

IN THE COURT OF AJAY K. VERMA, ADDL. SESSION'S JUDGE
PANIPAT (UID NO. HR0488)

CIS No.CRR-33 of 2020.

Criminal Revision no. RBT-42 of 2020.

Date of Institution: 25.02.2020/28.02.2020.

CNR No.HRPP01-001475-2020.

Date of Decision: 29.03.2023.

1. Dr. Anita Tandon wife of Dr. Ramesh Tandon, resident of Tandon Hospital, Tehsil Road, Behind Civil Hospital, Panipat.
2. Smt. Rajni wife Shri Sanjay Kumar, resident of House No. 769/6, Ramesh Nagar, Tehsil Camp, Panipat.

....Revisionists/accused.

Versus

State of Haryana

.....Respondent.

REVISION PETITION AGAINST THE ORDER DATED
19.12.2019 PASSED BY SHRI JATIN GARG, LEARNED CHIEF
JUDICIAL MAGISTRATE, PANIPAT IN CASE FIR NO. 99
DATED 21.01.2016 UNDER SECTIONS 3, 4 & 5 OF MEDICAL
TERMINATION OF PREGNANCY ACT, 1971 REGISTERED IN
POLICE STATION CITY, PANIPAT

Present: Shri Pushpinder Pal Singh, Counsel for the revisionists-accused.
Shri Kuldeep Dhull, Public Prosecutor for State-respondent.

JUDGMENT

This revision petition has been preferred against the order dated 19.12.2019 passed by the court of Shri Jatin Garg, the then learned Chief Judicial Magistrate, Panipat in case FIR No. 99 dated 21.01.2016, under Sections 3, 4 & 5 of Medical Termination of Pregnancy Act, 1971 registered in Police Station City, Panipat vide which the revisionists have been ordered to be charge sheeted under Section 312 read with Section 511 and Section 34 IPC.

2. For the sake of convenience, the parties shall be referred to here

(Ajay K. Verma)
ASJ,PPT/29.03.2023.

as per their original status before the learned trial court.

3. Brief facts of the case relevant for the purpose of disposal of the present revision petition are that a complaint was received by the police from Sudhir Batra, Civil Surgeon, Panipat to the effect that on 21.1.2016 a team was constituted by D.C. Panipat and Civil Surgeon, Panipat comprising the Duty Magistrate Hari Om Attri, Dr. Sudhir Batra, Deputy Civil Surgeon, Panipat, Dr. Shalini Mehta, Medical Officer and Parvinder Malik, DCO, Panipat. The team sent a decoy to the mediator namely Rajni (revisionist no.2). They took the decoy to Tandon Hospital for medial termination of pregnancy. When the decoy and the mediator reached Tandon Hospital along with attendant, they were directed to purchase the injection Fortwin and Ondatop. Before the doctor could inject loaded Fortwin, the team reached the spot and at once caught Dr. Anita Tandon (revisionist no.1) along with the patient lying on the MTP table. ₹3000/- currency notes were recovered from the mediator on the spot, which currency notes bore the signatures of the Duty Magistrate. The team also recovered instruments used in MTP section, the medicines and loaded injection of Fortwin, Ondatop, 5 MI Dispovan and cotton wool from the spot. The team checked the OPD register of the hospital wherein the name of the Decoy patient was not entered. The people from the locality were requested to become witnesses and two of them became ready. It was complained that Dr. Anita Tandon's Hospital was not registered under the MTP Act. The entire raid proceedings were conducted in presence of police. However, seizing an opportunity, Dr. Anita Tandon ran away from the

spot. The complainant requested that FIR be registered against the doctor and the mediator and necessary action be taken against them. Consequently, a case was registered and investigated. Upon completion of investigation, the challan was submitted against the revisionists for offences punishable under Sections 4 ad 5 of MTP Act.

4. After presentation of the challan in the court, copies of challan were supplied to the accused free of costs. On finding a prima facie case for commission of offences punishable under Sections 4 and 5 of Medical Termination of Pregnancy Act, 1971, Smt. Harshali Chowdhary, the then learned Chief Judicial Magistrate, Panipat vide order dated 31.03.2018, served charge-sheet upon the respondents-accused accordingly, to which they pleaded not guilty and claimed trial.

