

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM A-1774-MA of 2018

Date of Decision: October 23, 2018

Kailash .....Applicant  
Versus  
Poonam and others .... Respondents

**CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH**

Present : Mr. R.S. Mamli, Advocate  
for the applicant.

**FATEH DEEP SINGH, J.**

This application has come about under Section 378(4) of the Code of the Criminal Procedure seeking leave to appeal against the order dated 06.2.2018 passed by learned Judicial Magistrate 1<sup>st</sup> Class, Hisar, whereby, the complaint of the applicant for prosecution of the accused Poonam and Roshni was dismissed.

It is worthwhile to mention here that a criminal case was got registered by way of FIR No. 14 dated 26.01.2016 under Sections 498-A, 406, 506, 323 and 34 IPC with Police Station Barwala on the complaint made by Smt. Poonam wife of applicant/complainant Kailash and vide judgment dated 23.05.2016, the Court has acquitted the accused/husband-Kailash.

In the criminal complaint instituted by the applicant under Sections 312, 120-B and 506 IPC with Police Station Barwala against wife Poonam and his widowed mother Roshni, the crux of the allegations was that a marriage took place between the couple on

29.03.2015 and whenever during the course of matrimony, the wife used to get pregnant would without consent and against the wishes of the husband used to get the pregnancy terminated. It is alleged that the wife under the influence of her mother left the matrimonial home and got registered a criminal case (referred to above) and hence the complaint was filed. It is worthwhile to refer here that another litigation by way of application under Section 125 Cr.P.C. was filed by the wife before the learned District Judge, Family Court, Hisar seeking maintenance from the husband.

The husband in his criminal complaint to substantiate his allegations examined Dr. Vibha Bansal as CW-1, who proved documents Ex.P-2 to P-8, Constable Gulab Singh as CW2, who proved documents Ex.P9 to Ex.P12 and, thereafter, applicant/husband Kailash himself stepped into the witness box as CW3 and reiterated his allegations. It is through the impugned order dated 06.02.2018, the learned Court of Judicial Magistrate 1<sup>st</sup> Class Hisar dismissed the complaint.

Upon hearing Shri R.S. Mamli, counsel for the applicant and on perusal of the complaint that has been filed for commission of offences under Sections 312, 120-B and 506 of the IPC and in the light of the settled proposition of law as has been taken note by the learned Court below, the onus to prove its case always rests upon the prosecution, which is supposed to prove its case beyond shadow of reasonable doubt.

Section 312 IPC deals with the act of voluntarily causing miscarriage of a woman which be not in good faith or for the purpose

of saving the life of a woman and under the explanation to it a woman who causes herself to miscarry falls within the ambit of this provision.

Learned counsel for the applicant could not convince that the wife at the relevant time was pregnant and it was her voluntary and intentional act which led to this miscarriage. Since the onus lay upon the complainant, he has only established the documents showing pregnancy tests upon the wife and complaint made to the police rather the complaint as is evident has come about after the registration of the case by the wife against the husband certainly is a matter, which needs to be taken account of, which could be as a result of motivated cause. The other offence, for which, the compliant has been filed revolves around the allegations of criminal conspiracy. There is no specific instance with details brought on record by the complainant to establish criminal conspiracy nor any particulars of the same have been brought about. Much less any corroboration to his averments made by him as his own witness and rather as is elicited from the record by way of Ex.P10, it was the complainant/husband, who on 29.05.2016 visited the house of the wife and physically abused her and she received severe injuries and rather is in itself suggestive of the likely reasons and, therefore, in the absence of any element worth credence allegations of criminal conspiracy to carry on with this offence or termination of pregnancy is not made out. Furthermore, counsel for the applicant could not show what evidence is there to bring about the offence of criminal intimidation punishable under Section 506 of the IPC.

The learned Court below has discussed at length the

evidence of the complainant and has come to a totally justifiable conclusion, which needs to be upheld. There appears to be no illegality in the findings of the Court below. The application for leave to appeal is without merit and stands dismissed.

**October 23, 2018**  
**amit rana**

**(FATEH DEEP SINGH)**  
**JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No