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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on: 04th January, 2016

+ **CRL.M.C. No.9/2016**

REKHA

..... Petitioner

Represented by: Mr.Puneet Yadav and
Mr.Akshay Raj Verma,
Advs.

versus

STATE GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Represented by: Mr.Kamal Kumar Ghei, APP
for the State with SI Ram
Pratap Meena, PS Rajinder
Nagar, Delhi in person.

**CORAM:
HON'BLE MR. JUSTICE SURESH KAIT**

SURESH KAIT, J. (Oral)

Crl. M.A.No.40/2016 (for exemption)

Exemptions allowed, subject to all just exceptions.

Accordingly, the application is allowed.

CRL.M.C. No.9/2016

1. By way of this petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioner has assailed the order dated 08.12.2015 passed in Criminal Revision Petition no.26/2015 by learned Special Judge, CBI-03, (PC Act), Tis Hazari Courts, Delhi thereby dismissed the said petition filed by petitioner.

2. Initially, the petitioner moved an application for amendment of charge which came up for hearing on 09.09.2015 before learned Trial Court and was dismissed. Being aggrieved, the petitioner filed aforementioned Revision Petition and resulted with same fate.

3. Learned counsel appearing on behalf of petitioner submits that the petitioner made a complaint against respondent No.2 that he had intentionally and deliberately got aborted the child of the complainant, but in the FIR, the Sections relating to that offences were not added. It is also submitted that complainant had contended said fact in the complaint before the CAW Cell and despite the material on record, charge under Section 313 of the IPC has not been framed against the respondent No.2.

4. Further submits that there were specific allegations against the respondent No.2 that marriage between petitioner and respondent No.2 was solemnised according to the Hindu rites and customs on 29.05.2001. After the marriage she was brought to matrimonial home at Gandhidham Gujarat and stayed there for three months and cohabited as husband and wife. Thereafter, the petitioner and her husband shifted to Vidya Nagar, Anand, Gujarat and after a few months, she became pregnant. She was called by her husband to the hospital and he told that it was just check-up and she believed him accordingly. The doctor over there gave an injection and she felt asleep and became unconscious. When she regained her consciousness, she went home with respondent no. 2 and his parents. She was completely shocked and physically weak. She asked them as to why they killed her baby. There was no response from their side.

5. It is not in dispute that the provisions of Section 216 of the Cr. PC.

applies to all Courts. Alteration in charge must be done on the basis of the some evidence on record. Power to alter charge should be exercised with caution. The power to add to, or alter, a charge under Section 216 of the Cr P C cannot be exercised unless there is evidence on record to support the addition or alteration.

6. It is also not in dispute that in the complaint which is Ex.PW1/B on the basis of which the *Rukka* was prepared and the FIR bearing No.85/2007 was registered at police station Rajinder Nagar, Delhi for the offences punishable under Sections 498A/406 of the IPC finds the allegations relating to miscarriage. However, charge under Section 313 of the IPC was not framed by learned Trial Court on 01.06.2010. After the conclusion of prosecution evidence, when the matter was listed for defence evidence, the application for amendment of the charge under Section 216 of the Cr P C was moved on behalf of petitioner, which was dismissed vide order dated 09.09.2015 by learned Trial Court.

7. It cannot be disputed that there were allegations in the initial complaint regarding the fact that husband of petitioner had taken her to hospital for check up after she became pregnant. There, doctor gave injection and she asleep and became unconscious. However, the fact remains that neither the name of hospital nor the doctor were mentioned in the said complaint. In fact in her cross-examination as PW1 on 12.09.2011, she deposed that she does not remember the name of the doctor and hospital where her abortion was done. She disclosed said fact to her parents after 11 months of abortion, when she came back to Delhi. Even in her testimony recorded on 12.09.2011 during cross-examination, she cannot spell out the date, month and place as well as the name of

doctor or the hospital where her abortion was done.

8. It can be believed that that at the time of making of complaint, the complainant was mentally disturbed and she could not mention the above facts in the complaint, however when she was tested at the floor of the witness box, she failed to disclose the date, month and name of the doctor and hospital. In view of that if the charge under Section 313 of the IPC is framed against respondent No.2 that will not change the fate of the case because no evidence would come on record against respondents. Accordingly, the entire allegations made by the petitioner falls in the realm of vagueness and uncertainty and it would not be proper to amend the charge at this stage, when the statements of accused persons under Section 313 Cr.P.C. have already been recorded and matter is listed for final arguments.

9. Accordingly, in view of the facts recorded above, I am of the considered opinion that two Courts below have passed the proper orders in the facts of the case. There is no illegality or perversity in the said orders.

10. Consequently, finding no merits in the instant petition, same is hereby dismissed with no order as to cost.

Crl.M.A.No.41/2016(for Stay)

Dismissed as infructuous.

**SURESH KAIT
(JUDGE)**

JANUARY 04, 2016

M/jg