5. Feeling aggrieved from the order dated 31.03.2018, the revision petition had been preferred by the revisionists-accused and same was *Partly Allowed by the Court of Shri Sumit Garg, the then Id. Additional Sessions Judge, Panipat.*

6. Thereafter, revisionists-accused were again charge-sheeted under Section 312 read with Section 511 IPC by the Court of Shri Jatin Garg, the then, Id. Chief Judicial Magistrate, Panipat vide order dated 19.12.2019.

7. Feeling aggrieved from the order dated 19.12.2019, the present revision petition has been preferred by the revisionists-accused.

8. It is submitted in the revision petition and it is argued by learned counsel for the revisionist that as per the ingredients of Section 312 IPC, there

must be a woman with a child whose miscarriage is caused or attempted to be caused. The charge framed by the Id. Trial Court is vague and without any basis in the absence of any woman carrying a child and there is no evidence to this effect. It is further argued that revisionist no.1 was earlier posted as Deputy Civil Surgeon in Civil Hospital, Panipat and had also been as officiating Civil Surgeon for many months. Complainant Dr. Sudhir Batra was also working in Civil Hospital, Panipat and during the tenure of posting of revisionist no.1, complainant Dr. Sudhir Batra was annoyed from revisionist no.1 due to distribution of work and was looking opportunity to teach a lesson to revisionist no.1. After retirement, revisionist no.1 started working as Medical Officer in Rajeev Colony Dispensary, Panipat. She neither carried out any medical termination of any pregnancy of any patient nor on that day she had carried any termination as stated above. It is argued that the learned trial Court acted in a casual manner and passed a non-speaking order. He further placed reliance on case law titled as Dr. Renu Bansal Vs. State of Haryana CRM-M-32213 of 2011 (O&M) decided on 21.03.2014. Hence, it is argued that the impugned order is liable to be set aside, the revision petition deserves to be accepted and the revisionist-accused are liable to be discharged for commission of offence punishable under Section 312 read with Section 511 of IPC.

9. Per contra, it is argued by learned Public Prosecutor for State that the observations as made by learned trial court while passing the impugned order were well reasoned. Hence, it is argued that there is no merit in the

revision petition and the same is liable to be dismissed.

10. I have heard learned counsel for the revisionist-accused and learned Public Prosecutor and have perused the record carefully.

11. It is well settled law that truth, veracity and effect of evidence which the prosecution proposes to adduce are not to be meticulously adjudged at the stage of framing of charge. The standard of test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise is not exactly to be applied at the stage of framing charge and at such stage even a very strong suspicion found upon materials before the Magistrate, which leads him to form a presumption/opinion as to the existence of the factual ingredients constituting the offence alleged may justify the framing of charge. At the stage of framing charge, court has to prima-facie consider whether there is sufficient ground for proceeding against the accused and the court is not required to appreciate evidence and arrive at the conclusion that materials produced were sufficient or not for convicting the accused. Where charge is framed by a trial court, Higher court cannot go into correctness and sufficiency of material and give conclusive finding about the matter. Ordinarily, it is left to the trial court to alter or modify any such charge at an appropriate stage based on material produced by evidence. Learned Trial Court, at the time of framing charge, 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. The court may, 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. In State of Maharashtra Vs. S.B.Johari and others 2000(1) Apex Court Journal 400 (S.C.), it was held that *the charge could be quashed if the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted, cannot show that the accused committed the particular offence and in that case, there would be no sufficient ground for proceeding with the trial.*

Applying this position of law to the peculiar facts of the present case, it could be stated that the revisionists-accused in this case has been charge-sheeted for the commission of offence punishable under Sections 312 read with section 511 of IPC by learned Trial Magistrate vide order dated 19.12.2019. Seemingly, the present FIR has been registered on the complaint of complainant Dr. Sudhir Batra who along with his team sent a decoy to the mediator named Rajni (revisionist no.2) and they took the decoy to Tandon Hospital for her medical termination of her pregnancy, however, before the doctor could inject loaded Fortwin injection, the team reached the spot and caught Dr. Anita Tandon (revisionist no.1). On the basis of said complaint, a FIR u/s 3, 4 and 5 of Medical Termination of Pregnancy Act, 1971 was lodged. After framing charge under said Sections, present revisionist had filed a revision petitioner which was Partly Allowed by the court of Sh. Sumit Garg, the then Ld. Addl Sessions Judge and thereafter, accused-revisionist were again charge-sheeted under Section 312 read with Section 511 IPC. Now

before we deal with the varies of the impugned order, it would be relevant to discuss the bare proviso of Section 312 IPC.

