

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

CRIMINAL REVISION APPLICATION NO.150 OF 2019

SATISH
RAMCHANDRA
SANGAR

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1. **Dr. Suhas Sampat Jadhavar**
Age : 40 Years, Occu. : Medical Practitioner,

2. **Dr. Ashwini Suhas Jadhavar**
@ Ashwini Hiralal Gaikwad
Age : 37 Years, Occu. : Medical Practitioner,

Both R/o. : New Colony, Ekatpur Road,
Sangola, District : Solapur.

...Applicants
(Original Accused)

Versus

The State of Maharashtra
At the instance of :
Sangola Police Station.

...Respondent

Mr.Manoj Mohite–Senior Advocate a/w Mr.Vishwanath Talkute:-	Advocates for Applicants.
Dr.Birendra Saraf – Advocate General, Mr.Avinash Kamkhedkar (APP) and Ms.Sangita Phad (APP):-	On behalf of Respondent State.

CORAM : S.M. MODAK, J.

RESERVED ON : 7th MAY 2025

PRONOUNCED ON : 9th JUNE 2025

JUDGMENT :

1. The very moot question about “*interpretation of the*

Medical Termination of Pregnancy Act, 1971 (“MTP Act”) and its correlation to the provisions of Indian Penal Code, 1860 (“IPC”) is involved in this Revision Application. Apart from arguments advanced by learned Senior Advocate Shri.Mohite and assisted by Mr.Talkute, the learned APPs in charge of this Revision, Mr.Kamkhedkar and Ms.Phad have argued the matter as well. However, as said above very basic questions are involved, as per order dated 19th March 2025, I have called learned Advocate General to address the Court on certain issues. He did address the Court. Even, I have heard Mr.Talkute.

2. There are 13 abortion cases noticed by the First-Informant Shri.Belpatre attached to Rural Hospital, Sangola, District : Solapur. Present Applicants being Medical Practitioners have aborted / done procedure on 13 pregnant women in their Dhanashree / New Dhanashree Hospital (charge-sheet mentions 12 but in a table prepared by Applicants, the number is 13). According to the First-Informant, there was no justification for performing abortion and the procedure is also not followed. There was a charge-sheet filed for the offences under sections 312, 313, 201 read with 34 of IPC and under section 5 of MTP Act, 1971 before the Court of Additional Sessions Judge, Pandharpur. Both the Applicants / Accused pleaded for

discharge. It was rejected on 15th February 2019 and that is why, this Revision Application is filed.

3. After hearing both the sides at great length, this Court is required to decide following questions:-

- (a) Whether in those 13 cases, there was abortion performed in the sense understood in medical parlance?
- (b) Whether these abortions violate the substantive provisions of MTP Act and more specifically Section 3?
- (c) Whether procedure laid down in the MTP Act, MTP Rules and MTP Regulations was not followed?
- (d) Whether the provisions of IPC were breached ?
- (e) Whether the issues raised can be decided in favour of the Applicants at pre-trial stage or whether they need to be decided after conclusion of the trial?

Prosecution case

4. The prosecution case, from the charge-sheet, needs to be stated. It is as follows:-

- (a) The First-Informant – Sandip Belpatre is doctor working as a Medical Practitioner – Rural Hospital – Sangola, District : Solapur. He was authorised to raid the hospitals and centres

to verify about the implementation of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 ("*PCPNDT Act*").

- (b) He got information about the illegal termination of pregnancies performed in the New Dhanashree Hospital and Maternity Home belonging to Doctor Jadhavar. Accordingly, he along with other staff raided New Dhanashree Hospital and Maternity Home on 7th February 2018. He noticed two lady patients admitted in the hospital for the purpose of termination.
- (c) He inspected the record. He found following lacunae / irregularities:-
 - (i) From April-2017 upto 7th February 2018, there were three MTP and three IUD (*Intrauterine Contraceptive Device*).
 - (ii) Earlier, registration under the provisions of the Maharashtra Nursing Homes Registration Act, 1949 ("*Nursing Homes Act*") was standing in the name of Dhanashree Hospital and Maternity Home, doctor Suhas Jadhavar. There was also approval in the same name under the MTP Act.
 - (iii) He was convicted for violation of PCPNDT Act for two years.

