



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 185 OF 2025

Dr. Omprakash s/o Lalbaji Kingaonkar
Age 71 years, Occupation Medical Practitioner,
R/o. Samatanagar, Nanded Road, Ahmedpur,
Taluka Ahmedpur, District Latur.

... Applicant
[Orig. Accused]

Versus

The State of Maharashtra
Through the Police Station Officer,
Ahmedpur, District Latur.

... Respondent

.....
Mr. U. L. Telgaonkar, Advocate for the Applicant.
Mr. S. G. Sangle, APP for Respondent-State.
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 18.02.2026

Pronounced on : 23.02.2026

JUDGMENT :

1. Revision petitioner-original accused in Crime No. 545 of 2022 registered at Ahmedpur Police Station, District Latur for offence under sections 315 and 316 of IPC as well as Sections 3(2)(a)(b) and 5 of the Medical Termination of Pregnancy Act, 1971 [for short, "MTP Act"], hereby takes exception to the order dated 06.03.2025 thereby rejecting application Exhibit 6 in Sessions Case No. 27 of 2024, which was filed by the revisionist seeking discharge under Section 227 of Cr.P.C.

2. In short, prosecution was launched against present petitioner on the premise that, he had conducted medical termination of pregnancy of patients whose gestation and pregnancy was beyond 20 weeks, which is impermissible. Therefore, having violated provisions of the Penal code as well and the MTP Act, after registration of crime on a complaint by authorized medical officer, above crime was registered and on completion of investigation, he was duly chargesheeted and is about to face trial vide above Sessions Case, in which an application for discharge has been rejected giving rise to present revision application by invoking Section 397 of Cr.P.C.

3. Learned counsel for the revision petitioner would point out that, applicant has served at various places on various positions such as Medical Officer and Superintendent for a period of almost 30 years. That, after superannuation, he set up a hospital at Ahmedpur and is a senior-most gynec surgeon with vast experience under his belt. It is pointed out that, his hospital is the only hospital in the entire taluka of Ahmedpur where there is authorization for conducting abortion over 20 weeks gestation period and he receives referrals from all corners from various medical practitioners and is thus a trusted medical practitioner.

4. Learned counsel further pointed out that, a surprise visit was allegedly paid to his hospital by one serving medical superintendent on 15.02.2022, and it is claimed that during said inspection and verification of documents, it was revealed that termination of pregnancies exceeding 20 weeks were performed without intimation to the authority or constituted committee. That, there are allegations that prior opinion of constituted committee was not obtained and on self determination, risky operations were conducted thereby violating the very provisions of the MTP Act. However, according to learned counsel, at the threshold, only a Chief Medical Officer or Civil Surgeon is authorized to conduct such raid. Here, complainant was mere Medical Superintendent and was not holding required designation to verify or lodge complaint.

5. Learned counsel pointed out that, hospital of the revision petitioner is equipped with all medical equipments and his hospital has been duly recognized by Government to conduct termination of pregnancies.

6. It is further pointed out that there are allegations that, medical termination of pregnancy of one lady namely Pooja Samukhrao was conducted even when it had gone to the advanced stage i.e. beyond

24 weeks and on such accusations, followed by illegal raid, above crime has been registered.

7. Learned counsel pointed out that though the MTP Act permits termination of pregnancy up to 12 or 20 weeks, by way of amendment the said period has been extended to 24 weeks. Moreover, according to him, when there is risk to the life of the mother, there is no cap of gestation or stage of pregnancy. Therefore, the above referred medical case which was conducted by revision petitioner, involved a medical exigency of saving life of the patient whose blood pressure had abnormally shot up and there was oedema over the entire body. That, ultra sonography report had indicated that the fetus was already stillborn as no fetal heart sounds were heard or detected. That, it was an emergent case necessitating urgent surgery to save life of the pregnant woman. That even provisions of MTP Act have given latitude to a registered medical practitioner to undertake such procedure. Consequently, it is his submission that, there was no irregularity or illegality. He pointed out that, patient had come on referral and after obtaining consent of relatives and patient, above procedure was undertaken after following due procedure contemplated under the MTP Act. That, said medical procedure was even successful. However, merely on the basis of verification and

examination of register maintained by the hospital, certain anomalies and irregularities are alleged to be detected and a senior doctor like revision petitioner is sought to be prosecuted.

8. lastly he submits that, even on studying entire chargesheet, there is no material suggesting availability of ingredients for which revision petitioner is framed. Therefore, according to him, making him face trial or its ordeal would amount to injustice. Consequently he urges to set aside the order of learned trial court by allowing the revision.

