

(2013) 12 BOM CK 0149

In the Bombay High Court

Case No : Criminal Application No. 5016 of 2013

Dr. Shrihari Limbaji Lahane

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 05-12-2013

Acts Referred:

Citation : (2014) 2 BomCR(Cri) 515

Hon'ble Judges : Abhay M. Thipsay, J

Bench : Single Bench

Advocate : Joydeep Chatterji, for the Appellant; S.R. Palnitkar, for the Respondent

Final Decision : Allowed

Judgement

Abhay M. Thipsay, J.—The applicant is the accused no. 2 in Sessions Case No. 170 of 2012 pending before the Additional Sessions Judge, Beed. There are 16 other accused in the said case. The allegation against the applicant and the other accused is of having committed offences punishable u/s 312 of the Indian Penal Code (IPC) read with section 34 of IPC, section 313 of IPC read with section 34 of IPC, section 315 of IPC read with section 34 of IPC, section 316 of IPC read with section 34 of IPC, section 318 of IPC read with section 34 of IPC, section 201 of IPC read with section 34 of IPC, section 304 of IPC read with section 34 of IPC, section 302 of IPC read with section 34 of IPC, as also, in respect of offences punishable under the provisions of the Preconception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred to as "the PCPNDT Act") and Medical Termination of Pregnancy Act. Charge of the aforesaid offences has been framed by the Additional Sessions Judge against the applicant and the other accused. The applicant is aggrieved by framing of charge against him, as according to him, there is absolutely no material whatsoever, to connect him with the alleged offences in any manner whatsoever.

By the present application invoking inherent powers of this Court, the applicant

prays that the order of framing of charge against the applicant passed by the learned Additional Sessions Judge be quashed.

I have heard Mr. Joydeep Chatterji, the learned counsel for the applicant. I have heard Mr. S.R. Palnitkar, the learned Additional Public Prosecutor for the State.

2. With their assistance, I have gone through the application, the annexures thereto and a copy of a charge-sheet, that has been made available by the learned counsel for the applicant.

3. The Sessions Case No. 170 of 2012 is actually a case arising from two different crime reports, viz.: C.R. No. 109/2012 and C.R. No. 66/2012, registered by Beed City Police Station. After investigation into the said two different crime reports, the police filed two separate charge-sheets. This resulted into two different sessions cases, viz.: Sessions Case No. 170/2012 and 172/2012. As the incidents were connected, the learned Additional Sessions Judge clubbed both the cases together, and the composite case has been numbered as Sessions Case No. 170/2012.

4. The two crimes came to be registered after three dead female fetuses were found at two different places; one in village Kakahira and the two in the bed of Bindusara river. The investigation commenced and it was found that the female fetuses found were a result of abortions performed in the hospital of accused no. 1 Dr. Shivaji Sanap. In the course of investigation, the accused no. 1-Dr. Sanap and the other accused, including the applicant, came to be arrested and as aforesaid, have been charged of having committed the aforesaid offences.

5. Mr. Joydeep Chatterji, the learned counsel for the applicant vehemently contended that even if the entire charge-sheet is perused, the only material that appears against the present applicant is that he had given post-surgery treatment to the women, whose pregnancy was allegedly illegally terminated by the accused no. 1 Dr. Sanap. He submitted that the applicant is the father-in-law of the accused no. 1, and that, after the arrest of the accused no. 1, there was nobody to look after the patients, who had been admitted in the hospital; and it is under these circumstances, that the applicant gave post-surgery treatment to the said women.

6. In view of these contentions, I have examined what is the case of the prosecution against the accused persons and more particularly against the applicant. This can be best seen from the "brief facts of the case" mentioned in the printed prescribed proforma of both the Final Report Forms in C.R. No. 109 of 2012 and in C.R. No. 66 of 2012. So far as C.R. No. 109/2012 is concerned (in which the applicant is the accused no. 2), the relevant column in the Final Report Form reads as under:

So far as C.R. No. 66/2012 is concerned (in which the applicant is the accused no. 6), the relevant column in the Final Report Form reads as under:

It is clear from the "brief facts of the case," as reproduced above, that the only

allegation against the applicant is that he had treated the women after their pregnancy was terminated by the accused no. 1 and the others.