- (iv) He applied for renewal of registration under Nursing Homes Act (as period has expired) to Civil Surgeon. However, this proposal was kept pending as sonography issue was pending with Maharashtra Medical Council (letter dated 16th March 2017 : Page No.100).
- (v) However, at the same place, New Dhanashree Hospital and Maternity Home was started by Mrs.Ashwini Jadhavar after obtaining registration under Nursing Homes Act.
- (vi) At no point of time, the approval in the name of Dhanashree Hospital as per MTP Act was cancelled / suspended.
- (vii) **The record in Form–C** about consent as per MTP Rules was not maintained for termination cases. The record is not kept in sealed condition.
- (viii) The names of the patients were mentioned in O.T., Register. But, in fact, they were supposed not to be disclosed. There are alterations in the names of the patients and names of anesthetist, operating doctor are not there. This is not as per Form I, II and III of MTP Regulations.
- (ix) The consent forms were not filled with all details.
- (d) On this background, the F.I.R. was registered with Sangola Police Station on 8th February 2018.

- (e) The First-Informant issued a notice and called explanation of both these Applicants. They have admitted about the violations. All the papers were sealed by drawing the panchnama.
- (f) The offence was investigated by the Police and charge-sheet was filed for the offences punishable under sections 312, 313, 201 read with 34 of IPC and under section 5 of MTP Act, 1971. The charge-sheet consists of:-
 - (i) the statements of various persons
 - (ii) the statements of the doctors, medical practitioners
 - (iii) old and new registration under the Nursing Homes Act and
 - (iv) registration under the MTP Act and relevant correspondence.

Prayer for discharge

5. Both the accused applied for discharge (Page No.461) on various grounds. They are:-

- (a) The ingredients of the offence are not disclosed on the basis of materials annexed to charge-sheet. The provisions of sections 312 and 313 are not applicable because procedures were carried in good faith.

- (b) The evacuation and cleaning of uterus falls outside the scope of sections 312 and 313 of IPC.
- (c) It was also pleaded that the provisions of section 201 of IPC will not be applicable as the ingredients of sections 312 and 313 are not attracted. They relied upon the police statement of one Rusheshwar Phalake about disposal of retained products of conception.
- (d) The accused have pleaded all terminations fall under section 3(2) (i) of the MTP Act. The accused relied on the provisions of sub-section (1) to section 5 which takes out cases out of the clutches of sections 3 and 4 of said Act.
- (e) Missed abortion and the incomplete abortion are due to natural causes and the nature has already begun the process of evacuating unviable foetus. And there is no human intervention. The role of Medical Practitioner is only to hasten the process.
- (f) The Applicants relied upon endorsement made on Evacuation Register on 27th September 2017 that it does not fall under MTP Act.
- (g) About previous conviction, the accused pleaded it was a technical offence and there was no sex determination. The violation was

“*non intimation of change*”. It is only accused Dr.Suhas who was convicted.

- (h) According to them, even though some of the consent forms of patients were incomplete, accused relied upon police statements of patients. Those patients have not alleged about not giving consent.
- (i) They have pleaded “*irregularities in the Registers*”, do not amount to any offence because the provisions of MTP Regulations 2003, is not applicable to the State of Maharashtra.

6. The State has opposed the prayer for discharge. Copy of reply is annexed to the Petition (Page No.472). The State has pleaded, pregnancies were aborted illegally, the record and register were not maintained properly. The First-Informant Dr.Sandeep Belpatre at the time of raid noticed 2 patients (Pradnya Bansode and Megha Gharode – names not hidden in reply) admitted for the purpose of abortion. According to the State, there is prima facie evidence against both the Applicants.

Order passed

7. I have read the impugned order. The learned Additional Sessions Judge has given the following reasons:-

- (i) There was a **similar offence** registered earlier against these Applicants. (Paragraph No.4).
- (ii) Whether the terminations were in good faith or not, can be decided only after evidence will be recorded. (Paragraph No.5 and Paragraph No.8).
- (iii) The MTP Register was not maintained. (Paragraph No.6).
- (iv) The trial Court observed “*offences are serious*”. (Paragraph No.7).

Submission

8. The main thrust of argument of Mr.Mohite and Mr.Talkute is as follows:-

- (a) The so-called terminations cannot be treated as termination within the meaning of MTP Act. In fact, the procedure was followed to remove remaining part of non-alive fetus.
- (b) Even if, it is presumed that there were terminations, they do not fall within the prohibited category of terminations as per MTP Act. Whereas, they fall within exempted category as per MTP Act and IPC.
- (c) There is allegation of non-compliance of the provisions of MTP Rules relating to consent of patients. However, there is no

corresponding punishing section in the provisions of MTP Act.

- (d) The MTP Regulations 2003 were issued by the Central Government in exercise of the power under section 7 of the MTP Act. However, they are applicable only to Union Territories and not to States. And as such, there cannot be prosecution for non-compliance of the provisions of that Regulation.

Main points

9. The Revision needs to be decided by considering the following aspects:-

- (a) The provisions of IPC and MTP Act, Rules and Regulations
- (b) factual aspects and
- (c) scope of discharge and revision vis-a-vis the allegations.

