

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL MISC. PETITION NO. 763 OF 2016

1. Avdhesh Shroti S/o Ashok Kumar Sharma Aged About 27 Years
2. Ashok Kumar Sharma S/o Late Onkar Prasad Sharma Aged About 50 Years
3. Smt. Urmila Sharma W/o Shri Ashok Kumar Sharma Aged About 49 Years
4. Ku. Madhuri Sharma D/o Shri Ashok Kumar Sharma Aged About 20 Years

All R/o Water Works Colony, H. No. - No. F-7, Hathras, District Hathras (U.P.).

... Petitioners

Versus

1. State Of Chhattisgarh Through The Station House Officer, Mahila Thana Ambikapur, District Surguja Chhattisgarh.
2. Smt. Sakshi Shroti W/o Avdhesh Shroti Aged About 26 Years R/o. Namnakala Girls Parisar Road, Ambikapur, P.S. Gandhi Nagar, District Surguja Chhattisgarh.

... Respondents

For Petitioners	:	Shri Kishore Bhaduri, Advocate.
For Respondent/State	:	Shri Rajendra Tripathi, Panel Lawyer.
For respondent No.2/ Complainant	:	Smt. Sakshi Shroti, appears in person.

Hon'ble Shri Justice P. Sam Koshy

CAV JUDGMENT

Reserved on : 29/08/2016

Delivered on : 02/09/2016

1. The present petition under Section 482 Cr.P.C. has been preferred by the petitioners seeking for a relief of quashment of the entire charge sheet and the criminal proceeding initiated against the petitioners in Crime No.06/2015 by the Mahila Police Station, Ambikapur, wherein

the petitioners have been prosecuted for the offence under Sections 498-A and 313 read with Section 34 of the IPC.

2. The relevant facts for proper adjudication of the present case is that, the petitioner No.1 and the respondent No.2 got married to each other on 29.11.2012. Later on, the relations between the two got strained and respondent No.2-wife is alleged to have been subjected to physical and mental torture and also harassment on account of demand of dowry for which she has filed a complaint case which was registered as Crime No.06/2015 at Mahila Police Thana, Ambikapur, Surguja.
3. After investigation part was done, the charge sheet (Challan) was filed. Initially the complaint was registered by the police authorities only for the offence under Section 498-A IPC, but later on, the court below filed a charge sheet adding the offence under Section 313 read with Section 34 IPC also.
4. Learned counsel for the petitioners by way of present petition during the course of argument submits that at present they intend to confine their argument only to the extent of registration of offence under Section 313 IPC. Therefore, heard the parties only with regard to registration of offence under Section 313 IPC.
5. Learned counsel appearing for the petitioners submits that it is a case where a prima facie perusal of entire contents of the charge sheet would reflect that there is no iota of evidence in the case diary by which the offence under Section 313 IPC could have been registered

against the petitioners. It is next submitted that for bringing home the offence under Section 313 IPC, the necessary ingredients would be as is reflected in Section 312 IPC where causing miscarriage has been defined. If an act on the part of the petitioners has been done in good faith for the purpose of saving the life of woman, the same would not fall within the ambit of having caused miscarriage. Referring to the document in the charge sheet, counsel for the petitioners submits that the statement of the doctor as well as the medical prescriptions given by the qualified medical practitioners by which it can be safely inferred that there was no act on the part of the petitioners intending to cause miscarriage. According to petitioners, there was no allegation whatsoever against any of the petitioners of any overt act on their part which could attribute themselves of having imparted something to the victim which must have caused or resulted in the miscarriage.