7. Really speaking, from this, the case of the prosecution against the applicant cannot be said to be of his having any way committed the alleged offences. It is not alleged in the police report at all that the applicant had conspired with the accused no. 1 and the others to illegally terminate the pregnancy of the three women; that, he had in any manner associated or facilitated the termination of the pregnancy of any of the said women, etc. Even if it is accepted that the applicant had given post-surgery treatment to the women after their pregnancy was terminated, this by itself cannot, by any stretch of imagination, amount to any offence. Thus the allegation that has been levelled against the petitioner in the police report, does not amount to any offence at all.

8. When the allegation levelled in the police report does not amount any offence, really speaking it is not necessary to examine the documents accompanying the same-which are meant for supporting the allegation-to see whether the same disclose commission of any offence by the applicant. Nevertheless, since the applicant has actually been charged by the learned Additional Sessions Judge of having committed the offences, as aforesaid, I have examined what is the material in the charge-sheet which refers to the applicant. It is not in dispute, that except the statements of three women whose pregnancy was terminated, there is no other material against the applicant.

9. The statement of Rekha shows that she had gone to the dispensary of Dr. Sanap for consulting in connection with her pregnancy, and that, Dr. Sanap had advised her to get the pregnancy terminated. That, thereafter her pregnancy was terminated by Dr. Sanap and thereafter the applicant had treated her. That, thereafter Dr. Sanap performed surgery on her and terminated the pregnancy. That, after the arrest of Dr. Sanap, the applicant had checked her and given her medicines.

10. The statement of Deepali is to the same effect. She speaks about the Dr. Sanap checking her, admitting her and later on, performing surgery on her for terminating her pregnancy. She does not implicate the applicant in any manner.

11. The statement of Yashoda shows that she got herself admitted in the hospital of accused no. 1 Shivaji Sanap for getting her pregnancy terminated, and that, the accused no. 1 Dr. Sanap terminated her pregnancy. That, on 02.06.2012, she learnt that Dr. Sanap and some members of the staff of the hospital were arrested by the police. That, thereafter, in the night, the applicant medically examined her and gave her medicines.

12. On the basis that the applicant gave post-surgery medical treatment to these women, it is impossible to hold that he had played any role in the alleged termination of the pregnancies or the disposal of the fetuses. None of the three women have stated about having even met the applicant before the termination of their pregnancies and clearly the applicant came in picture only after the

pregnancies were terminated and after the accused no. 1 Dr. Sanap had been arrested. All of them have categorically stated about having gone to "Dr. Sanap's hospital". The information that was available to them was about the "hospital of Dr. Sanap" and it is clear that they had dealt with Dr. Sanap only.

13. I have examined the order passed by the learned Additional Sessions Judge, whereby he had directed the framing of charge even against the present applicant. The learned Additional Sessions Judge also while understanding and describing the case of the prosecution was unable to find out anything against the present applicant and all that he could find is as follows:-

In this case, accused no. 2 (applicant) is alleged to be the partner in the hospital and has given post abortive treatment to the above said aborted women.

6. Investigation further shows that, the abortions were conducted by the accused no. 1 who run Sanap Hospital and Vithai hospital. The accused no. 1 is the son-in-law of the accused no. 2 (applicant) to whom the hospital was gifted by registered gift deed dated 27.10.2006.

14. On the basis of this reasoning, it is not possible to hold that the applicant has been involved in the alleged offences. On the contrary, the aforesaid reasoning makes it clear that the applicant has played no role in the matter, except giving post-surgery treatment to the women, whose pregnancy was medically terminated by the accused no. 1 Dr. Sanap with the help of some of the other accused.

15. There are no sufficient grounds for proceeding against the applicant. The order of framing charge against him, as passed by the Additional Sessions Judge, is, therefore, not in accordance with law. The Additional Sessions Judge ought to have discharged the applicant.

16. The application is allowed.

The order of framing charge, as passed by the Additional Sessions Judge, in so far as it relates to the applicant, is quashed.

The applicant stands discharged.

The learned Additional Sessions Judge shall proceed further with the trial, in accordance with law.

The application is disposed of in the aforesaid terms.