

CRM-M-43719-2014 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM-M-43719-2014 (O&M).
Decided on: January 14, 2015.**

Nashir

..... Petitioner(s)

Versus

State of Haryana and others

..... Respondent(s)

*** * ***

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

**PRESENT Mr.Satish Chaudhary, Advocate,
for the petitioner.**

M.M.S. BEDI, J (ORAL)

The petitioner is a complainant. He claims that the investigating agency had obtained opinion of Dr. Prachi, Medical Officer, SHKM Medical College, Nalhar (Mewat) indicating that his wife Sabron's was a case of complete abortion, attracting offence under Section 316 IPC. The said opinion was allegedly contradicted by obtaining report of Medical Board, from General Hospital, Mandi Khera, (Mewat). An application filed by the wife of petitioner for seeking opinion from Medical Board of PGI, Rohtak, pertaining to her medical condition on the basis of the material available in the record of SHKM Medical College, Nalhar, has been dismissed by the Illaqua Magistrate.

After arguing for sometime, counsel for the petitioner has not been able to satisfy this Court that circumstances

of the present case warrant exercise of inherent jurisdiction to require a Magistrate go get third medical opinion for determining whether offence under Section 316 IPC is made out or not.

Counsel for the petitioner submits that at present the case is fixed at the stage of framing of charges and that he would be satisfied in case the report of Dr.Prachi, Medical Officer, SHKM Medical College, Nalhar, which is part of the challan as medical evidence be also considered while considering the charges to be framed.

I have considered the facts and circumstances of the case and I am of the opinion that while exercising its power under Section 173 Cr.P.C., the trial Court has got jurisdiction to take into consideration the entire material placed on record by the investigating agency to form an opinion for framing of charges. This power has been recognised by Hon'ble the Apex Court in **Vinay Tyagi Vs. Irshad Ali @ Deepak and others, 2013 (5) SCC 762**, by observing even to the extent that if there are two reports by the same or different investigating agency, it is always open to the trial Court to rely upon any of the reports.

In the said case, Hon'ble the Supreme Court had issued direction to the trial Court while there were two reports one submitted by Delhi police under Section 173 Cr.P.C. and another closer report submitted by CBI that both the reports were to be read conjointly to form an opinion whether the accused was to be charged

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or discharged in accordance with provisions of Section 227 Cr.P.C.

Adopting the said parameter, this petition is disposed of with a direction that the trial Magistrate shall take into consideration the report of Dr.Prachi, Medical Officer, SHKM Medical College, Nalhar (Mewat) and will not ignore the same while simultaneously considering the report prepared by the Medical Board of General Hospital, Mandikhera, (Mewat). The circumstance that the relevant record of the SHKM Medical College, Nalhar, or the report of the Medical Officer Dr.Prachi has not been taken into consideration by the Medical Board, it will be open to the trial Court to ignore the report of the Medical Board and to arrive at a conclusion that prima facie, offence under Section 316 IPC is made out or not. In case the trial Court forms such an opinion, it will be open to the said Court to proceed in accordance with provisions of Section 209 Cr.P.C.

January 14, 2015.
rka

(M.M.S. BEDI)
JUDGE