6. It was further contended that the medical opinion which have come on record shows that the respondent No.2-wife infact conceived but the same could not be sustained. There is a categorical finding given by the Gynaecologist that the case of the respondent No.2 is that of unviable pregnancy which was diagnosed and since it was a unviable pregnancy and there were small complications developing, it was opined that it would had been otherwise dangerous situation. It was further contended by the counsel for the petitioners that medical prescriptions enclosed in the charge sheet itself sufficiently give an indication of the fact that there was an excessive bleeding which had happened and which too would have attributed for the miscarriage

and for which the petitioners cannot be blamed and ultimately when there was an excessive bleeding, the doctors treating the respondent No.2 suggested that in the given facts and circumstances of the case, the abortion of the foetus in the womb of the mother i.e. respondent No.2 was inevitable and therefore, in such circumstances the said abortion was done and as such, no offence under Section 313 IPC is made out. There is no allegation of any sort of force to have been applied by the petitioners for abortion.

7. It is lastly contended that statement of complainant-respondent No.2 also lacks the details of specific overt act against each of the petitioners and there are also vital contradictions in her statement and the benefit of which ought to have been given to the petitioners. Thus, to sum up, counsel for the petitioners submits that the court below and the authorities concerned at the time of registration of offence under Section 313 IPC ought to have dully appreciated the contents of the charge sheet wherein it has been specifically reflected from the medical opinion which has come on record that the abortion of respondent No.2 was conducted with a sole intention of saving her life as she was not able to bear with the foetus in her womb and the doctors have opined that it is a case of unviable pregnancy. According to petitioners, such an act would fall within the exception carved out under Section 312 IPC where abortion is done in good faith with an intention to save the mother's life.
8. The other ground of challenging registration of offence under Section 313 IPC is the fact that in the entire case diary there is no allegation

against any of the petitioners using force against the complainant with an intention of causing miscarriage to the carrying mother. There is no allegation of any force used or any overt act done or any insertion of medicine by the petitioners, and thus, the offence under Section 313 IPC is not made out at all.

9. On the other hand, respondent No.2-wife appearing in person before the court submits that this is the fourth petition under Section 482 Cr.P.C. which has been filed by the petitioners and all three petitions got dismissed. Those are Cr.MP No. 809/2015 which was dismissed for want of prosecution on 02.05.2016. Then, Cr.MP No.446 of 2016 and 614 of 2016 were filed which too were dismissed as withdrawn by the petitioners with liberty to file afresh and then the present petition has been filed.
10. According to respondent No.2, since the petitioners themselves have refrained from assailing the entire charge sheet, she is also confining her submissions only to the extent whether prima facie material is available against the petitioners so as to register the case under Section 313 IPC. According to her, a bare perusal of the FIR as well as her statement against the petitioners, more particularly the mother in law i.e. petitioner No.3 in the instant case, she specifically states that after she had conceived herself in August, 2013, none of the petitioners were happy with the same and they wanted elimination of the fetus for some pretext or the others. According to her, the petitioner No.3 on 24.08.2013 gave her some liquid to drink on the assurance that the said drink would give more energy to her as well

as the child in the womb and immediately after about 5-6 hours from drinking of the said liquid provided by her mother in law, she started having excessive bleeding and she had to be taken to the Hospital where she was treated. Subsequently, since the effect of the said drink was so bad that ultimately the doctor reached to the conclusion that it is a case of unviable pregnancy and that it was not advisable for the respondent No.2 to continue with her pregnancy and finally carried out abortion. According to respondent No.2, requirement of said miscarriage or abortion was on account of drink which the petitioner No.3 had given her to drink. This is a prima facie proof for the purpose of registration of complaint under Section 313 IPC.

11. Having heard the counsel for the parties and having perused the record, prima facie there was sufficient material available on record for the police authorities to register a case for the offence under Section 313 IPC. The statement of respondent No.2-claimant itself clearly reflects the allegation against the petitioners. So far as offence under Section 313 IPC is concerned, whether the allegations are good enough for deciding as to whether it would lead to conviction or not, is a matter of evidence which cannot be looked into at this stage where only the charge sheet has been filed.
12. A perusal of complaint filed by the respondent No.2 would also show that there is an allegation against the petitioners of not being interested and not being happy on the respondent No.2's getting conceived and some how they wanted the same to be terminated. It is for this that the respondent No.3 i.e. mother in law of respondent No.2

is alleged to have given something to drink and after drinking the same she received excessive bleeding and in the process she has to be subjected to abortion. Thus, the court below has rightly registered an offence under Section 313 IPC.

