

(2013) 04 BOM CK 0112

In the Bombay High Court

Case No : Criminal Application No"s. 116, 458 of 2013

Dr. Ashok

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 18-04-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173(8), 482
Medical Termination of Pregnancy Act, 1971 — Section 3, 4, 5
Penal Code, 1860 (IPC) — Section 107, 109, 312, 315, 316

Citation : (2013) ALLMR(Cri) 2321

Hon'ble Judges : Naresh H. Patil, J;A.V. Nirgude, J

Bench : Division Bench

Advocate : R.N. Dhorde with Mr. D.J. Choudhari, for the Appellant; A.V. Gondhalekar, APP, for the Respondent

Final Decision : Dismissed

Judgement

A.V. Nirgude, J.—Criminal Application No. 458 of 2013 is filed for intervention in Criminal Application No. 116 of 2013. For the reasons mentioned in the application, applicant is allowed to intervene, as prayed. The Criminal Application No. 116 of 2013 is filed u/s 482 of the Code of Criminal Procedure. Vide this application, the applicant sought quashing of Crime No. 182 of 2012, registered on 30th September, 2012, at Police Station, Kaij, Taluka Kaij, District Beed and corresponding Regular Criminal Case No. 385 of 2012, pending in the Court of Judicial Magistrate, First Class, Kaij, u/s 312, 315, 316 and 109 of the Indian Penal Code and under the provisions of Sections 3, 4 and 5 of the M.T.P. Act, 1971, to the extent of applicant.

2. The facts leading to the present application are quite peculiar and can be narrated as under:--

The peculiarity of the facts is that though the applicant is the complainant in the above mentioned crime, the prosecution now wants to add him as co-accused alleging that he abetted the offence committed by the other accused.

3. The applicant is the Medical Officer, Sub-District Hospital, Kaij and is under immediate control of Civil Surgeon, Beed. On 26th September, 2012, a woman by name Ashabai came to his hospital with a view to get her pregnancy terminated. The applicant referred her for ultra sonography examination and noticed that the pregnancy was more than 12 weeks old, and therefore, it's termination was required to be done in well equipped hospital in accordance with provisions of law relating to medical termination of pregnancy. He advised her to go to S.R.T.R. Medical College, Ambajogai for further treatment. Ashabai however returned to the applicant and expressed her desire to get the termination done at Kaij, and asked the applicant as to whether she should get the pregnancy terminated at the private hospital of Dr. Lamture, who is the main accused in this case. The applicant told her that he too learnt that the termination of pregnancy is done at Dr. Lamture's hospital and advised her to go to Dr. Lamture. He, however, kept a watch on her.

4. On 30th September, 2012, in the morning, the applicant learnt that Ashabai was admitted in Dr. Lamture's hospital. So, at 09.00 a.m., he informed this fact to his immediate superior officer, the Civil Surgeon as well as to the Superintendent of Police. He suggested that through a sting operation. Dr. Lamture could be caught. Accordingly, he approached police station, Kaij, at 09.00 a.m. and then the police as well as the Medical Officers paid visit to Dr. Lamture's hospital and found Ashabai undergoing treatment for termination of her pregnancy and that she was not well. The applicant received this information and promptly filed the complaint against Dr. Lamture. The police registered the offence, as mentioned above.

5. The police thereafter recorded statements of the witnesses and completed investigation. They filed charge-sheet against Dr. Lamture. However, during investigation, it was also found that the applicant too committed offence of abetment, and so, the police initiated further investigation u/s 173(8) of the Code of Criminal Procedure with permission of the learned Judicial Magistrate, First Class, Kaij. On hearing this development, the present application is moved for seeking stoppage of prosecution of the applicant.

6. We heard the submissions of all the sides. We have also perused the charge-sheet as well as the investigation papers of the investigation which the police did after obtaining permission from the learned Judicial Magistrate, First Class, u/s 173(8) of the Code of Criminal Procedure.

7. The learned senior counsel appearing for the applicant asserted that accusing his client as abettor of the crime is preposterous, because it is he, who initiated the action against Dr. Lamture. On the other hand, the learned A.P.P. Mrs. A.V. Gondhalekar asserted that though the initial intention of the applicant was to expose Dr. Lamture about his illegal activities, the applicant did not stop the termination of pregnancy of Ashabai at the hands of Dr. Lamture, though this was possible for him. If he did not stop Dr. Lamture from illegally terminating the pregnancy of Ashabai, he was guilty of abetment in as much as such omission

would constitute abetment as defined u/s 107 of the Indian Penal Code. We would not express our opinion on the question as to whether the applicant abetted the offence. But, on perusal of the police papers, we realized that expressing any opinion on this question would seriously affect the prospectus of the case. The facts are intricate, and expressing any opinion on this question, would not only be hazardous, but would also amount to trying the case at this premature stage. Nonetheless, we would atleast express our prima facie opinion on the merits of the case. In our considered view, the evidence so far collected does not indicate that the applicant should succeed in the present application. We do not think that this is a fit case for exercise of our powers u/s 482 of the Code of Criminal Procedure. The application should therefore fail. The Criminal Application No. 116 of 2013 stands rejected.