

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

CRR No. 2509 of 2018

DATE OF DECISION :- August 08, 2018

Manmohan and others

...Petitioners

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE H.S. MADAAN

Present:- Mr. T.S. Sangha, Sr. Advocate
with Mr. Narinder Singh, Advocate for the petitioner.

This Revision Petition is directed against the order dated 10.7.2018 passed by Additional Sessions Judge, Bhiwani.

Briefly stated that facts of the case as per prosecution story are that complainant Savita had submitted a written complaint to SSP Bhiwani seeking taking of legal action against her husband Manmohan Singh son of Prithvi Singh working as Constable in Haryana Police, father-in-law Prithvi Singh, brother-in-law Jitender, mother-in-law Krishna, sister-in-law Anita all residents of village Lohari, Tehsil Bawani Khera, District Bhiwani on the allegations that she was engaged with Manmohan on 22.12.2013 and at that time, she was studying in Chaudhary Bansi Lal Govt. Girls, Tosham in the month of January, 2014 Manmohan came to meet her in the college and stated that he has to talk with her in respect of marriage, then he took her away to some unknown place in his vehicle and committed rape upon her

threatening that in case she disclosed the fact to anybody else, then the engagement would be broken. Thereafter, Manmohan used to visit her in the college and take her forcibly to unknown places and had sexually intercourse with her without her consent under threat to breakdown the engagement. He did so for four months before their marriage was solemnized on 11.5.2014. In her complaint, she has levelled allegations of demand of dowry in the form of Fortuner vehicle, gold bangles etc. from the complainant. She has levelled allegations of her father-in-law making advances towards her, further adding that her husband started giving her contraceptive pills since he did not want children for the present. Prior to that her husband forcibly got her operated upon her without her consent at Sangwan Hospital.

According to her she was turned out of the matrimonial home by her in law's family on 25.4.2015 for getting demand of dowry fulfilled and she was threatened that if she came back to matrimonial home without getting those demand conceded then she would be killed; that the accused have also committed criminal breach of trust with regard to her Istridhan/dowry articles; that her parents had convened Panchayat seeking her rehabilitation in the matrimonial home but her in-laws family remained adamant stating that till their demands were met, they would not allow her to return to the matrimonial home.

After registration of the F.I.R. on the basis of this complaint challan was filed against husband, father-in-law and mother-in-law of the complainant for offences under Sections 498A, 434 IPC. The offence under Section 313, 406, 354 IPC were not added, however, the Illaqa Magistrate

vide order dated 28.10.2015 observed that offence under Section 313 IPC had been dropped by the investigating officer without any cogent reason despite the fact that it had come in evidence that the complainant was pregnant on 2.8.2014 and she was turned out of the matrimonial home on 25.4.2015. The Superintendent of Police, Bhiwani got the matter further investigated by Deputy Superintendent of Police under his supervision by associating the complainant as such supplementary challan was presented against the accused under Sections 354, 506, 498A IPC read with Section 34 IPC. The investigation agency concluded that offence under Section 313 IPC was not made out.

In the supplementary challan it was not mentioned as to whether offence under Section 354 IPC was made out or not. Further more allegation under Section 313 Cr.P.C are only against husband and no other accused had any concern there with. Further more vide order dated 28.10.2015 further investigation was to be done only with regard to Section 313 IPC as such lower Court had committed a big error while framing charge; that accused had moved a petition for quashing of the F.I.R. On the basis of compromise. The Court directed the parties to appear before learned Magistrate for the purpose of getting their statements recorded. Their statements were also recorded but when the case came up before this Court for final decision, the complainant made a statement that she had not been taken back to matrimonial home as per agreement arrived at between the parties, as such this Court dismissed the petition vide order dated 24.1.2017; that when the matter was brought before learned Magistrate, an application was moved by the complainant party that there has not been fair

investigation and report of the investigating officer is biased. Learned Magistrate came to the conclusion that offence under Section 313 IPC was made out as such vide order dated 11.4.2018 committed the case to the Court of Sessions under Section 313 IPC as well.

