

\$~13

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 27th November, 2018

+ CRL.M.C. 4051/2016

SEEMA KUMARI

..... Petitioner

Through: Mr. Purushottam Sharma
Tripathi, Mr. Mukesh Kumar
Singh, Mr. Amit, Ms. Vani
Vyas & Mr. Mohit Kaushik,
Advts.

versus

STATE & ANR.

..... Respondents

Through: Mr. Sanjeev Sabharwal, APP for
the State with ASI Ravinder
Kumar, PS Pandav Nagar,
Delhi.
Dr. M.Y. Khan, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner was married to the second respondent on 22.02.2011 as per Hindu Rites and Ceremonies in New Delhi. Out of their cohabitation, a girl child took birth on 01.04.2012. It appears the marital relations turned sour and the petitioner (the wife) was constrained to approach the Crime against Women Cell (CAW) on 08.10.2013 with allegations of she having been subjected to cruelty on account of illicit demands of dowry by the second respondent (the husband). The said complaint eventually resulted in first information report no. 626/2014 being registered by police station Badarpur on

24.10.2014 involving offences under Sections 498A/406/34 IPC. The said case is pending trial against the second respondent (the husband).

2. While the aforementioned complaint was pending inquiry, the second respondent (husband) presented a petition under Section 9 of Hindu Marriage Act, 1955 on 30.07.2013 against the petitioner wife. On 24.12.2013, some tentative settlement took place in terms of which the petitioner wife agreed to live with the respondent/husband in the matrimonial home i.e. Mayur Vihar, New Delhi. It is stated by the wife that on 24.01.2014, she was taken by the husband to a rented premises and not to the matrimonial home in Kotla Village where she was again subjected to cruelty during the continued cohabitation. Thereafter, the petitioner /wife again conceived, the pregnancy being about 14-16 weeks old sometime around 28.06.2014.

3. On 28.06.2014, the wife was taken to Lal Bahadur Shastri Hospital Khichripur at about 1.45 a.m. in the night with history of assault. It appears that she had suffered incised wound on the left wrist joint. She accused the husband of having caused the said injury and, on her complaint, supported by the observations in the medico legal report, the police registered FIR no. 502/2014 involving offence under Section 324 IPC. The petitioner remained in hospital till she was discharged on 04.07.2014. On 05.07.2014, she was again brought to the hospital with complaint of bleeding per vagina. Some treatment was administered but the pregnancy did not last and there was miscarriage on the next day, in the hospital. The petitioner/ wife had alleged physical assault and the police added the offence under

Section 315 IPC to the FIR No. 502/2014 on the basis of supplementary statement recorded on 14.07.2014, the gravamen whereof would be that it was the husband who had committed certain acts (physical assault) with intent to prevent the child from being born alive.

4. The police concluded its investigation into FIR no. 502/2014 and filed a report under Section 173 Cr.P.C. on 05.03.2016 and in the criminal case arising therefrom, the respondent/husband is facing trial on charge for offences under Sections 324 and 315 IPC.

5. On 23.09.2014, the respondent/husband presented an application under Section 156 (3) Cr.P.C. primarily alleging that the miscarriage that had occurred on 06.07.2014 was on account of acts of commission or omission on the part of the petitioner wife and, thus, seeking direction to the police to register an FIR and investigate. On 27.03.2015, he moved an application requesting that the complaint case (97/2014) be treated as a complaint case under Section 200 Cr.P.C. It appears that the Metropolitan Magistrate granted this modified request and gave opportunity to the respondent/husband to adduce evidence by holding pre-summoning inquiry under Section 200/202 Cr.P.C.

6. In the pre-summoning inquiry, the respondent/husband examined five witnesses. They would include the respondent/husband himself (CW-1); Head Constable Manoj Kumar (CW-2); Dr. Anuradha Mishra (CW-3); Dr. Deepti (CW-4); and Dr. Aparna Chaturvedi (CW-5). It may be mentioned here that the last three

witnesses are the medical officers of the Lal Bahadur Shastri Hospital, Khichripur where the petitioner/wife had been taken on 28.06.2014 with history of assault leading to the first FIR being registered and again on 05.07.2014 with the history of bleeding per vagina which was followed by the event of miscarriage during hospital treatment on the next date.

7. The Chief Metropolitan Magistrate on 17.08.2016 considered the material submitted before him during the pre-summoning enquiry and passed the following order:-

“I have heard the arguments on the summoning on the last date of hearing.

