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

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Date of decision: 20th July, 2023

+ CRL.REV.P. 754/2023, CRL.M.A. 18853/2023 (Ex.), CRL.M.A. 18852/2023 (delay 72 days in filing)

ANKITA JAIN

..... Petitioner

Through: Mr.Manish Kr. Singh and Ms.Tanya
Nayyar, Advocates.

versus

THE STATE & ORS.

..... Respondents

Through: Mr.Ritesh Kumar Bahri, APP for the
State.
SI Nishant, PS Roop Nagar.**CORAM:****HON'BLE MR. JUSTICE AMIT BANSAL****AMIT BANSAL, J. (Oral)**

1. The present revision petition has been filed impugning the order dated 25th January, 2023 passed by the learned Additional Sessions Judge (ASJ), Central, Tis Hazari Courts, whereby the accused respondents no.2 to 6 were discharged of charges under Section 313 of the Indian Penal Code, 1860 (IPC) in FIR No.209/2018 under Sections 498A/406/313/323/509/34 of the IPC, registered at Police Station Roop Nagar.



2. Brief facts culminating into the filing of the present revision petition are that on the complaint of the petitioner, FIR No.209/2018 was registered at Police Station Roop Nagar, wherein the petitioner had made allegations of, *inter alia*, being subjected to mental harassment, cruelty and physical assault on account of demands of dowry from the accused respondents no.2 to 6. It was also specifically alleged by the petitioner that on 17th November, 2017, the respondent no.2/husband of the petitioner and respondent no.4, despite having knowledge of the pregnancy of the petitioner and with the intention of removing her from the house, physically pushed her, which caused her to fall and consequently suffer a miscarriage.

3. Subsequently, investigation was carried out and charge sheet was filed.

4. The Trial Court, while dropping charges under Section 313 of the IPC, framed charges against the accused respondents no.2 to 6 under Sections 498A/406/323/509/34 of the IPC and the matter was remanded to the Court of Chief Metropolitan Magistrate.

5. Counsel for the petitioner impugns the order dated 25th January, 2023 on the ground that medical documents on record clearly show that the petitioner suffered a miscarriage. It is further submitted that the question of whether or not the miscarriage was caused on account of the actions of the accused is a matter which can only be determined in trial and therefore, the Trial Court should have framed charges under Section 313 of the IPC.

6. *Per contra*, learned APP submits that there was no material on record in support of charges under Section 313 of the IPC. He further submits that for



framing of charges under Section 313 of the IPC, there has to be scientific evidence on record. Therefore, he defends the impugned order passed by the Trial Court.

7. I have heard the counsels for the parties and have examined the material on record.

8. At the outset, reference may be made to the following observations of the Trial Court:

“I had the privilege of assistance rendered by Dr. Divya Goel, who was the consulting doctor. Dr Divya Goel apprised this Court that the complainant/victim for sure suffered miscarriage, however, she submits that without ultrasound report made available to her, she cannot confirm about the exact date of miscarriage and she also cannot confirm the exact cause of miscarriage. Evidently, in the case at hand, there is a missing link between the alleged assault and the alleged miscarriage. For reasons best known to the complainant/prosecution, ultrasound reports dated 18.11.2017, 23.11.2017 and 30.11.2017 have not been placed on record. Upon specific inquiry, the complainant submits that no ultrasound was carried out on 18.11.2017 and 23.11.2017. Despite specific advice given by the doctor on 18.11-2017, no ultrasound was conducted upon the complainant. It is baffling that on 23.11.2017, the consulting doctor, without insisting upon the previous ultrasound report, perfunctorily advised medication and once again advised fresh ultrasound to the complainant. Still further, even on 30.11.2017, the complainant approached the consulting doctor Ms Divya Goel without any ultrasound report and once again she was advised for a fresh ultrasound. Evidently, there is a gap of about 13 days between the alleged assault and the detection of the alleged miscarriage. It is not in dispute that during these 13 days, victim was residing in her parental home with her parents. Consequently, a void appears in the prosecution version and the



causal link between alleged assault of 17.11.2017 and alleged miscarriage seems to be mired under a cloak of surmises and conjectures. Hon'ble Delhi High Court in State (GNCT of Delhi) Vs Jai Kishan@ Jony & Ors. Crl. Rev No. 440/ 2015 decided on 18.07.2016, under similar circumstances has observed here as under:-

"9. I have heard learned Additional Public Prosecutor for the State at length and gone through the available records. The arguments advanced by learned APP for the State; the material available before the Court and the order passed by the learned Sessions Judge discharging the accused under Section 313 CrPC and remanding the matter back to the learned Metropolitan Magistrate, demonstrate that there were plain allegations with regard to the miscarriage of the victim. The material produced before the learned Magistrate was not found to be sufficient to hold a prima facie view that the miscarriage was the result of the act done by the accused persons. No doubt, the allegations of the miscarriage had been made against the accused persons, the same were not corroborated by the medical record rather the medical prescription slip which was produced, does not show any indication expressly or impliedly that miscarriage was the result of any injury caused by the accused persons. It would be essential for the prosecution to show from the medical record that it was a case of medico legal implication and no MLC had been produced in the Court. Apparently, this Court is of the considered opinion that mere oral allegations without any corroboration with other evidences, would not be sufficient to hold the accused prima fade guilty for the offence of miscarriage." (Emphasis Supplied)



Evidently, in the case hand, important medical documents i.e. Ultrasound reports dated 18.11.2017, 23.11.2017 and 30.11.2017 are missing and the gap between the alleged assault and miscarriage seems to be mired under a cloak of surmises and conjectures. Thus, I am of the considered view that accused persons cannot be charged for commission of the offence under Section 313 IPC only on the basis of suspicion. The material on record leaves much to be desired. I am of the considered opinion that no prima facie case under Section 313 IPC is made out against the accused persons.”

9. A perusal of the above extracts from the impugned order demonstrates that the Trial Court had specifically noted the statement of the treating doctor to the effect that she could neither confirm the date of miscarriage nor the exact cause of miscarriage in the absence of the ultrasound report.

10. It is relevant to note that the issue to be determined is not whether the petitioner suffered a miscarriage but whether the miscarriage suffered by the petitioner was on account of the actions of the accused respondents no.2 to 6.

11. It has been noted in the impugned order that the ultrasound reports of 18th November, 2017, 23rd November, 2017 and 30th November, 2017 were missing. The learned ASJ has also correctly placed reliance on the judgment dated 18th July, 2016 of this Court in Crl. Rev. No. 440/2015 titled *State (GNCT of Delhi) v. Jai Krisha n@ Jony & Ors.* to observe that there has to be sufficient material on record for the Trial Court to hold a *prima facie* view that the miscarriage occurred on account of the actions of the accused persons. Furthermore, it is a settled position of law that the Court has to apply its mind in order to consider whether there is sufficient ground to make out a *prima*



facie case against the accused, which cannot be done on the basis of mere allegations, particularly when evidence is absent for the purpose of trial. In the present case, as noted above, there are no medical documents on record which can attribute the miscarriage suffered by the petitioner to the actions of the accused persons. Therefore, in my considered view, there is no infirmity in the impugned order.

12. Accordingly, the present petition is dismissed.

13. All pending applications stand disposed of.

14. Needless to state that any observations made herein are purely for the purposes of deciding the present revision petitioner and shall not be construed as an expression on the merits of the case.

AMIT BANSAL, J.

JULY 20, 2023

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