That the petitioners are aggrieved by that order and are challenging this order by way of filing the instant Criminal Revision Petition. The petitioners have preferred a Revision Petition to the Court of Sessions at Bhiwani during pendency of which learned Additional Sessions Judge, Bhiwani framed charge against the accused persons under Section 354 IPC against Prithvi Singh and under Sections 498A, 506, 313 and 406 IPC against all the accused. It is contended that order vide which charge has been framed by learned Additional Sessions Judge is not speaking one though order of learned Magistrate dated 11.4.2018 vide which he had committed the case to the Court of Sessions under Section 313 IPC is a detailed order; that learned Magistrate had noted that marriage took place on 11.5.2014 and the complainant lived in matrimonial home upto 25.4.2015 and as per Ultrasound report dated 2.8.2014 from Gauba Ultrasound, Bhiwani complainant was pregnant with a foetus of 12 weeks and 5 days and said foetus was healthy with low lying placenta which means that complainant was pregnant and she was thrown out of matrimonial home on 25.4.2015; that complainant has admitted in her statement under Section 161 Cr.P.C. that at the time of abortion she was at her parental home and it was natural abortion; that the positive case of the complainant is that complainant was taken to Sangwan Hospital where without her consent the abortion was done; that the police had approached the doctor of the said

hospital who made statement that on 2.8.2015 the patient had come to him with a complaint of pain in the abdomen and he gave medicine of abdomen pain and referred for USG, however, Sunita never came back to him and she was not admitted in their hospital; that she got her Ultrasound done on 2.8.2014 and there was a healthy foetus of 12 weeks and 5 days but placenta was low line; that the police had got Medical Board constituted which had given in opinion as under :-

“In our opinion possibility of spontaneous abortion in this case cannot be ruled out. Possibility of spontaneous abortion due to low lying placenta in this case cannot be ruled out. Reasons for spontaneous abortion may be genetic factor, endocrine factors, anatomic factors, infections, immunological and others, in relation to mother/fetus or both.”

According to the revisionist, no charge for offence under Section 313 IPC is made out. Accordingly, with regard to offences under Sections 406, 354 IPC there are only vague allegations, therefore, the present Criminal Revision Petition be accepted, the impugned order passed by SDJM Tosham directing framing of charge and charge sheet be quashed.

I have heard learned Senior counsel for the petitioners besides going through the record.

The petitioners are basically aggrieved by the order passed by Additional Sessions Judge, Bhiwani dated 10.7.2018 directing framing of charge for offences under Sections 354, 498A, 506, 313 and 406 IPC against accused. Law is well settled that charge can be framed on the basis of strong suspicion even.

Section 227 Cr.P.C. provides that if upon consideration of

record of the case and the documents submitted there with and after hearing the submissions of accused and the prosecution in this behalf the Judge considers that there is not sufficient grounds for proceeding against the accused, he shall discharge the accused and record his reasons for so doing. The Court is to see whether there is a case for trial of the accused as per allegations set up by the prosecutrix. It is not to be seen whether the trial would end in conviction or acquittal. The only thing to be seen is whether from the challan and documents attached there with there exist suspicious circumstances against accused warranting his standing trial. It is subjective satisfaction of the Judge concerned. If the Judge finds the charge to be groundless then order of discharge is to be passed supported by reasons whereas for framing of charge reasons need not be given. The trial Court has placed reliance upon judgment “Omvati versus State (Delhi) Administration 2001(2) RCR(Criminal)255” that the detailed circumstances showing existence of prima facie case against the accused for the offences in question are not required to be set out while framing charge. Section 228 Cr.P.C. deals with framing of charge. It provides that if after such consideration of record of the case and hearing the submissions of accused and the prosecution the Judge is of the opinion that there is ground for presuming that accused had committed an offence then charge against the accused may be framed. In light of the criteria set out in these provisions the order framing charge against the accused can certainly stand judicial scrutiny and taken to be legal and valid.

The main grouse of the petitioner is with regard to framing of charge under Section 313 Cr.P.C. and report by Medical Board dated

1.4.2016 has been referred to giving opinion that possibility of spontaneous abortion in this case cannot be ruled out. However, these things can be taken into consideration during the trial and cannot be given undue importance and weighage at the time of deciding the question whether formal charge for offence under Section 313 IPC is to be framed or not when from the statement made by the victim and other oral and documentary evidence prima facie offence stands disclosed. It may be mentioned here that petitioners have filed two Revision Petition simultaneously one before this Court and one before the Court of Sessions, where the order dated 11.4.2018 committing the case to the Court of Sessions on account of the fact that Section 313 IPC is exclusively triable by the Court of Sessions has been challenged. That Revision Petition is pending. The petitioner could wait for decision of such Revision Petition. Since they might have redressed their grievances but they have opted to approach this Court also challenging the order framing charge including that for offence under Section 313 IPC against them.

I do not find any merit in the Criminal Revision Petition, therefore, the same stands dismissed.

(H.S. MADAAN)
JUDGE

August 08, 2018

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No