The complainant/CW-1 Abhimanyu Kumar deposed on the material aspects as under:

“ I got married with accused No.1 Seema on 22.02.2011. On 30.07.2013 I filed a petition u/sec. 9 of Hindu Marriage Act to being the accused no.1 to back but accused no.1 lodged a false complaint dated 08.10.2013 in CAW Cell PS Srinivaspuri, New Delhi as counter case against me and my parents. Subsequently on 24.12.2013, the accused No.1 expressed her willingness to stay with me on the condition that she would not stay with my parents. On 20.01.2014, the accused No.1 apologies and agreed and stay with me and since then I and accused No.1 started at my above mentioned address.

Accused No.1 got admitted in LBS hospital Khichripur Delhi wherein the MLC report dated 28.06.2014 states that accused No.1 was conscious, her blood pressure was normal and the nature of injuries was simple and the accused No.1 also did

not attend for go to surgery room and doctor had also opined that the said injury on her left wrist had already got healed on the same very day. Despite that accused No.1 remained in the hospital from 28.06.2014 to 04.07.2014 and the complaint in this regard was lodged by me on 30.06.2014.

In the discharged report of accused No.1 dated 04.07.2015, the doctor further opined that accused No.1 was 14 weeks pregnant, her OS was closed and that the ultrasound report of her abdomen was also normal.

It is pertinent to mention that accused No.1 was not reported to have any injuries on her abdomen in her complaint being FIR No. 502/14 PS Pandav Nagar u/sec 324 IPC or that there were no signs of any hemorrhage on her placenta which would have been the direct and natural consequence of any kind of assault or trauma allegedly caused to the accused No.1. Rather in the discharged slip dated 11.07.2014, it is mentioned the said miscarriage took place took due spontaneous expulsions of male abortus.

In the present case, no other opinion can be arrived at other than that the said miscarriage had been caused after taking medicines by the accused no.1 in connivance with other accused persons.

At the time of discharged of accused no.1 from hospital 04.07.2014 “the Foetus was fine inside the womb”.

That the accused persons in-conspiracy with each other have killed the un-born child of mine so as to prevent the said child from being born alive and therefore have committed the offences u/sec 315 r/w 120 B IPC”.

On the basis of the aforesaid statement of the complainant and other witnesses supported by medical evidence, I am of the opinion that prima facie the present case discloses an offence u/s 315 IPC against accused no.2 Seema only. The aspect of good faith is a matter of defence which can be considered during or after conclusion of trial. The allegations of conspiracy leveled against other accused persons are general and the same are not sufficient to summon them. Accordingly, on filing of PF and a complete set of documents, summons be issued to accused no.2 returnable for 03.11.2016”.

8. It is clear from the above-mentioned order that the Metropolitan Magistrate has not even considered the import or effect of the evidence of CW-3 to CW-5, the medical officers. It is also clear that the Metropolitan Magistrate primarily went by “*the opinion*” of the complainant/husband that the miscarriage could not have been caused except “*after taking medicine*”, it being also added that in doing so the petitioner/wife would have acted “in connivance with other accused persons”.

9. As has been shown from the material on record, at the time of discharge from the hospital during the first stint – post admission in the wake of injury suffered by assault on 28.06.2014 – the placenta was lying low. In this context, the observations of Dr. R.K. Sharma, in the medical papers with opinion “*placenta posterior, Grade 0, covering OS*” only need to be referred. There is an admission on the part of CW-3 that she had not examined the petitioner/wife at the time of her discharge on 04.07.2014 or at the time of admission on 05.07.2014. The opinion given by her – vide document Mark ‘T’ – about the foetus being fine inside the womb, thus, is based on no

material. The evidence of CW-4 and CW-5 conjointly shows that the petitioner/wife was brought to the hospital on 05.07.2014 with complaint of abdomen pain and bleeding per vagina and it was during hospital treatment that she suffered miscarriage, it being described by the medical officers “ *spontaneous expulsion*”.

10. The allegations of the complainant/husband that the above event could not have been brought about except as a result of some medication being administered, is his suspicion. Criminal law cannot be set in motion on mere suspicion. There has to be cogent material or evidence to support the allegation.

11. In the above facts and circumstances, the summoning order passed by the Chief Metropolitan Magistrate suffers from serious error, it having resulted in abuse of the process of law which cannot be permitted to continue.

12. Thus, the petition is allowed. The impugned order is set aside. The proceedings in the aforesaid criminal complaint case initiated by the second respondent are hereby quashed.

13. Since the petitioner/wife had made counter allegations against the second respondent accusing him of being responsible for the miscarriage, the trial against him on the averments of physical assault being the cause for such miscarriage being presently underway, it is clarified that nothing in this order will be treated as expression of opinion on merits of such allegations.

14. The petition and the application filed therewith are disposed of.

R.K.GAUBA, J.

NOVEMBER 27, 2018

nk

