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## CASE COMMENT: PRANAB KANTI SEN V. STATE OF WEST BENGAL (2010)

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**CITATION:** (2009) 4 CALLT 182; (2010) CriLJ 162

**COURT:** High Court of Calcutta

**CORAM:** Partha Sakha Datta, J.

### INTRODUCTION

*Pranab Kanti Sen v. State Of West Bengal*<sup>1</sup>, a judgment pronounced by the hon'ble High Court of Calcutta stands as an essential one, which explores the scope of criminal law involving 'domestic violence' and 'medical consent' specifically in instances of forced medical termination of pregnancy. Furthermore the judgment has essentially enunciated upon the limits to High Court's power to intervene during preliminary criminal proceedings.

The matter arose subsequent to a First Information Report (FIR) lodged with the by the O.P. No. 2 against her husband, Petitioner no. 3 as well as her in-laws namely her father-in-law as the Petitioner No. 1 and mother-in-law as Petitioner No. 2. Pursuant to the FIR a criminal case was registered against them under Sections 498A, 406, 34 of the Indian Penal Code 1860 (IPC) relating to cases involving 'cruelty by the husband or relatives', 'criminal breach of trust', 'acts committed in furtherance of common intention'. Subsequently, an additional charge under Section 313 of the IPC was also formulated concerning the act of causing miscarriage without the consent of the woman. Aggrieved by this the Petitioners approached the High Court under Section 482 of the Code of Criminal Procedure (CrPC) seeking the quashing of the criminal proceedings initiated against them.

This case thus, engages with the complex questions of victim autonomy, nuances of medical ethics and principle of free consent in medical practices, which shall be further analyzed.

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<sup>1</sup> Pranab Kanti Sen v. State Of West Bengal (2010) CriLJ 162

## **FACTS**

The O.P. No. 2, the wife and her husband, Petitioner No. 3, a physician by profession, initially met each other through the Internet and over time their interaction evolved into a matrimonial relationship with their marriage occurring on December 15, 2002, which was registered on August 28, 2003. Subsequent to their marriage they went for their honeymoon in Singapore and Malaysia during which the wife conceived. However the husband, not wanting to continue with the pregnancy of his wife forcefully persuaded and coerced her into undergoing an abortion against her will. Following their return to India, the husband administered certain medicines to her for abortion in the month of April/May, 2003 and compelled her to sign the consent form. In addition to this the husband and his family heavily guarded her throughout her hospital stay to prevent outside contact.

After the abortion, the husband left for abroad, leaving his wife in the care of her inlaws, also the Petitioners to this case. During this time she was mentally and physically harassed with denial of food, isolation, humiliation and other actions as comprehensively narrated by the wife in the FIR. Even after the husband's return from abroad the ill treatment by the in-laws did not stop there, rather the husband, siding with the parents, actively joined in on the abuse by physically assaulting her. Furthermore, it came to the knowledge of the wife that husband was actively chatting with several girls on the Internet, thereby neglecting her.

The situation took a turn for the worse on January 23, 2006 when the husband brutally assaulted her by slapping her, punching her on the face, banging her head against the bathroom wall and dragging her to the bed to choke her, all described in the FIR in detail. All this was done in the presence of her mother-in-law who did nothing to stop the abuse from occurring. These actions of the husband became exceedingly unbearable for the wife to handle and she was compelled to leave her matrimonial home hurriedly for the sake of her safety, thereby leaving behind the jewelry, clothes and furniture that belonged to her.

Consequently, the wife lodged a detailed FIR dated February 10, 2006 before the Deputy Commissioner of the Police, Detective Department, Lalbazar, which later transpired to be a registered case under sections 498A, 406, 34 of the IPC. During the investigation, statements of several witnesses including her parents and doctors, were recorded which corroborated her version and an additional charge was introduced under Section 313 of IPC. After the investigation, the police officials submitted a charge sheet against the husband and his parents

in consonance to which the Trial Court, by order dated July 14, 2008 framed charges accordingly.

In response the Petitioners approached the High Court of Calcutta under Section 482 of the CrPC seeking quashing of the entire criminal proceedings initiated by the O.P. No. 2 particularly challenging the later introduction of the allegation of forced abortion against them.

## **ISSUES**

1. Whether High Court had jurisdiction under Section 482 of the CrPC to entertain the application filed by the Petitioners?
2. Whether the charge under Section 313 of IPC pertaining to causing miscarriage without the consent of woman, introduced in the later stages of investigation was maintainable or not?

## **ARGUMENTS IN BRIEF**

### **PETITIONER'S ARGUMENTS**

The principal contention brought forth by the petitioners was not directed towards the allegations of cruelty inflicted on the O.P. No. 2, rather their arguments centered on the charge under Section 313 of IPC contending that the accusation of deliberately inducing miscarriage without her consent was not maintainable. They relied on the consent form signed by her at the hospital alleging her voluntariness to the termination of pregnancy. Contending that lack of consent to be an essential ingredient of offence under the section, the petitioners urged that the establishment of consent, the charge could not be sustained and therefore should be quashed.

The petitioners also stated that the couple had a period of courtship prior to the solemnization of marriage and had mutual understanding to remain childless for a while and hence the abortion. It was further contended that this charge of causing miscarriage was incorporated in the FIR only during course of investigation by the Investigating Officer with a mala fide intent to incriminate the husband into a case of graver offence and hence cannot be allowed by the court.