Scope of Revision

10. The law on the point of discharge is well settled. The detailed scrutiny of the materials submitted along with the charge-sheet is not expected. The Court has to take a prima facie view after going through the materials. The Court has to ascertain whether there is a sufficient ground to proceed for trial. Scrutiny of materials means all the materials submitted along with the charge-sheet. It may be

favourable to the prosecution or it may be favourable to the accused. By considering the totality of materials, the Court has to take a prima facie view. Court is not supposed to ascertain whether the offence is proved or not. It is also true, when the Court has to form an opinion about sufficiency of material to frame a charge, Court is expected to give reasons prior to arriving at an opinion. Merely opining that the offence is serious is not fulfilling the obligations by the Court. Similarly, in a revisional jurisdiction, the Court has to ascertain about illegality, if any, in the findings. If, the findings are given without considering the materials, it is perverse finding. With this view in mind, I have perused the materials.

Legal provisions

11. It is true, every termination of pregnancy is punishable under Indian Penal Code. The exception is “*if it is done for good faith*”. Whereas, MTP Act lays down a mechanism wherein certain terminations are legalized. There is a difference in the ambit of the relevant sections of the IPC and ambit of the provisions of MTP Act. The relevant sections of the IPC are sections 312 to 318. Earlier to passing of MTP Act, there was no requirement of performing miscarriage by Registered Medical Practitioner. There was no

requirement that such termination shall be at the place which is approved. The only requirement under IPC was performing the miscarriage in a good faith. The concept of “*good faith*” was also not elaborated as per the Indian Penal Code. With advancement of technology, and social awareness, the legislatures have enacted MTP Act in the year 1971. Broadly, the requirements can be classified into procedural requirements and substantial requirements. They are laid down in section 3 of the said Act. They are as follows:-

- (a) In any case, termination shall be by Registered Medical Practitioner only.
- (b) Such termination shall be at an approved place only.
- (c) It shall be with consent of the woman or guardian.
- (d) The principle of “*good faith*” is elaborated. When “*the pregnancy involve a risk to the life of pregnant woman, and there is every possibility of suffering from abnormality if such child is born, it is said the termination is for good faith.*”
- (e) Every pregnancy cannot be terminated. It can be terminated only if the pregnancy is upto 20 weeks.
- (f) If the duration is below 12 weeks, and upto 20 weeks, it can be terminated by one Registered Medical Practitioner and by two

Medical Practitioners respectively.

Above requirements were not in existence prior to passing of MTP Act.

Cases of termination

12. Learned Senior Advocate Mr. Mohite has relied upon the observations in case of *X V/s. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi and Another*¹.

One unmarried girl of major age from Manipur was carrying single intrauterine pregnancy having a duration of twenty two-weeks. It was the result of consensual relationship. She has decided to terminate it because her partner has refused to marry her at the last stage. She approached Delhi High Court. It was rejected because the provisions of Section 3(2)(b) of the MTP Act are not applicable because the lady was unmarried woman. That is how, the matter came to Supreme Court. The lady was permitted to terminate the pregnancy. Considering the issue involved, the Hon'ble Supreme Court has dealt with the issue threadbare and also about what is the trend prevailing globally.

13. Even, learned Advocate General also relied upon the observations in the same judgment. He invited my attention to para

¹ (2023) 9 Supreme Court Cases 433

No.19. According to him, termination of a pregnancy is a criminal offence and there can be exception as per the MTP Act only when the conditions laid down therein are strictly fulfilled.

14. Dr.Saraf also relied upon the observations in case of **XYZ V/s. Union of India and Others**² and more specifically observations in para No.32. There is insistence on termination of pregnancies by Registered Medical Practitioner only and only at an approved place. There was a batch of petitions seeking permission to medically terminate pregnancies whose duration has exceeded 20 weeks.

15. In the case before us, it is not the ladies who have taken recourse to the Court of law. It is the Medical Officer who has raided the premises and lodged the FIR. This Court is required to ascertain, whether there are materials to suggest that the provisions of MTP / IPC Act were breached and whether, the materials are sufficient to frame a charge.