9. In support of his contentions, learned counsel for the revision petitioner places reliance on the decisions of the Hon'ble Apex Court in *P. Vijayan v. State of Kerala and Another* AIR 2010 SC 663 and *Captain Manjit Singh Viridi (Retd.) v. Hussain Mohammed Shattaf and Others* AIR 2023 SC 2480.

10. Per contra, learned APP would point out that, going by the nature of proceedings and accusations, there is more than sufficient material which has been gathered upon thorough investigation. That, medical experts, who themselves were part of the raiding team, have noticed prominent irregularities and illegalities in violation of the

MTP Act. That, voluminous documents are seized from the hospital run by the revision petitioner and that, it is a fit case to make petitioner face trial. According to him, whatever grounds are raised in the revision are not tenable at this stage. For above reasons, he seeks rejection of revision.

11. Heard. Perused the papers. This Court is called upon to exercise revisionary powers available under Section 397 r/w 401 of Cr.P.C. As there are prayers for discharge under Section 227 of Cr.P.C., it would be desirable to give a brief account on the settled legal precedent to be borne in mind while dealing with an application for discharge.

In the case of ***Sajjan Kumar v. CBI*** MANU/SC/0741/2010 : (2010) 9 SCC 368, on the scope of Section 227 of Cr.P.C., the Hon'ble Apex Court observed in para 21 as under :

“21. On consideration of the authorities about scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

(iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

The Hon'ble Apex Court, on the limited power of sifting the material on record at the stage of charge, in case of ***Dipakbhai Jagdishchandra Patel v. State of Gujarat*** MANU/SC/0595/2019 : (2019) 16 SCC 547, observed as under:

“23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the Court is expected to do is, it does not act as a mere post office. The Court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the Court dons the mantle of the Trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the Court must be satisfied that with the materials available, a case is made out for the accused to stand trial...”

In ***Asim Shariff v. National Investigation Agency*** MANU/SC/0863/2019 : (2019) 7 SCC 148 the Hon'ble Apex Court has observed that at the stage of framing of charge, the trial court is not expected or supposed to hold a mini trial for the purpose of marshalling the evidence on record. The relevant observations in this regard read as under:

“18. Taking note of the exposition of law on the subject laid down by this Court, it is settled that the Judge while considering the question of framing charge under Section 227 CrPC in sessions cases (which is akin to Section 239 CrPC pertaining to warrant cases) has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the material placed before the Court discloses grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing the charge; by and large if two views are possible and one of them giving rise to suspicion only, as distinguished from grave suspicion against the accused, the trial Judge will be justified in discharging him. It is thus clear that while examining the discharge application filed under Section 227 CrPC, it is expected from the trial Judge to exercise its judicial mind to determine as to whether a case for trial has been made out or not. It is true that in such proceedings, the Court is not supposed to hold a mini trial by marshalling the evidence on record.”

Some other rulings on this aspect can be named as *State of Maharashtra and others v. Som Nath Thapa and others* (1996) 4 SCC 659; *State of M.P. v. Mohanlal Soni* (2000) 6 SCC 338; *Amit Kapoor v. Ramesh Chander and another* (2012) 9 SCC 460; *Asim Shariff v. National Investigation Agency* (2019) 7 SCC 148.

The ratio that is culled out is that, while dealing with an application under Section 227 of Cr.P.C., strong suspicion against the accused cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage, if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. Where the material placed before the Court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial. By and large however, if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion

against the accused, he will be fully within his right to discharge the accused.

12. Further, this being revision, there is limited scope to this Court, i.e. to ascertain whether impugned order suffers from any patent illegality or error so as to interfere.

13. In above backdrop, charge-sheet placed on record is studied and it is noticed that, precise accusation against present revision petitioner is that, while running a hospital by name 'Kingaonkar Hospital' at Ahmedpur, there is violation of rules and regulations of the MTP Act whereby limit of 20 weeks pregnancy circumscribed by the Act has been violated and pregnancy terminations are done without obtaining prior approval or permission of District MTP Advisory Committee, and thereby he has committed offence under Sections 315 and 316 of IPC and Sections 3(2)(a)(b) and 5 of the MTP Act.

