

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on: 07/09/2017

Judgment delivered on:07/11/2017

CRMP No. 199 of 2014

- Smt. Indu Banjare W/o Santosh Kumar Banjare Aged About 27 Years R/o Through Tumanlal Kosre (Brother), Village Somni, Tah. And Distt. Rajnandgaon C.G.

---- Petitioner

Versus

- Santosh Kumar Banjare S/o A.D. Banjare Aged About 37 Years R/o Vivekanand Colony, Jashpur, Tah. And Distt. Jashpur C.G.

---- Respondent

For the petitioner	:	Shri Shrawan Agrawal, Advocate.
For the respondent	:	Shri Neeraj Mehta, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V Order

07/11/2017

Heard.

1. The petition under Section 482 of Cr.P.C. has been brought with a prayer to quash to impugned order dated 27.12.2013 passed by Sessions Judge, Jashpur Nagar in unregistered revision petition filed by petitioner.
2. Respondent is husband of petitioner. A complaint was filed by respondent before the Court of CJM, Jashpur praying for taking cognizance of offence under Section 312 of IPC against the petitioner. The complaint was dismissed vide order dated 11.07.2013 (Annexure P/4). Criminal revision No.13/2011 was preferred before Sessions court, Jashpur, the same was decided on 21.03.2012. Order passed by Court of CJM, Jashpur was set aside and direction were issued for taking cognizance against the petitioner for trial of offence under Section 312 of IPC. Subsequent to that the trial Court vide order dated 28.10.2013 (Annexure P/9) passed an order taking cognizance against the petitioner, this order was challenged before the Court of Additional Sessions Judge, Jashpur Revision Petition (unregistered) by the impugned order dated

27.12.2013. The revisional Court held that the petitioner has agitated the same point previously before the revisional Court, hence, the revision is not maintainable.

3. It is submitted by counsel for petitioner that the impugned order is contrary to the facts and law. The revisional Court has failed to appreciate the documents filed by the petitioner and the report submitted by police. The complaint case was filed only for the purpose of harassing the petitioner as she is prosecuting the respondent in Family Court, Rajnandgaon. No case is made out under Section 312 of IPC against the present petitioner, hence, the impugned order is miscarriage of justice and abuse of process of law.
4. Counsel for respondents has opposed the grounds raised in petition and the submission made in this respect. It is submitted that on the basis of the statement of witnesses recorded in the complaint case and the documents submitted in support by the complainant clearly a *prima facie* case is made out against the petitioner for her trial for offence under Section 312 of IPC. Hence, the petition be dismissed.
5. Heard the counsel and perused the documents on record. It was alleged in the complaint against the petitioner that she was living in adultery and on her becoming pregnant she illegally resorted to abort her pregnancy which is an offence under Section 312 of IPC. The trial Court by order dated 11.07.2011 gave the finding that no offence is made out and dismissed the complaint, but in the criminal revision No.13/11 finding has been given by the revisional Court, that on the basis statement of witnesses and material on record, a *prima facie* case for prosecution an offence under Section 312 of IPC is made out. Subsequent to that trial Court was left with no option other than passing order for taking cognizance and proceeded accordingly. Subsequent to that an application under Section 203 of Cr.P.C. was filed by the petitioner which has been rejected by the Trial Court and in the impugned order revisional Court has

held that the point raised in the revision is already decided which cannot be decided again by the revisional Court.

6. To make out an offence under Section 312 of IPC the requirement of proof are these that the woman concerned is pregnant and the accused which may also include the concerned woman herself, has caused the miscarriage to take place and that the act on the part of such accused was voluntarily. Further that such miscarriage has not been caused in good faith for the purpose of saving the life of the woman concerned.
7. The contents of the material of complaint a case against the petitioner on the basis of which a prima facie finding has been giving by the Sessions Court below and followed by trial Court needs no reconsideration regarding the prima facie nature of the case against the petitioner.
8. Looking to the material on record, it can be said that the petitioner has to defend herself in this case and no case of discharge is made out in her favour, hence, this petition is without any substance which is dismissed accordingly.

Sd/-

(Rajendra Chandra Singh Samant)

Judge