16. The Indian Penal Code does not lay down the meaning of “*termination of pregnancy*”. Section 2(e) of MTP Act lays down the meaning of “*termination of pregnancy*”. It means, “a procedure to terminate a pregnancy by using medical or surgical methods”. This was

² 2019 3 DCR 400

inserted by Amendment Act of 2021. Earlier, this meaning was not given in the MTP Act. It contemplates '*alive pregnancy*'. That is why, there is much emphasis by Mr.Mohite and Mr.Talkute on carrying out the procedure. The embryo may not be alive. There may not be fetal cardiac activity. According to Mr.Mohite, these are the cases of missed abortion. According to him, in such contingencies, further procedure needs to be done, and dead fetus cannot be kept in uterine of a pregnant woman. Whereas, according to learned APPs, at this stage, it cannot be decided whether the 13 patients undergone missed abortion or not, and for ascertaining the same, the evidence has to be adduced. But, this Court feels, Court can certainly consider the documents filed along with the charge-sheet.

Materials along with the charge-sheet

17. It is true, in the charge-sheet, there are statements of the pregnant woman, their relatives, the doctor who has examined the patient, the doctor who has carried out the sonography and so on. These documents can certainly be looked into by the Court even at a pre-trial stage.

18. There are 13 victims whose statements are recorded by the Police. They can be bifurcated into 2 categories:-

- (a) Patients wherein there is missed / incomplete abortion and
- (b) Other cases which fall within exempted / prohibitory category.

19. But, it is certain either of those 13 victims or their relatives have not made complaint of the termination / carrying out the procedure against their consent. With the assistance of Mr.Talkute, Mr.Mohite and both learned APPs, I have perused their statements. It is also true along with the charge-sheet, there are two documents which throw certain light upon the termination / procedure carried out. They are as follows:-

- (a) The copy of **Evacuation Register** (wherein there is a reference of 10 pregnant women). According to the Applicants, the representative from Civil hospital has already certified them as cases of incomplete abortion and missed abortion and as such, outside the purview of MTP Act. My attention is invited to an endorsement dated 27th September 2017. The patient details are for the duration 3rd April 2017 till 26th September 2017. There is much emphasis on this endorsement.
- (b) **An opinion** dated 26th March 2018 (after lodging of FIR) given by Medical Superintendent, Rural Hospital, Sangola addressed to the Police. She has scrutinized the papers of 12 pregnant women

and pointed out certain lacunas in the medical case papers and the consent forms. It does not mention about absence of consent of pregnant women.

According to Dr.Saraf, even if case of a single pregnant woman does not fall within the exception of MTP or IPC, still matter requires consideration by the trial Judge by adducing evidence. It is important to note when the FIR was lodged by Dr.Belpatre – Medical Officer on 8th February 2018, he has alleged abortion of 6 pregnant women illegally (concluding para of the FIR). He has not given details of those patients. It is true, during trial, those pregnant women and the doctors need to be examined as prosecution witnesses.

20. The remedy of discharge is provided in the Code of Criminal Procedure for the purpose of avoiding inconvenience to the accused by facing long-drawn trial. If, the submission advanced on behalf of the Applicants are accepted, then the Applicants need to be discharged. I am afraid, these submissions can be accepted in toto. This Court is not inclined to grant the relief in this Revision broadly for two reasons. **One**, all the 13 cases do not fall within the purview of missed abortion or incomplete abortion. **Secondly**, the pregnant women are not aware about the symptoms noticed in a sonography report. Some

of the reports do suggest existence of live fetus / embryo. On the bare perusal of those materials, it cannot be conclusively said that those terminations were done in good faith. It can be decided only after adducing evidence. I do not accept the submissions advanced on behalf of Applicants. I will give reasons.

Cases of missed / incomplete abortion

21. If all these papers (police statements, sonography reports, endorsement on register and the opinion) are considered in totality, it can be said that there are certain cases of incomplete and missed abortion. It is true, some of the patients referred in the opinion and Evacuation Register are common. It is not clear as to whether the copy of Evacuation Register was placed before the Medical Superintendent prior to giving of opinion dated 26th March 2018 by her. In fact, it was the duty of Investigating Officer to bring the attention of the Medical Superintendent to the endorsement on Evacuation Register. It seems, he has not done it. Even, learned trial Judge has not referred to any material from the charge-sheet except making general opinion “about seriousness of the offence and case is fit for trial”.

22. If there is missed abortion / incomplete abortion, there is no question of termination of live pregnancy. The trial Court ought to

have considered the endorsement on Evacuation Register. If at all, charge is to be framed, **at least the patients who have missed their abortion or they suffered incomplete abortion, can be excluded from the details of charge.** The trial Court can do this exercise.