14. The FIR seems to be on the basis of report dated 25.11.2022 lodged on one Dattartraya Kalidas Birajdar, Medical Superintendent, Rural Hospital, Ahmedpur. Substance of his report is that, being working as a Medical Superintendent since 2020, he has been

authorized to inspect all MTP centers and sonography centers. According to him, on 15.02.2022, he himself and one Doctor Kishanrao Surajmal paid a surprise visit to the petitioner's hospital situated at Nanded road, Ahmedpur for trimester MTP Center inspection, and on going through the register and the case papers, it was revealed that on 02.02.2021, 02.06.2021 and 30.08.2021, termination of pregnancies which were above 20 weeks were shown to be conducted. On 29.09.2021, 27 weeks pregnancy was shown to be terminated. On 20.11.2021, termination of 22 weeks pregnancy was noticed and on 20.01.2022, 24 weeks pregnancy was terminated. Lastly, on 20.02.2022 also pregnancy of over 24 weeks was shown to be terminated. Informant claims that, this revealed that there was violation of rules and regulations of the MTP Act and therefore, Civil Surgeon at Latur was duly reported and at his instance, inspection squad was constituted comprising of Dr. Pathak, Dr. Soudale, Dr. Birajdar, legal advisor Mekale and staff Thange, which again paid visit to the petitioner's hospital on 08.03.2022 and after inspection submitted report to the Civil Surgeon, who thereafter constituted special meeting on 23.03.2022, i.e. meeting of District MTP Advisory Committee, wherein revision petitioner was summoned to offer explanation, i.e. both oral and written, and thereafter above complaint has been lodged for above offence.

15. Charge-sheet shows that thereafter, investigation commenced which comprised of collection of various documents from the hospital and recording statements of officials who were party to the flying squad and raid. Necessary Circulars, Notifications and amended Gazette are also placed along with the charge sheet. On gathering sufficient evidence, charge-sheet seems to have been filed in the Court of Additional Sessions Judge, Ahmedpur for trial.

16. Submissions advanced in favour of relief are already dealt in aforesaid para. Precise and fundamental objections raised by learned counsel for the revision petitioner are that, firstly, raid being conducted by incompetent authority; secondly, petitioner's center to be approved and authorized by the Government to conduct termination of pregnancy; and thirdly, the cases, which prompted termination of pregnancy beyond permissible cap of pregnancy, to be done only due to medical exigency and to save life of the concerned patient.

17. For ready reference it would be fruitful to reproduce the relevant provisions for which petitioner is chargesheeted.

i. Section **315** of IPC deals with an act done with intent to prevent child being born alive or to cause it to die after birth, whereas Section **316** of IPC deals with causing death of quick unborn child by act amounting to culpable homicide.

As regards to above provisions are concerned, it is submitted that, these provisions are not applicable to the revision petitioner, he being a registered medical practitioner and moreover, none of the ingredients for above Sections are available in the charge-sheet.

ii. The other provisions of the MTP Act for which revision petitioner is charged are Sections 3(2)(a)(b) and Section 5.

The entire statutory regime of the MTP Act shows that it comprises of only eight sections. Section 3 of the MTP Act deals with important issue as to when pregnancies are permitted to be terminated by medical practitioners. Here, there is no dispute that revision petitioner is a registered medical practitioner and indeed, as pointed out, he also has vast experience to his credit.

iii. Section 3(1) of the above Act provides that notwithstanding anything contained in the IPC, a registered medical practitioner shall not be guilty of any offence under that Code or under any other law

for the time being in force, if any pregnancy is terminated by him in accordance with the MTP Act. In the light of such provision, probably learned counsel for revision petitioner could be justified in saying that provisions of IPC are not applicable to revision petitioner he being registered medical practitioner.

iv. However, further provisions of Section 3 (2) spell out other contingencies which permit termination of pregnancy by a registered medical practitioner, subject to the provisions of sub-section (4), i.e.

(a) where the length of the pregnancy does not exceed twelve weeks, if such medical practitioner is,
or

(b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are,
of opinion, formed in good faith, that, -

(i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or

(ii) there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

Explanation I. - Where any, pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation II. - Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

v. Section 3(3) of the MTP Act provides that, in determining whether the continuance of pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken of the pregnant woman's actual or reasonable foreseeable environment.

vi. Section 5 of the MTP act deals with the circumstances in which the provisions of Sections 3 and 4 of the MTP Act will not apply.

vii. Section 5(1) of the MTP Act provides that, the provisions of section 4, and so much of the provisions of sub-section (2) to section 3 of the MTP Act as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioners, shall not apply to the termination of a pregnancy by the registered medical

practitioner, in a case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman.

viii. Section 5 (2) of the MTP Act, as amended in 2002, provides, that notwithstanding anything contained in the Indian Penal Code, the termination of pregnancy by a person who is not a registered medical practitioner shall be an offence punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years under that code, and that Code shall, to this extent, stand modified.

ix. Section 5 (3) of the MTP Act provides that, whoever terminates any pregnancy in a place other than that mentioned in section 4, shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.

x. Section 5(4) of the MTP Act provides that, any person being owner of a place which is not approved under clause (b) of section 4 shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.

