

Form J(1)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

CRR 3167 of 2022

**Durga Garodia and others
Vs.
The State of West Bengal & Anr.**

Mr. Sourav Chatterjee
Ms. Subhasree Patel
Ms. Saini Das
..for the petitioners

Ms. Baisali Basu
...for the State

Item No.164ML

Heard & Judgment on: 09.09.2022

Bibek Chaudhuri, J.

The petitioner No.3 is the husband and remaining petitioners are matrimonial relations of the opposite party No.2.

Indisputably, marriage of the opposite party No.2 was solemnized with the petitioner on 15th February, 2015. Immediately after marriage she conceived some time in the month of June, 2015. It appears from the medical report of the opposite party No.2, copy of which has been annexed with the instant revision that the opposite party No.2 went on abortion voluntarily at ILS Hospitals, Salt Lake on 17th July, 2015. She was aborted. Subsequently, on 22nd December, 2018 the opposite party No.2 gave birth to a child under the wedlock between her and the petitioner No.3. She again conceived sometimes in the month of February, 2021. The opposite party No.2 decided voluntarily to terminate her pregnancy and it was terminated by Dr. Gitasree Mukherji attached to Bhagirathi Neotia, Woman & Child Care Centre on 23rd February, 2021. Subsequently, there was marital discord. The opposite party No.2 filed an application under the Protection of Women from Domestic Violence Act before the competent Court of the learned Magistrate on 16th December, 2021. In the said proceeding she did not make any allegation that she was forcibly terminated. Subsequently, on 13th May, 2022 she lodged a complaint before Golf Green Police Station against the petitioners alleging offence under Sections 498A/406/313/34 of the Indian Penal Code against the petitioners. It is submitted on behalf of the petitioners that when the prescription and medical examination report

dated 18th June, 2022 shows that the opposite party No.2 voluntarily agreed to terminate her pregnancy by medicine and she was explained by the Medical Officer regarding the risks that might be incurred by her, the allegation under Section 313 of the Indian Penal Code prima facie cannot stand.

Having heard the learned advocate for the petitioners this Court is of the view that the instant revision can be disposed of here and now with the assistance of learned advocate for the State of West Bengal.

Ms. Baisali Basu, P.P.-in-charge is requested to assist this Court.

I have heard the learned advocates for the petitioners and the learned P.P.-in-charge.

The instant revision is disposed of giving liberty to the petitioner No.3 to produce a copy of the instant revision to the Investigating Officer within three days from this date. The Investigating Officer shall verify the medical reports of the opposite party No.2/de facto complainant contained at page 36 (annexure P-2) and page 40 (annexure – P3) and will independently ascertain as to whether a case under Section 313 of the Indian Penal Code is made out against the petitioners or not.

If no such case is made out, investigation of Golf Green Police Station Case No.92 of 2022 shall be proceeded with following the decision of **Arnesh Kumar versus State of Bihar**.

Till the date of ascertainment of the application as to whether prima facie case under Section 313 of the Indian Penal Code has been made out against the petitioners or not, no coercive step shall be taken against the petitioner No.3.

The petitioners are at liberty to act on the server copy of this order.

(Bibek Chaudhuri, J.)