It is true, as said above, there are two documents. One is, Evacuation Register and second is opinion. Both need to be considered. Trial Court can ascertain whether the opinion only suggest of procedural non-compliances or also of violation of substantial provisions of the IPC / MTP Act. Trial Court can do this exercise. **For that purpose, matter needs to be remanded.**

23. It is not clear as to whether the Civil Surgeon while giving the opinion had gone through the endorsement on Evacuation Register. The Investigating Officer ought to have brought the attention of the Civil Surgeon to this endorsement. Even now, liberty can be granted to the Investigating Agency to seek further opinion on the basis of Evacuation Register. And then, trial Court can decide as to whether in those cases the provisions are violated. It is the choice of Investigating Agency whether to produce fresh opinion or not. Even if, it is not produced within reasonable time, the trial Court on the basis of the Evacuation Register can decide whether offence is made out in

respect of the patients named in the Evacuation Register.

Exempted category as per MTP Act / IPC

24. The Applicants also seek discharge in respect of other patients on the ground of exempted category as per the MTP Act / IPC. The Applicants have filed a table containing details of the patients, duration of pregnancy, sonography performed. About its contents, there is consensus amongst both the sides. Only dispute is about presence of good faith. If they will not fulfill the requirements of those provisions, there can be violation of the provisions of IPC / MTP. For deciding this issue, there are certain parameters which are inbuilt in the provisions of both the Acts. **They are as follows:-**

- (a) How much is the duration of pregnancy.
- (b) Who performed miscarriage / termination.
- (c) It was performed at which place – approved / non approved.
- (d) Whether it was performed in good faith.

25. The submission advanced on this aspect need to be considered. As per the prosecution, there are three type of violations.

They are:-

- (a) The termination was against the consent of a pregnant woman and the consent forms as per the MTP Rules were not filled in

properly.

- (b) The place wherein the terminations were performed was not approved place.
- (c) The terminations were not done in good faith.

There was submission on behalf of the prosecution in respect of deciding the issue of “*good faith*” at a discharge stage. They find favour from the trial Court Judge whereas Applicants contend the issue of good faith can be decided at a pre-trial stage on the basis of documents submitted along with the charge-sheet. This issue needs to be decided on the touchstone of the provisions of IPC and MTP Act, MTP Rules and Regulations.

Provisions of IPC / MTP Act

26. As said above, the element of “*good faith*” is required as per both the Acts. The only difference is the element of “*good faith*” is elaborated further as per the provisions of MTP Act. On record, we have got statements of pregnant women recorded by the Police, sonography reports, statements of sonography experts. **As said above, prosecution does not claim that in Police statements patients have expressed lack of consent.** The Court has to consider those statements as well as the sonography reports and the opinion. After reading them,

it is difficult to opine at this stage that terminations were done in good faith. This much material is sufficient to frame charge against both the accused at least in respect of patients who have not been named in the Evacuation Register. Charge can be framed under section 312 of IPC though not under section 313 of IPC.

27. As said above, the punishing section under section 5 of the MTP Act talks about penalties in case of non-compliance of procedural aspect. About charge under section 201 of IPC, trial Court can read the statement of Rusheshwar Phalake and other materials and then can take a decision.

Non-compliance of MTP Rules and Regulations

28. It is true, section 6 of MTP Act empowers the Central Government to make Rules for the purpose of carrying out the provisions of this Act. There is MTP Rules, 2003 in existence. Section 7 of the said Act empowers the Central Government to issue Regulations in respect of the subjects described under section 7(1). Mr.Mohite and Mr.Talkute have laid emphasis on applicability of the provisions of Regulation to territory of State. They have also invited my attention to Hariyana Medical Termination of Pregnancy Regulations, 1972 issued by Governor of Hariyana in exercise of the

powers conferred by section 7 of MTP Act. It is true certificate of opinion and other formats are annexed to that Regulation. He also relied upon the observations in case of ***Rohitash Kumar and Others V/s. Om Prakash Sharma and Others***³. It is in respect of interpretation of the provisions of a statute .There is no scope for the Court either to add or substract even a single word. There is further observation:-

“The Court cannot proceed with the assumption that legislature while enacting the statute has committed a mistake it must proceed on the footing that the legislature intended what it has said. Even if there is some defect in the phreasology used by it in framing the statute, and it is not open to the Court to add and amend or by construction, make up for the deficincies which have been left in the Act”.

For ascertaining this aspect, this Court has issued certains directions to the prosecution. Accordingly, learned APP Shri.Kamkhedkar when he was in charge of the case, filed following documents:-

- (a) Affidavit dated 8th May 2024 filed by Dr.Suhas Dattatraya Mane – Civil Surgeon – Civil Surgeon Office, Solapur.
- (b) Additional Affidavit dated 27th June 2024 filed by Dr.Mukund Parmeshwar Mane – Medical Officer, Class-I, Women Hospital, Solapur.

