

CNR No. WBUD01-003030-2024

JO Code-WB00993

Sessions Case No.283/24

05/02.07.2025

Today is fixed for consideration of charge.

All the three accd persons on bail are present by filing hajira.

Ld P.P in charge and Ld. Defence Counsel are present.

Heard both sides.

Ld P.P in-charge submitted that charge sheet has been filed against all the 3 accd persons in respect of offences punishable u/s. 448/323/506/313/34 IPC.

Out of all these sections, only section 313 IPC is Sessions triable in nature. All other offences are Magistrate Triable. But as, one of the offences alleged is sessions triable, the entire case in respect of other offences also becomes fit to be tried by this court. For this reason, charge should be framed in respect of all the sections.

Ld defence counsel raised objection. It is submitted by Ld defence counsel that the allegation against the accused persons is that they assaulted the victim while she was pregnant. As a result of such assault, the victim suffered miscarriage. Ld defence counsel emphasised that if this allegation and the prima facie materials available on record are considered, then in such situation, the offence comes under the ambit of sections 312 IPC and not sec 313 IPC.

Ld defence counsel further submitted that sec- 312 IPC is a Magistrate triable section. In such a situation, the entire case becomes Magistrate triable. So, this case should not be tried in the court of sessions.

Ld defence counsel accordingly prayed for passing necessary order.

I have perused the entire care record.

I have also perused the FIR, charge sheet and other documents available on record.

I have perused the CD including medical reports.

It appears that there is medical document available in the CD from which a prima facie presumption of assault upon the victim resulting in miscarriage, may be drawn.

But the question here remains is whether such offence false within the purview of sec- 312 IPC or sec-313 IPC.

Sec- 312 IPC deals with causing offence of miscarriage. Sec- 313 IPC deals with causing miscarriage without woman's consent. For convenience, the sections are reproduced here.

312. Causing miscarriage – *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.*

Explanation – *A woman who causes herself to miscarry, is within the meaning of this section.*

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313. Causing miscarriage without woman's consent. - *Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.*

In this case, the allegation is of voluntarily causing miscarriage by assaulting the victim in such a manner that resulted in the miscarriage. Therefore, it fits within the definition of the offence as provided in sec- 312 IPC.

But here, the thing to be noted is that such kind of miscarriage was caused without the consent of the woman. Due to the absence of consent, the offence of miscarriage in such situation would fall within the category of sec-313 IPC.

Now as sec.313 IPC is sessions triable, the entire case becomes sessions triable in nature. Therefore, the trial shall be commence in this court after framing of charge.

Fix 22.09.2025 for framing of charge. All the accused persons are directed to remain present.

D/C by me.

Judge,

ADJ,FTC-I

