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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 23.08.2019

+ CRL.REV.P. 731/2017

STATE NCT OF DELHI

..... Petitioner

Through: Mr. Hirein Sharma, APP for State
with SI Dharamvir Singh, PS – CWC,
Nanak Pura

versus

JATIN KAPOOR

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

CRL.M.A 16081/2017 (Exemption)

1. Allowed, subject to all just exceptions.
2. This application is, accordingly, disposed of.

CRL.REV.P. 731/2017 and CRL.M.A 16080/2019

3. Vide the present revision petition, the petitioner – State seeks setting aside the part of the order dated 04.05.2017 whereby the respondent was discharged for offence U/s 313 IPC and consequently direct framing of charges U/s 313 IPC.
4. The present revision petition is filed on the ground that learned trial court while passing the impugned order dated 04.05.2017 ignored the fact that there is a specific allegation in the complaint of the complainant that the

accused-respondent did not want the child as he was afraid that if the child is born, the complainant may claim 2/3rd share in his properties and assets.

5. Learned trial court also ignored the fact that the complainant in complaint dated 10.06.2013 and statement under Section 161 Cr.P.C. had categorically attributed that on the intervening night of 5/6 June, 2011, she was hit on her abdomen by her husband and she was dragged out of the bed as a result thereof her condition worsened and she had to go to the hospital in this regard wherein doctor told her to go to shelter home or to her parent's house in India.

6. Learned Additional Public Prosecutor appearing for the petitioner-State submits that the Ld. ASJ erred while not, appreciating the fact that the complainant was forced to bring more dowry and when she refused, she was humiliated and subjected to cruelty.

7. He submits that based upon the allegation in the complaint, the learned Judge is bound to frame the charge under Section 313 IPC and if any clinching evidence is with the respondent / accused, he may take the benefit of the same during the trial.

8. It is not disputed by the petitioner that initially FIR No. 106/2013 was registered under Section 498A/406/34,IPC 02.07.2013 on the complaint of

the complainant whereby, she has alleged that once her marriage was fixed with accused in December, 2010, different demands were made by his family members qua venue of functions associated with marriage. Further, though her father spent about 2 crores on her marriage, but parents of accused were not happy. Further, after marriage, she stayed with accused and his family at Delhi for about one month and after that she went to her husband to U.K. The respondent had demanded ₹ 50,000/- in U.K. from her and when she refused, she was beaten by him. Meanwhile, her father-in-law also came to U.K. and they also quarrelled with her and beaten her. Then she came to India in February, 2011 to attend her brother's marriage and went back to U.K. Thereafter, she became pregnant, but she was not well and doctors in U.K. advised her to go back to India because accused-respondent wanted her abortion done in U.K. In the month of June, 2011, she returned to her parents at Delhi. Her father suffered minor heart attack when she informed them about different incidents of cruelty. Moreover, her condition deteriorated so much that her mis-carriage happened. Further, efforts were made to settle the disputes, but to no avail and she was not permitted to stay with accused-respondent in U.K. However, she went to U.K. for her studies and resided separately but she did not report the said incidents of quarrels

and beating at U.K. as it could hamper her studies.

9. During investigation, supplementary statement of complainant was recorded whereby she disclosed that immediately after her marriage, accused-respondent and his parents kept her jewellery with them at Delhi house on the pretext of keeping it in safe custody, but it was not returned despite repeated requests. Further, she added that accused-respondent too came to India to attend the marriage of her brother and he returned to U.K. on 22.02.2011. She returned to U.K. after two months on 22.04.2011 and thereafter, she stayed with her guardian because of her coming examination. When she informed her husband about her pregnancy on 20.05.2011, he took her to his place from her guardian's place, but since then he started pressurizing her for abortion and one day, after getting annoyed on the issue of abortion, he gave a fist blow on her abdomen and since then she started having pain in her abdomen. Subsequently, offence under Section 313 IPC was added in the case by the police.

10. The medical reports of U.K. qua pregnancy of complainant have been attached along with charge sheet. Though, the learned counsel for the respondent has questioned the admissibility of these medical reports, however, genuineness of these reports was confirmed by the concerned I.O.,

through e-mail and trial court was of the view that these could be looked into at this stage of charge and the question of admissibility can be decided during trial, if required. As per the allegation, the respondent landed a fist blow on her abdomen few days after 20.05.2011 when she disclosed about her pregnancy and thereafter, she had to go to London hospital on 07.06.2014 on account of bleeding.

11. The learned trial Court perused the clinical notes of U.K. hospital which established that the complainant had disclosed to doctor that there have been arguments between her and her husband recently and they used to hit each other while fighting and screaming but at the same time she denied any specific episode of injury/trauma. Accordingly, the trial Court opined that complainant had not alleged at that time that accused had hit her on her abdomen. There seems to be no reason as to why the complainant would hide such an important information, especially after knowing that because of the said act, the bleeding started during early stage of pregnancy, as alleged by her.

12. It is not the case of the complainant that she had not disclosed anything to the doctor about their matrimonial dispute. When complainant had frankly told the doctor that there had been arguments, fighting and even

hitting between them, her omission about disclosing the specific incident of punching her abdomen only indicate that there had been no such incident.

13. In view of the above, the learned trial Court recorded that when complainant has herself admitted that they used to hit each other, without alleging hitting at abdomen, no inference can be drawn that accused had hit complainant with the intention to cause injury resulting into mis-carriage. Moreover, complainant while indulging in fighting and hitting with her husband knowing well that she was pregnant. In that condition, even an accidental injury can be fatal for fetus.

14. In view of the facts recorded above, this Court is of the view that there is no illegality and perversity in the order of the learned ASJ by not framing charge under Section 313 IPC against the respondent. However, this Court hereby makes it clear that if during trial, clinching evidence comes before the trial Court, the Court may take action at that stage as per the law.

15. In view of the above, the present revision petition is dismissed not only on merit but also on the ground of delay and laches. Pending application also stands disposed of.

(SURESH KUMAR KAIT)
JUDGE

AUGUST 23, 2019

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