

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.Rev.P. No.243/2016 & CrI.M.A. No.4984/2016

Date of Decision : 23rd August, 2016

SURENDER SULANIA PETITIONER

Through Mr.Neeraj Gupta, Adv.

versus

STATE OF NCT OF DELHI RESPONDENT

Through Mr.Manjeet Arya, Additional
Public Prosecutor for the State with Sub-
Inspector Prisilla, Police Station
Sagarpur.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. The present petition under Section 397 read with Sections 401 & 482 of the Code of Criminal Procedure (Cr.P.C.) has been filed on behalf of the petitioner for revision against the impugned order dated 15th December, 2015 passed by learned Additional Sessions Judge-03, PHC/NDD, Delhi, thereby framing charges against the petitioner under Section 316 of the Indian Penal Code (IPC) in a case arising out of FIR No.182/2013 registered at Police Station Sagarpur, Delhi.

2. A thumbnail sketch of the facts of the case is that on 6th July, 2013, a PCR call was received in Police Station Sagarpur, New Delhi to the effect that the wife of the caller, namely, Mrs.Prem, was admitted in

Mohanty Medical Clinic and her abortion was done on account of miscarriage. The complainant Mrs.Prem in her complaint had alleged that on 5th July, 2013, she along with her husband-Mr.Ram Manohar visited the house of one of their relatives namely Mr.L.D. Sulania, for the purpose of demanding their long outstanding amount of approximately rupees eight lakhs when there arose a quarrel between her husband and Mr.L.D. Sulania. It is submitted that Mr.Ram Manohar used to work with Mr.L.D. Sulania as driver/labour for carrying malba from tractor trolley. It was stated in the complaint that the said L.D. Sulania was a Government contractor and was not giving their dues for a long time. It is alleged that on being made a demand of money by the complainant and her husband, Mr.L.D. Sulania remarked that had they not been their relatives, he would have kicked them out. It is further submitted that in the meanwhile, L.D. Sulania's son namely Surender Sulania (the present petitioner) reached there and started abusing the husband of the complainant upon which the complainant came and stood between them. Thereafter, Surender Sulania pushed the complainant as a result of which she fell down. The complainant is stated to be six months pregnant at that time. Thereafter, the complainant and her husband returned to their house. It is submitted that on the very next day i.e. 6th July, 2013, the complainant felt stomach pain and her husband admitted her in Mohanty Medical Clinic where ultrasound was done and her child was aborted.

3. The statement of Dr.C.L. Mohanty was recorded in which she stated that the complainant visited her clinic with the complaint of pain in abdomen. The doctor further stated that the complainant never stated her in respect of history of assault, fall, injuries and violence. She further stated that the ultrasound of the complainant revealed that she was pregnant with evidence of open internal (OS) with gross Oligohy Dramnios with presence of fluid in cervical canal with rupture of membrane. She further stated that the spontaneous delivery of the foetus in her clinic was conducted.

4. The post mortem of the foetus was conducted to examine the injuries, if any, over the body of the foetus. It was further opined that the ultrasound report of foetus showed that the foetus was alive and injuries over the same could not be possible due to simple fall on the ground. It was also opined that possibility of infliction of injuries on the body of the foetus after the delivery of the dead foetus cannot be ruled out.

5. Learned counsel for the petitioner has submitted that in the complaint dated 5th July, 2013, made by Mr.Ram Manohar, husband of the complainant, he did not mention that his pregnant wife accompanied with him on 5th July, 2013 and further there was no allegation of assault made by the accused (petitioner herein) or any other person. It is also contended that no PCR call was made by the complainant even on 5th July, 2013. It was also contended that in the complaint dated 5th July,

2013, the husband of the complainant tried to book Mr.L.D. Sulania and his son Surender Sulania (accused/petitioner herein) under the SC/ST Act.

6. Learned counsel for the petitioner has submitted that the impugned order is bad in law as the learned Sessions Court failed to consider the post mortem report inasmuch as the death of foetus is opined to be due to decreased amount of amniotic fluid due to premature rupture of membrane. It was also opined by the doctor that the ultrasound report of foetus clearly shows that the foetus was alive and injuries over the foetus could not be possible due to simple fall on the ground. It was also further opined that membrane could be ruptured due to trauma, pathological causes or drugs induce.

7. Learned counsel for the petitioner has further submitted that local inquiry was also conducted and statement of one of the residents namely Mr.Valmiki Sharma, was also recorded who stated that he was present at the house and no one visited Mr.L.D. Sulania. Statement of Ms.Suresh Devi, residing in front of the house of Mr.L.D. Sulania, was also recorded who confirmed that on 5th July, 2013, no quarrel took place at the house of Mr.L.D. Sulania.

8. In support of his arguments, learned counsel for the petitioner relies on the pronouncement of the Supreme Court in ***Union of India vs. Prafulla Kumar 1979 SCC (Crl) 609***, in which it was held that if two

views are possible and the evidence produced gives rise to some suspicion but not great suspicion, he would be justified to discharge the accused and even the principles of that judgment clearly shows that the petition is entitled to discharge.

9. Learned counsel for the petitioner also relies on the pronouncement of the Apex Court in ***Yogesh Vs. State of Maharashtra 2009 (1) SCC (Crl.) 51*** in which it was observed that mere suspicion is not sufficient to hold that there is a sufficient ground to proceed against the accused.

10. Reliance is also placed on ***P. Vijayan Vs. State of Kerala AIR 2010 SC 663***, the Supreme Court held that the courts are empowered to discharge accused if two views are possible and one of them give rise to suspicion only as distinguished from grave suspicion. It was also held that the judge is not a mere post office to frame the charge at the behest of the prosecution.

11. Learned Additional Public Prosecutor for the State has vehemently contended that an offence under Section 316 IPC is made out because due to injury suffered by Smt.Prem at the hands of the accused person, she lost her unborn baby. It was further submitted in the status report that during trial, two witnesses ASI Sarla and W.Ct. Seema were examined. The case was fixed for remaining evidence on 26th April, 2016.

12. I have heard learned counsel for the parties at length; gone through the available records and the judgments cited by learned counsel for the

petitioner.

13. It emerges from the record that there are specific allegations of the complainant in her complaint dated 6th July, 2013 that due to the act of pushing the complainant by the accused-Mr.Surender Sulania, she suffered miscarriage of the child. It is important to note that on the very next day of the said incident, the miscarriage, that too of six months pregnancy, took place. Having regard to the magnitude of the offence and the manner in which the offence is stated to have been committed, charge under Section 316 of the Indian Penal Code appears to have been rightly framed. The fact that miscarriage took place due to the act attributable to the accused or not is matter which shall be considered during further evidence in the trial and the petitioner is at liberty to contest his case in the Court below.

14. I, therefore, do not find any infirmity, illegality or impropriety in the order dated 15th December, 2015 passed by the learned Additional Sessions Judge, thereby framing charge under Section 316 of the Indian Penal Code against the petitioner.

15. Consequently, the present revision petition and application are dismissed.

(P.S.TEJI)
JUDGE

AUGUST 23rd, 2016

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