

CRR No. 2729 of 2015

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:14.2.2017

CRR No. 2729 of 2015

Krishan Chand Samdyan and another

---Petitioners

vs.

State of Haryana and another

---Respondents

CRR No. 3940 of 2015

Roshni Devi and another

---Petitioners

vs.

State of Haryana and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Arvind Singh, Advocate
for the petitioners
Ms. Dimple Jain, AAG, Haryana
Mr. Y.S.Rathore, Advocate
for respondent No. 2/complainant

Rekha Mittal, J.

This order will dispose of CRR Nos. 2729 and 3940 of 2015 as identical questions of law and fact are involved for adjudication. For brevity, facts are taken from CRR No. 2729 of 2015.

The facts relevant for disposal of the present petition are that FIR No. 1000 dated 4.12.2013 was registered at Police Station, Civil Lines, Karnal for offence punishable under Sections 323, 312, 313, 315, 406, 498-

A, 417, 420, 506, 120-B of the Indian Penal Code (in short “IPC”). On completion of investigation, challan was presented against Sumit son of late Bal Kishan, Roshni Devi widow of Bal Kishan, Balwan Singh Kanchi and Krishan Samdyan. The case was committed to the Court of Sessions as offence under Section 313 IPC being exclusively triable by the said Court. After having heard counsel for the parties and finding a prima facie case, accused were charged for commission of offence punishable under Sections 120-B, 323, 313, 498-A, 406, 417 and 506 IPC.

The sole submission made by counsel for the petitioners is that order passed by the Additional Sessions Judge, Karnal dated 4.5.2015 framing charge for offence punishable under Section 313 IPC cannot be allowed to sustain and liable to be set aside. To substantiate his contention, counsel has submitted that as per allegations raised in the FIR and so also the report submitted under Section 173 of the Code of Criminal Procedure (in short “Cr.P.C.”), the said offence was stated to be committed by Sumit husband of the complainant when the complainant and her husband were residing together in Australia, therefore, the said offence was committed outside India. It is further argued that in view of provisions of Section 188 Cr.P.C., the Court in India cannot commence trial for commission of offence punishable under Section 313 IPC without prior sanction of the Central Government. In support of his contention, he has relied upon judgments of Hon'ble the Supreme Court of India *Thota Venkateshwarlu vs. State of A.P. Tr. Princ. Section and another 2011(4) RCR (Criminal) 92*, *Fatma Bibi Ahmed Patel vs. State of Gujarat and another 2008(3) RCR (Criminal) 135*.

Counsel for the State of Haryana assisted by counsel for the complainant would submit that as Sumit husband of the complainant is presently residing in India, the Indian courts have the jurisdiction to try offence punishable under Section 313 IPC. In support of their contention, they have referred to judgments of Hon'ble the Supreme Court of India *Om Hemrajani vs. State of U.P. and another 2005 (1) RCR (Crl.) 293*, *Ajay Agarwal vs. Union of India and others 1993 AIR 1637*, *Sajjan Kumar vs. Central Bureau of Investigation 2010 (4) RCR(Crl.) 382*.

I have heard counsel for the parties, perused the paper book more particularly the first information report running into more than 100 pages and the order impugned.

Before advertng to the submissions made by counsel for the parties, a brief reference to the allegations brought forth by the complainant with regard to termination of her pregnancy in December 2008 relevant in the present context, reads thus:-

Accused No. 1 put pressure upon the complainant not to get pregnant on the pretext that they are not PR (permanent resident) in Australia and they will have to pay all the medical expenses and it would be very costly to bear the child. The complainant was shocked to see such greedy behaviour of accused No. 1 who did not want a child because of costly medical expenses. After sometime, the complainant, however, got pregnant in December 2008 and on coming to know the said fact, accused No. 1 badly abused the complainant and asked the complainant to abort the child. The complainant when refused to do so, accused No. 1 gave severe beatings to the complainant with fist and kick blows and due to beatings

given by accused No. 1, complainant suffered miscarriage in December 2008.

It is pertinent to mention, at the outset, that during the course of hearing counsel for the complainant has not pointed out any discrepancy in translation of the FIR particularly the allegations with regard to pregnancy in December 2008, accused No. 1 having caused miscarriage by giving severe beatings to the complainant with fist and kick blows. This apart, counsel for the complainant has not disputed that all the allegations with regard to causing miscarriage due to physical torture of the complainant occurred when the complainant and her husband were residing in Australia, therefore, offence punishable under Section 313 IPC was committed outside India or in other words, it was committed in Australia.

Section 188 Cr.P.C. deals with jurisdiction of the Court with regard to offence committed outside India. A relevant extract therefrom reads as follows:-

“Offence committed outside India. When an offence is committed outside India-

[\(a\)](#) by a citizen of India, whether on the high seas or elsewhere; or

[\(b\)](#) by a person, not being such citizen, on any ship or aircraft registered in India, he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found: Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government.

A similar issue came up for consideration before Hon'ble the

Supreme Court of India in two cases referred to by counsel for the petitioners. A plain but careful reading of provisions of Section 188 Cr.P.C. and observations made in the judgments of Hon'ble the Supreme Court of India *Thota Venkateshwarlu's case (supra)* and *Fatma Bibi Ahmed Patel's case (supra)*, it becomes settled position in law that where an offence is committed by an Indian citizen outside India or by a non Indian on any ship or aircraft registered in India wherever it may be, such an accused may be dealt with in respect of such offence as if had been committed at any place within India at which the accused may be found but no such offence shall be tried in India except with previous sanction of the Central Government.

As in the case at hand, offence under Section 313 IPC is stated to be committed by a citizen of India but outside India, such an offence cannot be tried in India except with the previous sanction of the Central Government. It is not plea of the respondents that any such sanction was applied much less accorded.

To be fair to the respondents, the judgments referred to by counsel for the complainant have got no bearing on the facts of the case in hand. In *Om Hemrajani's case (supra)*, the court was concerned with the interpretation of the words “a place within India at which he may be found”. The question before the Court was whether the accused was to be tried by the Court at Gujarat or one at Bombay as plea of the accused was that he was actually found at Bombay, therefore, court at Gujarat do not have jurisdiction to try the case. In *Ajay Agarwal's case (supra)*, the accused were charged for committing offence of criminal conspiracy at Chandigarh

though certain overt acts in furtherance of conspiracy were done at Dubai, in those circumstances, it was held that sanction under Section 188 Cr.P.C. is not necessary and the Court at Chandigarh has the jurisdiction to try the charged offences. The judgment in *Sajjan Kumar's case (supra)* does not deal with the provisions of Section 188 Cr.P.C., germane to the controversy in the instant case.

In view of what has been discussed hereinabove, in absence of sanction from the Central Government, the petitioners cannot be tried by the Court in India for commission of offence punishable under Section 313 IPC. As a result, charge framed by the Court below for offence under Section 313 IPC is set aside for want of jurisdiction.

The petitions are accordingly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

14.2.2017
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No