

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM- M-12867 of 2013
Date Of Decision 30.05.2018**

Parvesh Rathee and others

...Petitioners

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Sunil Sihag, Advocate,
for the petitioners.

Ms. Gaganpreet Kaur, AAG, Haryana.

Mr. Harsh Aggarwal, Advocate,
for respondent No.2.

JAISHREE THAKUR, J.

The instant petition has been filed under section 482 Cr.P.C for quashing of the order dated 13.03.2013 passed by Additional Sessions Judge Jhajjar (Annexure P-12) whereby Section 313 IPC has been added to the report filed under section 173 (2) Cr.P.C.

2. In brief, the facts are that the complainant-respondent No. 2 (hereinafter respondent No.2) Rekha was married with Parvesh Rathi petitioner No. 1 on 21.11.2007. On account of matrimonial differences that arose between the parties, respondent No. 2 instituted a complaint dated 27.05.2010 before Superintendent of Police, Jhajjar leveling allegations of cruelty and maltreatment. The matter was referred to the Women Cell on

19.07.2010 and a detailed inquiry was conducted therein. On 19.07.2010 itself, a statement of respondent No. 2 was recorded by Women Cell and thereafter on the basis of the enquiry, it was recommended that FIR be registered under Sections 498-A, 406, 506 IPC against the petitioners herein.

3. FIR No. 315 dated 22.7.2010 was registered under Sections 498-A, 406, 506 IPC Police Station Sadar Bahadurgarh in which it was alleged by respondent No. 2 that she had solemnized the marriage with Parvesh Rathi on 21.11.2007 as per Hindu rites and rituals. But within 15 days of her marriage, her in-laws started harassing and maltreating her on account of inadequate dowry. It was submitted that sufficient dowry was given at the time of the marriage, however, they were not satisfied. It was further submitted that she became pregnant and her mother-in-law and husband forcibly gave her medicine to abort the pregnancy and when the medicine did not have its effect, they gave beatings to her. It is further alleged that her mother-in-law kicked her in her abdomen in order to abort the pregnancy and thereafter both of them took her to Bharat Hospital near Sonapat bus stand and got her the pregnancy terminated against her wishes in December, 2007. As the matter was pending before JMIC, Bahadurgarh, respondent No. 2 submitted an application for denial of bail and a fair investigation with addition of Section 313 IPC as an offence. Accordingly, reply was filed to the said application and ultimately, the matter was investigated by the SHO, Police Station, Jhajjar who submitted reply dated 07.08.2010, stating therein that the matter had been investigated and Dr.

Rita Gulati, MBBS, MD stated that pregnancy of one month cannot be aborted and, therefore, the investigation revealed that Section 313 IPC is not attracted. Another application dated 01.06.2011 was made for addition of Section 313 IPC to the chargesheet and to direct the police to conduct further investigation in the case. The same was declined, holding that the matter had been investigated properly and no offence is made out under Section 313 IPC. This order was challenged and Additional Session Judge, Jhajjar by impugned order, held there was sufficient allegation to charge the accused persons with commission of offence under Section 313 IPC and accordingly committed the matter to be heard before the Sessions Court. Aggrieved against the said order, the instant criminal revision petition has been filed.

4. Mr. Sunil Sihag, learned counsel appearing on behalf of the petitioners contends that the allegations of having committed the offence of getting an abortion done are unsustainable and, therefore, the offence under Section 313 IPC cannot be added to the charges already framed under Sections 406, 498-A and 506 IPC. It is contended that when the matter was investigated by the Women Cell and the statement of the respondent No. 2 recorded, there were no such allegations raised therein. Respondent No. 2 only submitted that she had been harassed on account of inadequate dowry and it is only subsequent thereto that an improvement has been made by leveling allegations of having committed the offence of getting pregnancy forcibly terminated. It is also submitted that the matter has been investigated and statement of the Doctor which would clearly indicate that no such

abortion was conducted at the Bharat Hospital as mentioned by respondent No. 2.

5. Per contra, Mr. Harsh Aggarwal learned counsel appearing on behalf of respondent No. 2 vehemently puts forward the argument that in December, 2007 the petitioner and his mother, petitioner No. 2 forcibly administered medicine to her in order to abort the pregnancy and when the medicine did not take affect she was kicked in the abdomen and eventually taken to the hospital where the pregnancy was forcibly terminated. It is argued that the offence under Section 313 IPC has rightfully been added. In the detailed reply filed on 1.4.2018, it is submitted that marriage took place on 21.11.2007 and the menstrual cycle was completed on 13.11.2007 and the respondent became pregnant on the first night itself and, therefore, she was pregnant within the month. She did not complain about the abortion at the given time as she wanted to save her marriage.

