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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-7807-2019

Date of Decision : February 27, 2019

Bimal and others

.... Petitioners

Versus

State of Haryana and another

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by Mr. Parveen Kumar Rohilla, Advocate,
for the petitioners.

SHEKHER DHAWAN, J.

Present petition under Section 482 of the Code of Criminal Procedure is for quashing order dated 19.1.2019 (Annexure P/3) passed by learned Judicial Magistrate Ist Class, Karnal whereby Section 316 IPC has been added in the FIR and the case has been committed to learned Sessions Court, Karnal for trial.

2. Learned counsel for the petitioners contended that initially FIR No. 393 dated 3.11.2016 was registered under Sections 323, 452 and 506 IPC at Police Station Madhuban, District Karnal on the statement of complainant – respondent no.2, namely, Prem Pal. The complainant and other persons have been given severe and merciless beatings to the petitioner in the same occurrence on 30.10.2016 with their respective weapons, i.e., *gandasi, lathi and iron rod etc.* and they were also medically examined in CHC, Indri. Subsequently, learned trial Magistrate added

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Section 316 IPC as well and the case has been committed to the Court of learned Sessions Judge, Karnal for trial, though there is no such material or evidence available on the file.

3. Learned counsel for the petitioners further contended that as per Post Mortem Report, there was no injury mark and the fetus was of age of 5 - 6 months only and as such, there was no applicability of Section 316 IPC to the present case.

4. Having considered the submissions made by learned counsel for the petitioner and appraisal of the record of this case, this Court is of the considered view that learned Magistrate while passing the impugned order has rightly considered the fact that Suleen, who was pregnant was at the time of occurrence and "she was quick with unborn child" was given beating with leg blows in her stomach which ultimately resulted in miscarriage.

5. The requirement of Section 316 IPC is not of causing injury with any sharp edged weapon or any such like weapon, rather "any act" will bring the offence punishable under Section 316 IPC. For ready reference, Section 316 IPC is extracted below:-

"316. Causing death of quick unborn child by act amounting to culpable homicide.—Whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

6. It is beyond doubt that Suleen was pregnant woman. Allegations are that injuries with leg blows were given to her which resulted into death of quick unborn child. Learned Magistrate has considered that the incident had taken place on 30.10.2016 and the death report of quick

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unborn child is of 5.11.2016 and on that basis, the matter ought to be tried by the Court of Sessions as Section 316 IPC is triable by the said Court and committed the same to the Court of Sessions.

7. There is no merit in the present petition and the same stands dismissed in *limine*.

(SHEKHER DHAWAN)
JUDGE

February 27, 2019
som/komal

Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes