

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-37276-2014

Date of Decision:- 29.11.2016

Pardeep Kumar Srivastav

....Petitioner

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. J.S. Bedi, Senior Advocate
with Mr. Sunil Sihag, Advocate
for the petitioner.

Ms. Mahima Yashpal, AAG, Haryana.

Mr. John Kumar, Advocate
for respondent No.2.

RITU BAHRI, J. (Oral)

Petitioner is seeking quashing of impugned order dated 25.09.2014 (Annexure P-4), passed by the learned Additional Sessions Judge, Faridabad.

Brief facts of the case are that FIR No.226 dated 01.05.2013 (Annexure P-1), under Sections 354-A and 506 IPC, was registered at Police Station Faridabad. After due investigation, the report under Section 173(2) Cr.P.C. was submitted under Sections 354-A and 506 IPC and thereafter charges were framed under Sections 354-A and 506 IPC, vide order dated 21.10.2003 (Annexure P-3), passed by the learned Judicial

Petitioner challenged the said order of framing of charges before the Court of Additional Sessions Judge, Faridabad by filing a revision petition whereby the order of learned trial Court dated 21.10.2013 was set aside and Section 316 IPC was added and the trial Court was directed to commit the case to the Court of learned Sessions Judge, vide impugned order dated 25.09.2014.

The allegations made by complainant Jagriti Rastogi were that petitioner accused P.K. Srivastav was working as Managing Director, BSNL and he transferred in the office at Faridabad in September, 2009. Thereafter, he started pressurizing the complainant for sexual favour. When complainant objected the same, she was threatened to transfer to Palwal. During a period of three years, she has been transferred thirteen times. In order to harass and torture, the petitioner had made a complaint against complainant before Vigilance Unit and hid the related departmental file. On enquiry, the same was found baseless and false. Accused requested her many a times to accompany him in some hotels. The harassment to the complainant was to the extent that it caused her miscarriage and disturbed her family life. The complainant thereafter became a patient of depression, B.P. etc. She was advised complete rest by doctor. She sought medical leave and thereafter finally a written complaint was made to police on 01.05.2013.

After registration of FIR, the accused was charge-sheeted for offences punishable under Sections 354-A and 506 IPC.

Learned counsel for the petitioner has argued that initially on the allegations made out in the FIR only at best offence under Sections 354-A and 506 IPC could be made out and in the absence of any medical record, the charge under Section 316 IPC could not be framed. Moreover,

there was no material before the Court to come a conclusion that offence under Section 316 IPC had been committed. In the absence of any medical evidence, it was the only material brought on record by the prosecution which has to be accepted by the Court at the time of framing of charge. Complainant neither during the investigation nor at the time of framing of charges has sought further investigation in the matter with regard to abortion to make out an offence under Section 316 IPC.

Learned State counsel, on the basis of reply filed, has argued that complainant Jagriti Rastogi had been transferred from one office to another from time to time and on account of harassment faced by her she underwent a miscarriage/abortion. At the same time, she does not dispute the fact there was no medical evidence on record to prove that she had undergone abortion apart from this oral allegation against the petitioner for committing offence under Section 316 IPC.

Learned counsel for the complainant has filed his reply and placed on record the enquiry reports (Annexure R-2/1 Colly) whereby it has been observed that Jagrii Rastogi had undergone a miscarriage on account of harassment caused to her by present petitioner. He has placed on record medical records (Annexure R-2/2 colly) dated 17.03.2012 and 07.05.2012 to show that at the relevant time when she was facing sexual harassment, she was carrying pregnancy of seven weeks and three days and underwent abortion at the same time. He has further argued that it was a case of defective investigation as the respondent-State has not investigated this aspect at the time of the presentation of the challan.

The main question for consideration in the present case is

whether in the absence of any medical evidence in the challan, can

Revisional Court modify the charge under Section 316 IPC. For ready reference, Section 316 is as under: -

“316. Causing death of quick unborn child by act amounting to culpable homicide. Whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

After hearing the learned counsel for the parties, going through the record, this Court is of the considered view that in the complaint made by the complainant there are general allegations that on account of the sexual assault meted out to her by the present petitioner, she had undergone an abortion, however, to make out an offence under Section 316 IPC there has to be a specific act, which led to cause of death of quick unborn child. The punishment under Section 316 IPC is up to 10 years. Keeping in view of the seriousness of the offence, the challan could only be framed if there was some medical evidence at the time of presentation of the challan, which the trial Court had not appreciated at the time of initial framing of charge, vide order dated 21.10.2013. Now, the respondent-complainant has placed on record the medical details (Annexure R2/2 Colly) to show that she had undergone an abortion, which is apparent from the ultrasound report as well. However, these documents have been placed on record along with the reply and they are not part of the record of the investigating officer or challan. Moreover, to frame a charge under Section 316 IPC against an accused there has to be specific act done by him, which resulted into the quick death of an unborn child. In the absence of medical evidence, no investigation has been carried out at the time of presentation of the challan. The complainant

challan based on this medical evidence, which the complainant has not chosen to do. Further, after framing of charge under Sections 354-A and 506 IPC, the complainant has not gone in revision on the basis of this evidence taking the plea that it was a case of defective investigation that despite giving this information the proper challan had not been presented. These documents have been placed on record for the first time in this Court on a revision filed by the petitioner against framing of charge under Section 316 IPC. Simply undergoing an abortion would not make out an offence charge under Section 316 IPC, abortion relates to an act committed by the petitioner, which was the cause of abortion which in the present case is missing. No doubt the complaint made by the respondent has been considered by the committee considered under the Sexual Harassment Scheme (Annexure R-2) and even in the report of that committee reference has been made to the allegation that she underwent abortion during the period when she was facing sexual harassment from the petitioner. Perusal of the inquiry report does not reflect any specific act, which led to abortion. In the absence of any medical evidence, the revisional Court should not have framed the charge under Section 316 IPC.

Reference, at this stage, can now be made to a judgment of Supreme Court in case **State Tr. Insp. of Police Vs. A. Arun Kumar and another**, 2015(2) SCC 417, which deals with regard to framing of charge and held that the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as if cannot be expected even at that initial stage of accept all that the prosecution states as

gospel truth even if it is opposed to common sense or the broad probabilities of the case. The Supreme Court in paragraph 8 has laid down the following guidelines for framing of charges under Sections 227 and 228 Cr.P.C.

“(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

(iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

Applying the ratio of law laid down by the Supreme Court to the facts of the present case, after registration of the FIR, at the time of presentation of the challan, as there was no evidence before the Court to reflect that the complainant had undergone any abortion, therefore the Court had no option but to except the case of the prosecution as gospel truth. The revisional Court in the present case has framed charge under Section 316 IPC in the absence of medical evidence in the challan. The medical evidence placed on record by the complainant in this revision petition cannot sustain the impugned order and the remedy available to the complainant was to get further investigation after the challan had been presented if the evidence was with the investigating agency after the FIR has been registered. Learned State counsel has informed the Court that this evidence was never given by the complainant at the time of registration of the FIR or during the investigation.

Consequently, in view of the above facts and keeping in view the guidelines laid down by the Supreme Court in **State Tr. Insp. of Police Vs. A. Arun Kumar and another** case (supra), this revision petition is allowed and the impugned order dated 25.09.2014 (Annexure P-4), passed by the learned Additional Sessions Judge, is hereby set aside with the directions to the trial Court to proceed with the case for the offence under Sections 354-A and 506 IPC.

November 29, 2016
naresh.k

(**RITU BAHRI**)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No