6. I have heard learned counsel for the parties and with their assistance have also perused the pleadings.

7. The challenge in this petition is to the order directing the offence of Section 313 IPC to be added to the already existing charges under Sections 406, 498-A, 506 IPC. Admittedly, a complaint was filed and statement recorded on 19.07.2010 by the Women Cell Police Station Sadar Jhajjar which only reflected cruelty harassment and demand of dowry. There was no reflection in the said statement about any forcible abortion. It is only when the FIR was being recorded on 22.07.2010 that an allegation was made that petitioner No.1 and his mother got the pregnancy forcibly

terminated in December, 2007 at Bharat Hospital. The matter has been investigated and no record has been found in the hospital so mentioned that respondent No. 2 was present or there was an abortion. Counsel for the respondent rebuts by stating that the abortion was done at a private hospital and in normal circumstance the record pertaining to termination of pregnancy would not be maintained.

8. The question that has to be addressed is limited to the extent whether the charge under Section 313 IPC should be allowed to stand in the given circumstances, when there is no supporting document or evidence available on the record. In fact on the contrary, the matter was investigated and the noting of the doctor is available on the record that no abortion took place at the Hospital of Rekha wife of Parvesh, respondent No. 2, between 20.12.2007 to 31.12.2007.

9. There are a catena of judgments, which have gone into the question as to what factors should be considered by the Court at the time of framing of charges. In these judgments, it has been categorically held that the Court is required to evaluate the material and documents on record to see if the facts emerging therefrom, taken at their face value, would constitute the offence alleged. It is not possible to shift the evidence at the initial stage. The Court is to only apply its judicial mind on the material placed before it and be satisfied that there is a commission of offence. At the stage of framing of charge, the Court is not to enter into a roving inquiry to appreciate or weigh the material on record and only then frame charges. Strong suspicion is enough for a Court to form a presumptive opinion as to

the existence of an event having taken place, justifying framing of charge. The Supreme Court, in a latest judgment rendered in ***State of Rajasthan Vs. Fatehkaran Mehdu, AIR 2017 SC 796***, while relying upon the judgment in ***Amit Kapoor Versus Ramesh Chander (2012) 9 SCC 460***, has categorically held as under:-

“26. The scope of interference and exercise of jurisdiction under Section 397 of Cr.P.C. has been time and again explained by this Court. Further, the scope of interference under Section 397 Cr.P.C. at a stage, when charge had been framed, is also well settled. At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage final test of guilt is to be applied. Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with scheme of Code of Criminal Procedure.

27. Now, reverting to the limit of the scope of jurisdiction under Section 397 Cr. P.C., which vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in the proceeding.

*28. It is useful to refer to judgment of this Court in **Amit Kapoor and Ramesh Chander and Another, (2012) 9 SCC***

460, where scope of Section 397 Cr. P.C. have been succinctly considered and explained. Para 12 and 13 are as follows:

“12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well founded error and it may not be appropriate for the court to scrutinize the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

13. Another well accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of

its revisional jurisdiction unless the case substantially falls within the categories aforesaid. Even framing of charge is a much advanced stage in the proceedings under the Cr.P.C.”

29. The Court in para 27 has recorded its conclusion and laid down principles to be considered for exercise of jurisdiction under Section 397 particularly in context of quashing of charge framed under Section 228 Cr.P.C. Para 27, 27(1), (2), (3), (9), (13) are extracted as follows:

“27. Having discussed the scope of jurisdiction under these two provisions, i.e., Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.1) Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2) The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3) The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.9) Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.13) Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.”

10. As it has been held above, the quashing of a charge is an exception to the rule of continuous prosecution. The Court should apply the

test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith *prima facie* establish the offence or not. The Additional Sessions Judge, Jhajjar by the impugned order set aside the order of the JMIC refusing to add Section 313 IPC to the charges framed, primarily on the ground that the complainant had made specific allegation about an abortion at Bharat Hospital, Sonapat and that the defence of the accused cannot be looked into. It is pertinent to note the JMIC had taken into consideration the report of the Doctor at Bharat Hospital, who clearly stated that there was no such abortion.

11. Charges have to be framed on the basis of the material available with the prosecution and presented in Court. On the application filed for fair investigation, an investigation was conducted at the behest of respondent No. 2. It had been stated in the FIR that her abortion was carried out at Bharat Hospital, Sonipat near the bus stand. The matter was investigated and the said report available on the record of the doctor of the hospital negates the said claim.

12. At the present moment, there is nothing available on the record as adduced by the prosecution to substantiate the claim of respondent No. 2 that the petitioners forcibly got the pregnancy terminated. To frame a charge there has to be some material available with the prosecution which is lacking in the instant case. On the statement made before the Women Cell too, the complainant was silent about the forcible termination of pregnancy, and when her statement was recorded in the FIR stating that there was a pregnancy within a few days of her marriage and same was forcibly

terminated at Bharat Hospital, the investigation done by the prosecution itself does not support her claim. The Additional Session Judge allowed the addition of the charge without adverting to the investigation done, holding it to be the defence of the petitioner herein.

13. Normally this court would not interfere in nor examine the evidence at the stage of framing of charge or quashing of charge, but when there is none, it would be in the fitness of things to step in. Therefore, in the light of the above discussion, the order of the Additional Session Judge is set aside and the Criminal Miscallenoun petition is allowed.

30.05.2018

Satyawan

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes.
No.