The first explanation to section 5 of the MTP Act provides, that for the purpose of this section, the expression '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 the MTP Act.

The second explanation to section 5 of the MTP Act provides that, for the purpose of this section, so much of the provisions of clause (d) of section 2 of the MTP Act as relate to the possession, by the registered medical practitioner, of experience or training in gynaecology or obstetrics shall not apply.

18. On taking into account of the above provisions, it is emerging that, in order that medical practitioner is to be immunized from prosecution under the law, it is firstly to be by a registered medical practitioner and that too, at an approved place as provided under Section 4(d) of the MTP Act. Section 3 primarily provide for termination of pregnancy of a woman where length of pregnancy is less than 12 weeks or where it exceeds 12 weeks but does not exceed 20 weeks, and further poses a threat to the life of pregnant woman or there is imminent or grave danger to her physical and mental health. The said Act further lays down that the said procedure involves obtaining opinion of one medical practitioner [in case of contingency

mentioned in Section 3(2)(a)] or two medical practitioners [in case of contingency mentioned in Section 3(2)(b)], who are authorized to perform abortions and they are further satisfied that continuance of such pregnancy would render considerable risk to the life of woman or cause grave injury to her physical and mental health.

19. Similarly, on taking into account the above referred provision of Section 5, for which also present petitioner is booked, it is clear that this Section is in the nature of an exception to the provision laid down in Sections 3 and 4 of the MTP Act. However, said exception would not be applicable in blanket. The exceptions seplt out in section 5 apply only in relation to Section 4 and so much of the provisions of Section 3(2) which are relatable to the length of pregnancy as well as the opinion of not less than two registered medical practitioners.

20. The exception apparently comes into play only where the registered medical practitioner is of firm opinion, which is “**formed in good faith**”, that termination of such pregnancy is immediately necessary for saving life of the pregnant woman. Therefore, the pivot or linchpin of the above provision is, “good faith”. It is sole opinion of the medical practitioner which is to be formed in only emergent cases and not otherwise.

21. As to what is meant by “good faith”, or how it is to be gauged, is not clarified or elaborated in the Act. Definition of “good faith” is also not provided in the Act. In legal parlance, good faith contemplates or implies doing something honestly and with clear conscience. It contemplates display of ordinary prudence to have been exercised with reasonable standards. It contemplates honest effort.

Even the General Clauses Act provides for definition of “good faith”, but as stated above, in MTP Act at-least, there is no clarification as to what is meant by “good faith”.

Section 52 of IPC defines “good faith” as, “nothing is said to be done or believed in ‘good faith’ which is done or believed without good care and attention”. In Penal Code, this phrase “good faith” finds place while extending an exception to claim immunity.

Section 88 of IPC provides a defence for the acts done in good faith and for the benefit of a person, with their consent, even if the act results in harm, and this Section is invoked in cases of medical negligence for protecting doctors from liability. However, it is a matter of trial.

Section 111 of the Indian Evidence Act provides that, burden of proving a transaction to be in good faith lies on the party who asserts it. Therefore, if at all benefit of acting in good faith is to be availed, it is to be proved at trial by way of evidence, and such plea cannot be entertained at this stage. It is a question of fact necessitating procedure of trial. To support such proposition of law, reliance can be placed on the judgment of ***Sewakram Sobhani v. R.K. Karanjia and Ors.***, reported in MANU/SC/0219/1981 : 1981 INSC 105 and ***Harbhajan Singh v. State of Punjab and Another***, reported in AIR 1961 Pub 215.

22. Here, both, penal sections as well as the MTP Act, contemplate proving act to be done in good faith. In the light of above discussion, conclusion flows is that, it is a matter of trial and not to be dealt at this stage, it being matter of fact.

23. Here, this Court has to merely ascertain availability of sufficiency of material. Charge-sheet contains statements of medical experts who were party to the raid and verification, and voluminous documents and entire hospital papers are undeniably seized by the investigating machinery. On *prima facie* going through the above material, it is difficult to accept the contention that there is no

material whatsoever to make accused face trial. There is material for framing charge. Revision petitioner may have a good case as regards to charges under IPC, however, more particularly for technical offence under Section 5 of the MTP Act, conducting trial is essential. The issue whether the act was done in good faith or otherwise requires full fledged trial. Resultantly, there is no error on the part of learned trial court in refusing to discharge. Hence, the following order :

ORDER

The Criminal Revision Application is dismissed.

[ABHAY S. WAGHWASE, J.]