



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 31<sup>ST</sup> DAY OF JANUARY, 2023**

**BEFORE**

**THE HON'BLE MR JUSTICE R. NATARAJ**

**CRIMINAL REVISION PETITION NO. 389 OF 2014**

**BETWEEN:**

SMT. FATHIMA @ SHAHEEN FATHIMA  
W/O WAZEER KHAN  
AGED 57 YEARS,  
COOLIE WORK AND  
MEDICINE SUPPLYING WORK,  
R/O HALENAHALLI VILLAGE,  
CHIKMAGALUR TALUK-577101.

...PETITIONER

(BY SRI. AJAY PRABHU.M, ADVOCATE FOR  
SRI. SACHIN B.S, ADVOCATE)

**AND:**

THE STATE OF KARNATAKA  
BY BASAVANAHALLI POLICE  
CHIKMAGALUR,  
REPRESENTED BY  
STATE PUBLIC PROSECUTOR  
HIGH COURT OF KARNATAKA  
BANGALORE-560001.

...RESPONDENT

(BY SRI. KRISHNA KUMAR. K.K, HIGH COURT GOVERNMENT  
PLEADER)

THIS CRL.RP IS FILED UNDER SECTION 397 READ WITH 401  
CR.P.C PRAYING TO SET ASIDE THE JUDGMENT AND ORDER DATED  
10.04.2014 PASSED BY THE PRL. SESSIONS JUDGE, CHIKMAGALUR  
IN CRL.A.NO.371/2013 AND ALSO THE JUDGMENT AND CONVICTION  
DATED 21.10.2013 PASSED BY THE I ADDL. CIVIL JUDGE AND  
J.M.F.C., CHIKMAGALUR IN C.C.NO.990/2007, CONSEQUENTLY  
DISMISS THE COMPLAINT FILED BY THE RESPONDENT HEREIN IN  
PCR NO.192/2010 OF PRL. CIVIL JUDGE AND J.M.F.C., MUDIGERE.

Digitally  
signed by  
SUMA  
Location:  
HIGH COURT  
OF  
KARNATAKA



THIS PETITION, COMING ON FOR HEARING, THIS DAY,  
THE COURT MADE THE FOLLOWING:

**ORDER**

The petitioner has challenged the judgment of conviction dated 21.10.2013 passed by I Additional Civil Judge and JMFC, Chikmagalur in C.C.No.990/2007 and the sentence to undergo simple imprisonment for a period of three months for the offence punishable under Section 269 of IPC and to pay a fine of Rs.3,000/-, failing which, she was directed to undergo simple imprisonment for a period of one month. The petitioner has also challenged the judgment dated 10.04.2014 passed by Principal Sessions Judge, Chikmagalur in Crl.A.No.371/2013, by which, the judgment of conviction was upheld.

2. Based on a complaint of PW-8 that the accused had induced a miscarriage which resulted in medical complication, the police registered a Crime.No.229/2006 for the offence punishable under Section 312 of IPC. The jurisdictional police took up investigation and thereafter filed a charge sheet for the offence punishable under Section 312 of IPC. The trial Court took cognizance of the offence punishable under Section 312 of IPC. The accused pleaded not guilty and claimed to be tried.



The prosecution examined PW-1 to PW-8 of whom PW-8 was the victim and exhibits P1 to P7 were marked. Statement of the accused was recorded under Section 313 of Cr.P.C, who denied the incriminating evidence against her. Later, the prosecution filed an application under Section 216 of Cr.P.C. to include the charge under Section 269 of IPC based upon which, the trial Court charged the petitioner for the offence punishable under Section 269 of IPC.

3. Based on oral and documentary evidence, the trial Court convicted the accused of the offence punishable under Section 269 of IPC and acquitted her for the offence punishable under Section 312 of IPC. The petitioner challenged the same before the Sessions Court in Crl.A.No.371/2013. The appellate Court dismissed the appeal and confirmed the judgment of conviction passed by the trial Court. Being aggrieved by the same the present revision petition is filed.

4. Learned counsel for the petitioner submitted that the petitioner was acquitted for the offence punishable under Section 312 of IPC but was convicted for the offence punishable under Section 269 of IPC. He submitted that a perusal of



Section 269 of IPC would indicate that the accused must be involved in spreading of an infection that she has suffered. He contends that in the present case, the allegation against her was that she induced a miscarriage which resulted in medical complications in the victim (PW-8) and therefore the trial Court committed an error in adding the charge under Section 269 of IPC and convicting her for the said offence. In this regard he also relied upon the judgment of a Co-ordinate Bench of this Court in Crl.P.No.101562/2022.

5. The learned High Court Government Pleader on the other hand submitted that the evidence of PW4 disclosed that due to the miscarriage induced the accused, the victim had suffered serious infection which was life threatening and therefore, the charge under Section 269 of IPC was justified.

6. I have considered the submissions made by the learned counsel for the accused as well as the learned High Court Government Pleader for the respondent.

7. I have also perused the records of the trial Court. It is undisputed that the petitioner was acquitted for the offence punishable under Section 312 of IPC and was convicted for the



offence punishable under Section 269 of IPC. In order to understand the scope and purport of Section 269 of IPC, which it is extracted below:

*" Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both."*

8. A literal interpretation of Section 269 of IPC indicates that, if any person negligently and unlawfully attempts to spread the infection of any disease which is dangerous to life, would be liable to be punished with imprisonment of either description for a term which may extent to 06 months or with both. There is nothing on record to indict that the petitioner did any act to spread any infection. On the contrary, PW8 suffered a miscarriage and the complication resulted in the infection. The accused was not suffering from any infectious disease and she neither unlawfully nor negligently spread the infection of such disease and therefore she was not guilty of the offence punishable under Section 269 of IPC. Contrarily, she having allegedly induced a miscarriage,



a case under Section 312 of IPC was made out. However, the State has failed to file an appeal against the acquittal of the accused under Section 312 of IPC.

9. In that view of the matter, the conviction of the accused for the offence under Section 269 of IPC is unwarranted and therefore the judgment of conviction passed by the trial Court convicting her for the offence punishable under Section 269 of IPC deserves to be set aside. Hence, the following:

**ORDER**

1. This revision petition is allowed.
2. Impugned judgment of conviction dated 21.10.2013 passed by I Additional Civil Judge and JMFC, Chikmagalur in C.C.No.990/2007 is set aside for the offence punishable under Section 269 of IPC and the consequent sentence is set aside. Consequently, the judgment of the Sessions Court dated 10.04.2014 passed by Principal Sessions Judge, Chikmagalur in Crl.A.No.371/2013 is set aside.



3. The accused is acquitted of the said offence and she is set free.

**Sd/-  
JUDGE**

PK