Section 312 IPC :-

“Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine”.

12. As per the case of complainant/prosecution, they sent a decoy for apprehending the revisionist-accused. Admittedly, the said decoy was not pregnant and no miscarriage was caused with her. However, as per the ingredients of the said Section, there must be a woman with a child whose miscarriage is caused. However, this aspect had not been taken into consideration by learned Trial Magistrate while framing charge vide order impugned herein. Apart from this, there was no Medical Evidence present on record of trial court's record showing that any miscarriage was ever caused by the revisionist no.1. Further, the said charge is not applicable qua respondent no.2 because allegedly she was only a mediator. However, still at the time of framing charge under this section, it was barely expected from the learned trial Court, to have considered the ingredients as enshrined in Section 312 IPC. As such, I am of the considered opinion that keeping in mind the facts emanating from the instant FIR no charge under Section 312 read with section

511 IPC ought to have been framed. Further, Hon'ble Punjab and Haryana High Court in case titled Dr. Renu Bansal Vs. State of Haryana CRM-M-32212 of 2011 (O&M) has held that *in the case at hand, the petitioner has been sought to be indicted in the crime on the allegations that some instruments used for termination of pregnancy, were found in the labour room in Bansal Nursing Hospital during a raid, conducted by a team of doctors. However, during investigation of the case, no evidence has been collected that Dr. Renu Bansal, petitioner ever conducted termination of pregnancy. No person can be held guilty for committing a crime on the basis of assumptions and presumptions. This apart, there is nothing on record suggestive of the fact that these instruments are not used for conducting delivery or any other medical precision much less used only for termination of pregnancy.*

Similar observations has also been made by Hon'ble Punjab and Haryana High Court in case titled as Dr. Vandana Malik Vs. State of Haryana CRM-M-15860 of 204 (O&M) and Dr. Manisha Vs. State of Haryana CRM-M-30622 of 2014.

13. The above said judgments, are fully applicable to the facts and circumstances of the present case, In such circumstances, in my opinion, learned Trial Court committed an error in framing charge under Section 312 read with Section 511 of IPC against the revisionists-accused because the challan and accompanying documents did not make out any prima-facie case as to the commission of offence punishable under these sections. Therefore, impugned order suffers from material illegality to the extent to which charge

under Section 312 read with section 511 of IPC was framed as against the revisionists-accused and the revision petition deserves to be allowed.

14. No other point has been urged before me.

15. In view of the above discussion, revision petition succeeds and is hereby allowed. Impugned order dated 19.12.2019 is set-aside to the extent to which charge under Section 312 read with Section 511 of IPC was framed against them. Learned Chief Judicial Magistrate, Panipat is directed to proceed further in accordance with law. Revisionists-accused are directed to appear before learned Trial Court on the date fixed.

Trial Court's record along with a copy of this judgment be sent back and revision file be consigned to the record room after due compliance.

Pronounced in open Court on
29.03.2023.

(Ajay K. Verma)
Addl. Sessions Judge,
Panipat.(UID-HR0488).

Certified that all the Nine pages of this order
have been checked and signed by me.

(Ajay K. Verma)
Addl. Sessions Judge,
Panipat.(UID-HR0488).
29.03.2023

Typed by
Himanshu,
Stenographer G-II

(Ajay K. Verma)
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Present: Shri Pushpinder Pal Singh, Counsel for the revisionists-accused.
Shri Kuldeep Dhull, Public Prosecutor for State-respondent.

ORDER

Arguments heard. Order pronounced.

Vide my separate detailed order of even date, the present criminal revision stands allowed. Trial Court's record alongwith a copy of this judgment be sent back and revision file be consigned to the record room after due compliance.

Announced in open court.
29.03.2023

(Ajay K. Verma)
Addl. Sessions Judge, Panipat,
UID No.HR0488

Himanshu, Stenographer G-II