³ (2013) 11 Supreme Court Cases 451

29. Shri.Kamkhedkar has also produced the following correspondence:-

- (a) The letter written by Civil Surgeon – Solapur to the Additional Director, Health Services, Family Welfare Department – Pune dated 5th April 2024 requesting him to supply necessary information about applicability of the Regulation to the State of Maharashtra.
- (b) Copy of letter sent by Section Officer – Public Health Department dated 1st April 2024 addressed to the Director, Health Services – Mumbai and Additional Director – Pune forwarding copy of order dated 5th April 2024 passed by a Division Bench in case of *Sau. Ashwini Ghanshyam Pali V/s. The State of Maharashtra through the Chief Secretary, Public and Family Welfare Department, and another*⁴.
- (c) The instructions issued vide letter dated 11th July 2017 by the Additional Director, Health Services, Family Planning – Pune to all the Civil Surgeons, District Health Officer, in respect of maintaining the record and registration in termination centres.

30. On this background, as per the order dated 19th March

⁴ Writ Petition No.2319 of 2024 : 5th April 2024 : Bombay High Court (Bench at Nagpur)

2025, I have called upon learned Advocate General to address the Court on certain issues. Even, learned Advocate General Dr.Saraf addressed the Court. According to him, this issue need not be addressed in this Revision but it should be left to be decided in appropriate proceeding. Even, he submitted that this issue is not raised specifically in the memo of Revision.

31. Much is argued on behalf of the Applicants about non-compliance of Rules and Regulations and absence of the provision for prosecution as per MTP Act. Whereas, according to learned APPs, if the details of the consent are not filled in properly, they cannot be treated as valid consent. There was also an argument that the names of the patients need to be kept secret whereas, they are disclosed in the register and it amounts to violation. Whereas, Dr.Saraf has argued, if there is no specific provision in the MTP Act prescribing the prosecution for non-compliance of the procedure, still those acts are not exonerated and they will fall within the purview of the provisions of sections 312 and 313 of IPC.

Obtaining consent

32. It is true, necessity of consent of the pregnant woman is mandatory whether it is under section 313 of IPC or under section

3(4)(b) of the MTP Act. The copies of consent are not brought to my notice. **There are two aspects.** First one factual and second is the legal aspect. As said above, it is not the prosecution case that those 13 pregnant women have made complaint of the abortion against their consent. In fact, in their statements, they have explained the circumstances why they have visited the hospital of the Applicants. The provisions of Indian Penal Code do not lay down the manner in which consent should be obtained. Whereas, the MTP Act, section 3(4) lays down who can give consent if the woman is below the age of 18 years or mentally ill person, there has to be consent of her guardian. In other cases, the consent of a pregnant woman is required. Whereas, Rule 9 of the Rules lays down how the consent should be obtained. It should be in Form-C. The format is annexed to the Rules.

33. It will be relevant to consider corresponding penal provisions of the MTP Act. The Act contains only 8 sections and section which prescribes punishment is **Section 5 of the MTP Act**. The offences defined and the punishment prescribed therein is as follows:-

- (i) **Sub-section 1:-** In fact, it does not lay down punishment. It carves out an exception when the provisions of sections 3 and 4 of the said Act will not be applicable. When there is immediate

necessity of saving the life of the pregnant woman and Registered Medical Practitioner has formed such an opinion, the procedure prescribed in sections 3 and 4 of the said Act is not applicable.

(ii) **Sub-section 2:-**

It lays down an enhanced punishment as compared to the punishment prescribed under IPC ranging from two years upto seven years, in case the termination was done by a person other than Registered Medical Practitioner. In nutshell, this will be applicable only when non-registered Medical Practitioner terminates the pregnancy. It does not say about improper consent.

(iii) **Sub-section 3:-**

It emphasises on termination at approved place only. If termination is done at a place which is not approved (as per section 4 of the said Act), there is a punishment.

(iv) **Sub-section 4:-**

It lays down punishment for an owner of the place which is not approved wherein pregnancies are terminated.

34. If we read the above quoted provisions, we do not find anywhere any punishment prescribed if the consent is improper. So, it

would not be justified to frame a charge against both these Applicants under section 5 of MTP Act just because consent forms were not filled in properly. Whereas, section 313 of IPC talks about consent. If we read the statements of 13 pregnant women, we can find they have consented for abortion.

Non-compliance of the provisions of MTP Regulation

35. The source of power for issuing Regulations is given in the title clause. These Regulations are made by the Central Government in exercise of powers conferred by **Section 7 of the MTP Act**. The provisions of section 7 can be elaborated as follows:-

- (a) **Sub-section 1** prescribes three areas wherein Regulations can be issued.
- (b) **Sub-section 2** prescribes giving of intimation and information to the Chief Medical Officer of the State.
- (c) **Sub-section (2-A)** lays down the requirement of laying of every Regulation made by the State Government before the State Legislature. There is no period prescribed for such lying. It only says '*as soon as*'.
- (d) **Sub-section 3** prescribes punishment if the requirement of Regulation are contravened or wilful failure.

