members were aware about said disease, and it would lead to death. It is her contention that despite the knowledge, they assisted her husband to marry with her and thus, in furtherance of common intention attempted to commit the offence of culpable homicide to her extent.

6. The learned counsel appearing for applicant would submit that the allegation made in the Police Report does not make out a

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prima facie case to constitute the offence. He has produced certain literature to impress that HIV Positive can also live normal life span. It depends upon variety of factors like the time of diagnosis treatment, response of patient etc. A number of factors can affect the life expectancy of a people living with HIV Positive and thus, it cannot be said that there was an attempt to commit culpable homicide.

7. The learned counsel for applicant in the alternative submitted that the entire Police Paper does not disclose that the applicant was aware about the infectious disease of her son and thus, in absence of knowledge, criminal liability cannot be fastened. It is submitted that this Court has quashed the proceeding against the co-accused on the same set of facts.

8. The crime was registered by the informant against her husband, parents-in-law, brother-in-law and wife of brother-in-law. During pendency, her husband and father-in-law died. Brother-in-law and his wife had approached this Court by filing Criminal Application (APL) No. 753/2016, in which this Court held that the disease of

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HIV is such a type of disease which normally nobody will disclose. There is no material to show that the applicants (brother-in-law and his wife) were knowing HIV disease of Sagar/husband and on that count, proceeding has been quashed.

9. The learned APP in resistance would submit that as per Police Report he/husband had disclosed his ailment to his parents, but they insisted for marriage. The husband is no more as he died by infectious disease. The informant though infected by HIV in the year 2014, still she is alive. The applicant mother-in-law is 70 years old ailing of different diseases. At the inception, it is to be assessed whether the applicant lady was having knowledge about the disease of her son. It requires to be noted that her son was not carrying disease for a long time so as to construe the knowledge to the lady. As per Police Report, deceased Sagar came to know about infectious disease on 20.02.2013 i.e. few months prior to the marriage. Brother-in-law, his wife were living in the same house, whose FIR has already been quashed. We see no material to construe a positive knowledge to the mother of deceased.

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10. The learned counsel for applicant took us through the statement of parents of informant, who stated that on query, the applicant and her husband stated that they were not aware about the disease of their son. One should take note that a person affected by HIV positive carries a tabu and runs a risk of social ostracism. Always such disease which are kept in secrecy. Only few months before the marriage deceased Sagar came to know about his ailment. In absence of any material, the knowledge to the applicant about infectious disease of her son cannot be construed. Though the learned APP would submit that life of young lady has been destroyed by concealment, however that cannot be a reason to put the applicant on trial. The applicant is sailing in the same boat like brother-in-law and his wife whose proceeding has already been quashed. It is a matter to appreciate as to how the act of the applicant could be construed as an abetment to commit culpable homicide as longevity of the infected person depends upon various factors. Be that as it may, there is no material to hold that the applicant was aware about the infectious disease of her son and thus, in absence of said essential component,

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continuation of prosecution amounts to abuse of the process of the Court.

11. In view of above, application is allowed. We hereby quash and set aside prosecution bearing Sessions Trial No. 173/2019 arising out of Crime No. 466/2016 registered with Police Station Paratwada, Dist. Amravati for the offence punishable under Section 308 read with Section 34 of the Indian Penal Code.

12. Application stands disposed of in above terms.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)