

**107 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR-2272-2022

Date of Decision: 29.10.2022

Asha Sharma

..... Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Virender Kumar, Advocate, for the petitioner.

Rajesh Bhardwaj, J.

The present revision has been filed by the petitioner assailing the order dated 30.9.2022, passed by the learned Additional Sessions Judge, Karnal, whereby, application under Section 227 Cr.P.C. for discharge of petitioner from the offence under Section 313 IPC was declined. Another prayer has been made for quashing of the charge-sheet dated 30.9.2022, whereby, charges have been framed by the trial Court under Sections 313, 323 and 506 IPC.

As per the facts of the case, FIR No.520 dated 19.10.2020, under Sections 323, 34, 506 IPC at Police Station Sector-32-33, Karnal was lodged by the complainant. It was alleged that the complainant was pregnant and on 9.10.2020 at about 8:00 pm, she was attacked by a woman Asha and her son Madhav, who gave her kick and fist blows on her abdomen and head. During investigation, the complainant produced evidence pertaining to her pregnancy, which was allegedly terminated on account of the injuries given by the accused to her and on the basis of the same offence under Section 313 IPC was added. The petitioner-accused filed the application under Section 227 Cr.P.C. for her discharge from the offence under Section 313 IPC, however, the same was declined by the learned trial Court vide

impugned order dated 30.9.2022. Aggrieved by the same, the petitioner has approached this Court by way of filing the present revision petition.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely and frivolously implicated by the complainant in this case. He has submitted that the petitioner side has already lodged an FIR No.490 dated 10.10.2020, under Sections 294, 323, 34, 354-B, 452, 509 IPC, at Police Station Sector-32-33, Karnal against the complainant and as a counter blast to the same, the complainant has filed the present FIR. He has submitted that the allegations in the FIR were investigated and on completion of investigation, the son of petitioner was found innocent, and challan was filed against the petitioner. He has submitted that initially FIR was lodged under Sections 323, 34 and 506 IPC and thereafter, Section 312 IPC was added but subsequently, Section 312 IPC was deleted and offence under Section 313 IPC was added by the Police in connivance with the complainant. He submits that the Police has filed challan under Section 173 Cr.P.C. without any ultrasound report regarding the pregnancy of the complainant before the alleged occurrence dated 9.10.2020. He has submitted that the complainant stated that she was having two months pregnancy and she remained mum from 9.10.2020 to 13.10.2020. He submits that the complainant manipulated the medical reports while appearing before the Civil Hospital, Karnal on 13.10.2020. He has submitted that on account of the manipulation, the complainant has implicated the petitioner for the offence under Section 313 IPC. He has submitted that *prima facie* from the MLR produced, offence under Section 313 IPC is not made out, but the learned trial Court has failed to appreciate the same and thus, illegally declined the application filed by the petitioner

under Section 227 Cr.P.C. and went wrong in framing the charges vide order dated 30.9.2020. He has relied upon the judicial precedent passed by Hon'ble Supreme Court in Sanjay Kumar Rai vs. State of UP and another, 2021(2) RCR (Criminal) 813 SC. He submits that weighing the facts and circumstance of the case on the anvil of the law settled, the impugned order dated 30.9.2020 deserves to be set aside.

Heard.

The complainant lodged the FIR, wherein, allegations pertaining to beating and giving kicks and fist blows on her abdomen were levelled. There is a specific assertion by the complainant that she was pregnant at the time of occurrence. Though the FIR was lodged for the offence under Sections 323, 34 and 506 IPC, however, during investigation MLR of the relevant dates were produced by the complainant, contending that due to the injuries caused by the petitioner, she suffered termination of her pregnancy. MLR produced would reflect injuries suffered by the complainant. Dr. Gargi Aggarwal, Asstt. Prof. (Gynae KCGMCH) has also opined that “there are multiple causes of abortion and one of the causes may be physical assault/trauma and exact cause/reason of abortion cannot be defined in this case”.

Needless to say that at that time of framing of charges, the Court is not supposed to weigh the evidence and is to see whether on the basis of material produced *prima facie* case for framing charges is made out against the accused or not. In all humility, there is no dispute regarding the law laid down by Hon'ble Supreme Court in Sanjay Kumar Rai's case (supra), however, in the facts and circumstance of the present case, the same is distinguishable. Learned trial Court has considered the facts and the

material produced by the prosecution and on the basis of the same, it is found that *prima facie* case for framing charges under Section 313 IPC is made out against the petitioner and hence, application filed under Section 227 Cr.P.C. is declined and charges are framed. As discussed above, the Court is to see only whether *prima facie* case is made out against the petitioner or not. This Court is supported by the decision of Hon'ble Supreme Court in Sajjan Kumar v. CBI (2010) 9 SCC 368, wherein while discussing the scope of Sections 227 and 228 Cr.P.C., the following principles were laid down:

“(i) The Judge while considering the question of framing the charges under Section 227 Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a *prima facie* case against the accused has been made out. The test to determine *prima facie* case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

- (v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.
- (vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.
- (vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

Evaluating the facts and circumstance of the present case on the anvil of the law settled, this Court is of the opinion that the view taken by the learned trial Court does not suffer from any infirmity, hence, the present petition being devoid of any merit is hereby dismissed.

Nothing said herein shall be treated as an expression of opinion on the merits of the case.

29.10.2022			(RAJESH BHARDWAJ)
sharmila			JUDGE
	Whether Speaking/Reasoned	:	Yes/No
	Whether Reportable	:	Yes/Nos