36. In Regulation No.1, there is mention about “*extent of regulation*”. **It applies to all the Union Territories.** There is provision in Article 240 of the Constitution empowering the President to make Regulations for certain Union territories. The Regulation in question is issued in pursuance to the provisions of section 7 of MTP Act. **There are 7 Regulations in 2003 Regulations. The relevant are as follows:-**

- (i) Regulation 3 prescribes the format for giving of an opinion by Registered Medical Practitioner.
- (ii) Regulation 4 lays down the officer who can be a custodian of the record.
- (iii) Regulation 5 imposes a responsibility on head of the hospital or owner of approved place to maintain the Register of Admission.
- (iv) Regulation 6 gives secrecy to Admission Register. It shall not be open for inspection by other persons.
- (v) Regulation 7 lays down the manner of making entries in the registers.
- (vi) Form I and II lays down the format for giving opinion and the format of giving intimation to Chief Medical Officer respectively.

37. Admittedly, Regulation does not spell about its applicability to States. It is true, MTP Act is enacted by the Central

Government in respect of an entry from concurrent list. Section 1(2) of the said Act extends the applicability to the whole of India. According to Dr.Saraf, this plea was not pleaded in the memo of Revision and requesting to reserve this issue for a decision in another proceeding.

38. When this Court has elaborately heard the matter and given directions, it may not be proper to postpone giving of any finding on this aspect. In fact, during the earlier hearing when two Affidavits dated 8th May 2024 and 27th June 2024 were filed by the concerned Medical Officers and when the supporting correspondence was filed (as referred above), they have not enlightened the Court about adopting the Regulation by our State or passing separate Regulation. In fact, they have simply relied upon the observations by Division Bench given in case of *Sou.Ashwini Pali* (referred supra). It was a case of medical termination of pregnancy of lady carrying more than 24 weeks pregnancy. It deals with the amended provisions of the MTP Act carried out in the year 2021. There was direction issued to formulate standard operating procedure to be followed while dealing with termination of pregnancies.

39. Earlier to this decision, there was a circular issued by Additional Director, Health Services, Pune thereby prescribing the

format of register, format of consent and format of an opinion. This was issued on 11th July 2017. Whereas, in this case, the FIR is dated 8th February 2018. From the above, it can very well be said that even though there is neither a Regulation issued by State Government nor adopted by the State Government, there are guidelines issued by the Medical Authorities. They were in force at the time of lodging of an FIR. Certainly, it has got a binding force but there is a difference in between the law made by the Parliament and the guidelines issued by the concerned Authorities. A person can be prosecuted for non-compliance of the guidelines only when there is a penal provision prescribed as per the relevant Act passed by the Parliament. After reading the provisions of section 5 of the Act, we do not find anywhere any penalty prescribed for not keeping the register in proper manner. Regulation 3 lays down a penalty but as said above, it is not applicable to our State. I am not inclined to accept the submission made by Dr.Saraf.

Suspension of Nursing Homes License

40. It is true, **Section 4** of the Act prescribes a place wherein the pregnancies can be terminated. It may be either a government

hospital or a place approved for the purpose of this Act by the Government or the Authority. It is also true, there is a punishment prescribed under section 5(3) and 5(4) of the said Act. According to Mr.Mohite and Mr.Talkute, the emphasis is on “*the place*”. He invited my attention to the meaning of the word “**owner**” given in Rule 2(d) of the Rules. It is as follows:-

“(d) “owner”, in relation to a place means any person who is the administrative head or otherwise responsible for the working or maintenance of a hospital or place, by whatever name called, where the pregnancy may be terminated under this Act.”

According to them, even though there are different registrations under the provisions of Nursing Homes Act, the place where the pregnancies were terminated has not changed. They have made the following submissions:-

- (a) Earlier, registration as per the Nursing Homes Act was in the name of Dhanashree Hospital and Maternity Home – Suhas Jadhawar. New registration was obtained in the name of Ashwini Jadhawar – New Dhanashree Hospital.
- (b) They have explained by referring to the letter issued by District Civil Surgeon – Solapur addressed to Medical Superintendent,

Rural Hospital – Sangola dated 13th April 2017. The earlier registration in the name of Dhanashree Hospital was kept pending in view of pendency of the sonography issue before Maharashtra Medical Council.