## RESPONDENT'S ARGUMENTS

In response, the Respondents submitted that the charge under Section 313 of the IPC had its foundation in the FIR itself by mentioning that the O.P. No. 2 was 'persuaded against her will' to undergo with the abortion and therefore the ground that the charge was freshly added during the course of investigation was baseless. The charge was later on elaborated upon by the testimonies of witnesses and evidences during the investigation, which the petitioners wrongfully perceived as the addition of a fresh charge.

The Respondents further challenged the legality of the consent form. It was submitted that while the consent form remains a formal document indicating the voluntariness of the mother to undergo the process of abortion, in this case the husband and in-laws forcefully compelled the O.P. No. 2 to sign it under pressure and hence it cannot be treated as determinative evidence. Moreover the fact that the petitioners closely guarded the O.P. No. 2 during her hospital stays preventing her contact from outsiders further indicates the absence of free and voluntary consent.

## JUDGEMENT

The application by the petitioners for quashing the entire criminal proceedings especially the charge under Section 313 of the IPC to the High Court of Calcutta was dismissed by the hon'ble High Court Judge P.S. Dutta.

The court held that once a charge sheet is filed after investigation and the Trial Court has framed the charges, the High Court under exercise of its power under Section 482 of the CrPC couldn't question the adequacy of the evidences. Only a 'prima facie appraisal' was to be done at the stage of the framing the charges. The judgment cited precedents, particularly the case of *Stree Atyachar Virodhi Parishad v. Dilip*

*Nathumal Chordia*<sup>2</sup>, which reaffirmed the notion of reduced interference by the High Court after the framing of charges by the Trial Court.

The court was of the opinion that the FIR, witness testimonies and evidences associated with this case laid out a narrative, which invoked all the aforementioned sections of IPC including

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<sup>2</sup> *Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia*, 1989 (1) SCC 715

the charge under the Section 313 pertaining to forced miscarriage against the Petitioners. Furthermore the court rejected the notion of mala fide addition of this charge during the course of investigation, contending that the charge was well grounded in the FIR filed initially by the O.P. No. 2. The issue regarding the validity of the consent form was deemed to be a matter requiring evidentiary examination at the stage of trial. Ergo, the High Court directed the Trial court to expedite and proceed with the case.

## **CRITICAL ANALYSIS**

The judgment pronounced by the High Court Of Calcutta reflected the concept of restricted judicial interference and rightly reinstated that the High Court under Section 482 of CrPC must confine itself to a 'prima facie appraisal' rather than intervening with the process of Trial court after the filing of the charge sheet unless the allegations are inherently barred by the law. This, coupled with the court's notion to refer the case back to the Trial Court significantly reduced the scope of unnecessary interference of the High Courts in the procedural practice of Trial Courts, thereby preventing the misuse of the section as a tool to delay or prematurely terminate the due process of the trial.

Additionally, the court in this case was exposed to the controversial and contentious issue of assessing the consent given by the woman in medical termination of pregnancy with the Petitioners arguing that the consent form signed at the hospital qualifies as an evidence of free consent and therefore, nullifies the charges under Section 313 of the IPC. The court, however, and rightfully so, stated that since the

FIR and witness testimonies suggested coercion by the husband reflecting the absence of free consent on the part of woman. Consequently, the Trial Court could not treat the signed consent form as an evidentiary piece of evidence without proper authentication. This consideration of the court allowed for a more detailed enquiry upon the consent of the patient in medical cases regarding abortion, further holding that in situations involving domestic violence, the mere existence of consent form, by itself cannot be comprehended as evidentiary proof of free and voluntary consent. This has paved the way for protection of rights of victim in such cases by placing an enhanced burden to prove voluntariness of the victim on alleged abusers ensuring that they do not escape liability by showcasing completion of mere procedural formalities.

However, the judgment though apt, was not without its shortcomings. Although the court

rejected the contention that a consent form for medical termination of pregnancy can be treated as conclusive evidence, rather holding it to be a mere procedural formality, it nonetheless fell short of providing detailed guidelines as to when such a consent form can be treated as a conclusive proof of free consent. The court could have elevated the judgment by describing the standard circumstances under which consent form would be acceptable by the trial court along with introducing the provisions for witness attestation and hospital liability. It is also to be noted that even though the case delves into issues concerning medical termination of pregnancy and forced administration of medicine by a Medical Practitioner himself, the husband of the O.P. No. 2 (Petitioner No. 3), yet the provisions of Medical Termination of Pregnancy Act, 1971 (MTP Act) has neither been invoked nor has its application has been encouraged by the court. The clarification with regards to 'mens rea' of the

Petitioners under Section 313 of the IPC and the ambit of actions taken in 'good faith' under the MTP Act could have been incorporated into the judgment to more effectively counter and negate the arguments of the Petitioners.

## CONCLUSION

The judgment in the case of *Pranab Kanti Sen v. State of West Bengal* stands to evolve the jurisprudential aspect of topics such as pre-trial intervention by the court in criminal proceedings along with legal implications of offences involving forceful abortion.

While the judgment in question, hereby stands the test of time by maintaining its relevance, it missed the opportunity to become a landmark ruling by not fully addressing the intricacies involved and failing to formulate a standardized framework regarding the admission of consent form as a conclusive piece of evidence. Nonetheless, the judgment remains commendable and of significant value to the victims of domestic abuse as it reinforces procedural safeguards against irrational quashing of the criminal proceedings instigated against the abusers while simultaneously paving the way for the progressive development of laws concerning free medical consent in cases of termination of pregnancy in the future.