

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ ***Crl.Rev.P. 440/2015***

Date of Decision: 18th JULY, 2016

STATE (GNCT OF DELHI) Petitioner
Through: Ms. Manjeet Arya, Additional Public
Prosecutor for the State with ASI
Shyam Sunder, Police Station
Mukherjee Nagar, Delhi
versus

JAI KISHAN @ JONY & ORS Respondent
Through: None.

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

P.S.TEJI, J.

1. The present petition has been filed by the petitioner under Section 397(1) of the Code of Criminal Procedure (Cr.P.C.), seeking setting aside of the order dated 21st April, 2015 passed by learned Additional Sessions Judge-03, North District, Rohini Courts, Delhi in Sessions Case No. 26/14 titled '*State v. Jai Kishan @ Jony & Ors.*' arising out of FIR No.209/2012 registered under Sections 498-A/406/313/34 of the Indian Penal Code (IPC), PS Mukherjee Nagar thereby discharging the accused persons arrayed as respondents herein, for an offence committed under Section 313 of the IPC.

2. The facts giving rise to the factual matrix of the present case are that the complainant namely, Sh.Arshee Advani and the respondent no.1, namely, Jai Kishan @ Jony got married on 3rd June, 2011. The

complainant alleged that after her marriage, her husband-respondent no.1 and his family members started harassing her on account of demands of dowry. According to the complainant's version, the threats and harassment went till 7th December, 2011 when her husband called her for the purpose of finalizing everything and for meeting him. When she went to meet him, a heated exchange of words led to her husband/respondent no.1 beating complainant by giving her kicks and punches and she was not allowed to leave. The complainant further alleged that on the night of 12th December, 2011, the complainant started experiencing severe pain and started bleeding and upon visiting a doctor she was prescribed some medicines and was asked to visit again for a check up on 13th December, 2011. On 13th December, 2011, the doctor informed the complainant about the miscarriage of her pregnancy.

3. The complainant instituted a complaint against the respondents on the basis of which FIR No.209/2011 under Sections 498A/406 IPC at Police Station Mukherjee Nagar, was registered against the respondents. The chargesheet was filed by the police for the offences punishable under Sections 498-A/406/313/34 IPC. The police seized the prescription slips dated 12th December, 2011 & 13th December, 2011 issued by Dr. Deepa Dureja with respect to the miscarriage.

4. In defence, learned counsel for the accused persons argued that they were innocent and had been falsely implicated in the case. It was submitted that the alleged offences under Sections 498-A/406/313/34 IPC were not made out against the accused and the miscarriage of pregnancy was caused due to physical incapability of the complainant

and not due to the alleged torture or harassment.

5. Learned APP for the State has submitted that since offence under Section 313 IPC was Sessions triable, the case was committed to the Court of Sessions. The arguments were advanced by the parties and the accused were discharged on the ground that no prima facie case was made out against all the accused for the offence under Section 313 IPC. It had also been held that as the offences under Sections 498A/406/34 IPC were triable by the Court of learned Metropolitan Magistrate, it was observed that the learned MM may hear arguments on the point of charge for the said offences.

6. Learned APP for the State has further submitted that the learned ASJ did not take into consideration the statement of the doctor who had treated the complainant, who in her statement, had opined that the abortion could have been caused due to malnutrition, excessive stress, physical torture and mental harassment. Thus, doctor's statement is materially consistent regarding the possible occurrence of the miscarriage due to physical torture of the complainant. It is next contended that strong suspicion is sufficient for framing of charges.

7. In support of her contention, learned Additional Public Prosecutor relied on the pronouncement of Hon'ble Supreme Court in ***State of Bihar v. Ramesh Singh 1978 SCR (1) 257*** wherein it was held that at the stage of framing of charges, it is not obligatory for the Judge to consider in any detail and weigh in sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not.

8. In the counter affidavit filed by respondent nos.1 to 3, it has

been stated that the allegation made by the complainant regarding abortion of her child due to merciless beating by them for want of dowry, is absolutely false and frivolous. It has further been submitted that the learned Additional Sessions Judge, however, observed that the Medical certificate of doctor also reflected that miscarriage/abortion had taken place and, therefore, the offence under Section 313 IPC was to be added after experts opinion to be sought by the investigation agency. However, it was added that till date, the investigating agency had not obtained opinion of the expert and charge-sheet was not filed for the purpose of commencement of trial and, therefore, in the absence of expert's opinion, charge under Section 313 IPC cannot be made out. Besides this, it was also averred that the medical certificate was forged and fabricated one and no such incident happened.

9. I have heard learned Additional Public Prosecutor for the State at length & gone through the available records. The arguments advanced by learned APP for the State; the material available before the Court and the order passed by the learned Sessions Judge discharging the accused under Section 313 IPC and remanding the matter back to the learned Metropolitan Magistrate, demonstrate that there were plain allegations with regard to the miscarriage of the victim. The material produced before the learned Magistrate was not found to be sufficient to hold a prima facie view that the miscarriage was the result of the act done by the accused persons. No doubt, the allegations of miscarriage had been made against the accused persons, the same were not corroborated by the medical record rather the medical prescription slip which was produced, does not show any

indication expressly or impliedly that miscarriage was the result of any injury caused by the accused persons. It would be essential for the prosecution to show from the medical record that it was a case of medico legal implication and no MLC had been produced in the Court. Apparently, this Court is of the considered opinion that mere oral allegations without any corroboration with other evidences, would not be sufficient to hold the accused prima facie guilty for the offence of miscarriage.

10. The discussion made above does not show any illegality, infirmity or mistake on the face of the record nor exceeding of the jurisdiction or non-exercise of jurisdiction by the Trial Court. The impugned order not framing the charge under Section 313 IPC, has been passed after due application of mind and is a reasoned one.

11. Thus, the order passed by the Court below is upheld and the revision petition is, hereby, dismissed being devoid of merit.

12. Consequently, the present petition is dismissed.

(P.S.TEJI)
JUDGE

JULY 18th, 2016

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