

IN THE HIGH COURT AT CALCUTTA**Criminal Revisional Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****C.R.R. No. - 3233 of 2018****With****IA CRAN 1 of 2021****IN THE MATTER OF****Manindra Kumar Mitra & Ors.****Vs.****The State Of West Bengal & Anr.****For the Petitioners : Mr. Asis Bhattacharyya, Adv.,****For the State : Mr. Imran Ali, Adv,
Ms. Debjani Sahu, Adv.****Judgment on : 22.09.2022****Subhendu Samanta, J.**

The instant Criminal Revision has been preferred against order dated 19.09.2018 passed by Learned Fast Track Court Cooch Behar in reference to Sessions Case No. 435 of 2013 U/s 313/498A/406/506/34 of IPC.

The de facto complainant/OP No. 2 lodged a written complaint with Tufanganj Police Station on 12.07.2009 against the present petitioners and her husband. Present petitioners are the in-laws. Upon receiving the

complaint Tufanganj P.S Case No. 227 of 2009 and 498A U/s 313 IPC has been started. The investigation of the police is ended in charge sheet against all the accused persons U/s 498A/313 IPC vide charge sheet No 305 of 2009 dated 30.11.2009.

The present petitioners being in-laws submitted one application before the Learned court below U/s 227 of CrPC. for discharging them against the offence punishable U/s 313 of IPC.

Learned Court below rejected the petition by passing impugned order.

Hence this instant criminal revision.

Learned Advocate for the petitioner submitted that the marriage between the de facto complainant and accused Biswajit Mitra solemnised on 15.10.2013. according to the Special Marriage Act. Out of their wedlock one male child was born. After marriage the de facto complainant and the accused Biswajit Mitra were living separately to their parents. The allegation in the FIR are false and concocted in respect of allegation under Section 313 CrPC. The statement in the FIR cannot be construed to be true as the date mentioned in the FIR i.e. "30th Magh 1415 BS", actually never exist. Any allegation of forceful abortion is against the prime accused Biswajit Mitra but the present petitioner being the in-laws had no role to play in respect of the allegation U/s 313 IPC.

The framing of charge against the present petitioner U/s 313 of IPC. is not maintainable. He further argued that the prosecution has not collected any materials regarding the offence committed U/s 313 CrPC.

During the course of investigation prosecution has collected medical prescription of one Dr. Satish Sarkar. But from the said medical prescription the fact of abortion could not be substantiated.

He further argued that the medicine prescribed in the said prescription is not the medicine by which the pregnancy can be terminated medically. On the basis of such grounds he argued that there are no evidence against the present petitioners to frame charge U/s 313 CrPC. So he prayed, the petitioners may be discharged from the alleged offence punishable U/s 313 IPC.

In support of his contention Learned Advocate for the petitioner cited two decisions One of Kerala High Court in **Moideen Kutty Haji & Ors. Vs. Kunhikoya & Ors.** The cited paragraph 5 of the said judgment.

He also referred one judgment of **Chattishgarh High Court passed in Avtesh Shroti & Ors. Vs. State.**

Learned Advocate appearing on behalf of the State submitted that during the course of investigation the I.O has collected sufficient materials against the present petitioners regarding their involvement in the alleged offence. The medical prescription of the doctor would suggest that at the time when the de facto complainant visited the doctor she was very weak. The FIR clearly notifies that the husband with the instigation other in-laws forcefully administered a medicine to the de facto complainant to terminate her pregnancy. He further argued the CD contains different materials including statement of available witnesses recorded under Section 161 CrPC

wherefrom the involvement of the present petitioner in alleged offence punishable under Section 313 of IPC is glaring.

He further argued that the Learned Court below has committed no error in passing impugned order thus the order cannot be set aside.

Heard the Learned Advocates peruse the CD. Perused the seizure list and the medical prescription of Dr. Satish Sarkar. On perusing the written complaint it appears to me that after marriage there were allegation of physical and mental torture upon the de-facto complainant by the husband and in-laws on the demand of dowry. Thereafter, she was driven out from her matrimonial home when she was only 7 months pregnant and she took shelter at her father's house with her son. Again she was called back to her matrimonial home on the ground that her husband was ill and she again start living with her husband on her matrimonial home. During that period she again became pregnant. Her husband with the instigation of other in-laws forcefully administered some medicine to her to terminate her pregnancy. Thereafter, her pregnancy was terminated and she became very weak.

The above mentioned allegation in the FIR clearly labelled the involvement of the in-laws in the present case in respect of the alleged offence punishable under Section 313 IPC. On perusing the statements of available witnesses, it transpires that some of the witnesses stated in tune to the FIR case. The statements in the FIR regarding instigation by in-laws to the husband for forceful commission of miscarriage to the victim and the statement U/s-161 CrPC supporting the same facts are sufficient materials

to frame charge against the present petitioners (in-laws) U/s-313 IPC. Mentioning wrong date in the FIR, the distant place of residence of the available witnesses, the correctness of the medical prescription can not be ascertained at this initial stage of framing of charge. Which can only be ascertained at the time of trial.

The judgment of Hon'ble Kerala High Court and Hon'ble Chattisgarh High Court clearly envisaged the principle that for the commission of offence under Section 313 IPC the definition of causing miscarriage with consent defined U/s 312 and ingredients thereof must be satisfied. The non-consent of the woman is very much essential to constitute an offence U/s 313 of IPC.

In both the cited cases the doctor has caused termination of pregnancy and whether it was done under the consent of the woman, was the question. In the present case the miscarriage was allegedly forcefully committed by the husband by forceful administering some medicine. So this case is quite different to the cited cases.

Considering the entire materials on record and considering the CD placed before this Court it appears to me that impugned order passed by the Learned Court below suffers no illegality or impropriety. There are sufficient materials to frame charge against the present petitioner U/s 313IPC.

In result thereof, the instant Criminal Revision has got no merit to entertain.

Thus, The Criminal Revision 3233 of 2008 is dismissed.

The impugned order passed by the Learned Court below dated 19.09.2009 in Sessions case 335 of 2013 is hereby affirmed.

Order of stay passed by this court if any, is hereby also vacated.

The instant Criminal Revision along with connected CRAN application if any is also disposed of.

Let a copy of this order be sent down to the Learned Court below for his information and necessary action.

(Subhendu Samanta, J.)