- 13.** Now, whether there is sufficient evidence and the said evidence are cogent enough to convict the accused is concerned, are all matter of evidence which could not and cannot be looked into by the court of law at the initial stage where the only consideration to be taken note of is whether prima facie offence is made out or not. For the purpose of framing of charge all that the Trial Court has to see is whether on the basis of the materials collected during the course of investigation a prima facie case is made out or not. Even if there is a strong case of suspicion made out even then the Court is justified in framing of the charge.
- 14.** So far as the law under Section 482 CrPC is concerned is by now a well settled proposition, that while considering the case for quashing of the Criminal proceedings the court should not “kill a stillborn child” and appropriate prosecution should not be stifled unless there a compelling circumstances to do so. An investigation should not be shut out at the threshold if the allegation have some substance. When a prosecution at the initial stage is to be quashed, the test to be applied by the Court is whether the uncontroverted allegation as made, prima facie establish the offence. At this stage neither can the Court embark upon an inquiry, whether the allegations in the complaint are likely to be established by evidence nor should the court

judge the probability, reliability or genuineness of the allegations made therein.

15. In **Amit Kapoor Vs. Ramesh Chander and Anr**, (2012) 9 SCC 460, the Supreme Court has very clearly laid down the principle that inherent as well as revisional jurisdiction should be exercised cautiously. If the jurisdiction under the Code in relation to quashing of an FIR is circumscribed by the factum and caution afore noticed, in that event, the revisional jurisdiction, particularly while dealing with framing of a charge, has to be even more limited. At the initial stage of framing of a charge, the court is concerned not with the proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not be applied at that stage.
16. This view has further been reiterated by the Supreme Court in the case of **Vinod Raghuvanshi Vs. Ajay Arora and others**, reported in (2013) 10 SCC 581, wherein it has been held :

“It is a settled legal proposition that while considering the case for quashing of the criminal proceedings the court should not “kill a stillborn child”, and appropriate prosecution should not be stifled unless there are compelling circumstances to do so. An investigation should not be shut out at the threshold if the allegations have some substance. When a prosecution at the initial stage is to be quashed, the test to be applied by the court is whether the uncontroverted allegations as made, prima facie establish the offence. At this stage neither can the court embark upon an inquiry, whether the allegations in the complaint are likely to be established by evidence nor should the court judge the

probability, reliability or genuineness of the allegations made therein. More so, the charge-sheet filed or charges framed at the initial stage can be altered/amended or a charge can be added at the subsequent stage, after the evidence is adduced in view of the provisions of Section 216 CrPC.”

17. In the case of **N. Soundaram Vs. P.K. Pounraj and Another**, reported in (2014) 10 SCC 616, the Supreme Court in paragraph 13 has categorically held that :

“13. It is well settled by this Court in a catena of cases that the power under Section 482 CrPC has to be exercised sparingly and cautiously to prevent the abuse of process of any court and to secure the ends of justice. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should refrain from giving a prima facie decision unless there are compelling circumstances to do so. Taking the allegations and the complaint as they were, without adding or subtracting anything, if no offence was made out, only then the High Court would be justified in quashing the proceedings in the exercise of its power under Section 482 CrPC. An investigation should not be shut out at the threshold if the allegations have some substance.”

18. For the foregoing reasons and in view of the aforesaid legal pronouncements made by the Supreme Court, this Court is of the opinion that there is no illegality or infirmity committed by the Court below while framing of charge against the Petitioner calling for an interference invoking the extraordinary inherent powers under Section 482 CrPC conferred upon this Court.
19. The petition being devoid of merit thus is liable to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
JUDGE