- (c) According to them, the Police, the Medical Authorities and the trial Court has far-streched the issue of conviction as per PCPNDT Act. It was a conviction for non-compliance of certain provisions of informing the names of employees to the Authorities and only Suhas Jadhawar is convicted for an offence under section 23 of the PCPNDT Act (Page No.455). His Appeal is pending. This offence has nothing to do with the present prosecution.
- (d) According to them, there was approval granted as per MTP Act in the name of Dhanashree Hospital Maternity Home, owner Dr.Suhas Jadhawar on 22nd September 2015 and this is not cancelled.
- (e) In nutshell they submitted, if there is new registration as per the Nursing Homes Act in the name of Ashwini Jadhawar and if there is unaffected approval in the name of Dr.Suhas Jadhawar as per MTP Act, it cannot be said that the pregnancies were

terminated at a place not approved as per section 4 of the said Act.

- (f) They invited my attention to the provisions of Rule 7 of the MTP Rules. It talks about cancellation or suspension of certificate of approval. According to them, admittedly this procedure was not followed.

41. Whereas, according to learned APP, the requirement of Nursing Homes registration in the name of Dr.Suhas Jadhawar is mandatory and admittedly it was not continued.

42. Admittedly, the approval under MTP Act is neither cancelled nor suspended. If we read the provisions of section 4 of MTP Act, the place must be approved by the concerned Authorities. **There is a rider. It says “approved for the purpose of this Act”.** As said above, the certificate in the name of Dhanasharee Hospital as per the MTP Act was in force when the hospital was inspected by the First-Informant on 7th February 2018. **It is true, the requirement of registration under Nursing Homes Act and requirement of approval under MTP Act are different.** It has got different purposes. There is a form and application for getting approval prescribed in Form-A of the MTP Rules. It talks about category of duration of pregnancy,

requirement of facilities available.

43. For the above discussion, it is difficult to accept the submission of learned AG and learned APP that the place where pregnancies are terminated is not approved place as per the provisions of MTP Act.

Invocation of IPC

44. It is true, as per the provisions of section 312 of IPC, the only exception provided is when there is a good faith for saving the life of woman. As per said provision, a person who terminates pregnancy whether is a Registered Medical Practitioner or not can be prosecuted if there is absence of good faith. By passing of the Act, termination of certain pregnancies having prescribed duration if done by Registered Medical Practitioner at approved place with consent are legalized. It is difficult to accept the submission of learned AG that the provisions of section 312 of IPC can be invoked if MTP Act does not provide for any prosecution in case the provisions of Rules and Regulations are violated. It can be accepted only when section 312 of IPC provides for punishment. **We cannot read that contingency in section 312 of IPC.** This is a penal law and it has to be interpreted strictly. So, the Applicants have made out a case for dropping of a charge for an

offence for non-compliance of the provisions of Rules and Regulations in respect of not keeping the consent in proper manner, disclosing the details of patient in Admission Register.

Conclusion

45. For the above discussion, the charge for non-compliance of the provision relating to consent form, maintaining the register and termination at non-approved place needs to be dropped. For rest of the issue, that is to say, about violation of the provisions of section 312 of IPC, the matter needs to be remanded. Hence, the direction:-

-: **DIRECTION** :-

- (i) The Revision Application is partly allowed.
- (ii) The order dated 15th February 2019 passed by the Additional Sessions Judge – Pandharpur in Sessions Case No.30 of 2018 is set aside.
- (iii) The charges against both the Applicants for non-compliance of the provisions of MTP Rules and MTP Regulations on account of not keeping the consent forms properly, allegations relating to maintaining the registers and termination at non-approved place are dropped.
- (iv) The matter is remanded to the Court of Additional Sessions Judge – Pandharpur with following directions:-
 - (a) The trial Court is directed to hear both the sides on aspect of the cases of **missed abortion / incomplete abortion** as

depicted in the Evacuation Register.

- (b) The trial Court is directed to consider all the materials including Evacuation Register, the opinion given by the Medical Superintendent on 26th March 2018.
- (c) The Investigating Agency is at liberty to place the opinion of the Medical Superintendent, if any, obtained on the basis of endorsement in Evacuation Register.
- (d) If, the Investigating Agency chose not to produce it in a reasonable period not more than two months, the trial Court is at liberty to give a finding on the cases of missed / incomplete abortion on the basis of available record.
- (e) **For rest of the cases of abortion**, the trial Court is at liberty to proceed for violation of the provisions of section 312 of IPC and to take decision on charge under section 201 of IPC.
- (v) Above observations are prima facie in nature and the trial Court may not be influenced by those observations when the trial will be conducted. The Applicants are at liberty to put forth their case during trial.

46. I express my sincere thanks to all the Counsel and learned Advocate General for giving valuable assistance.

[S. M. MODAK, J.]