

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.44997 of 2012

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Sangeeta Devi

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Bipin Bihari Singh

For the Opposite Party/s : Mr. Surendra Kumar (App)

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 23-04-2015

Heard learned counsel for the petitioner.

This application has been filed under Section 482 Cr.P.C. for quashing the order dated 19.09.2012 passed by Additional District Judge, Samastipur in Sessions Trial No.134 of 2012 arising out of Samastipur (Town) P.S. Case No.576 of 2007 whereby the court below rejected the application filed by the petitioner under Section 227 Cr.P.C.

It appears that on the basis of the F.I.R., the aforesaid police case was initiated against the accused persons including the present petitioner. The allegation was made that this petitioner along with 4-5 persons were seen coming on a Bolero vehicle with the deceased Pawan Kumar. In the next morning the informant's uncle Pawan Kumar was found dead, therefore, the informant doubted that the accused persons and the petitioner by giving poison to the deceased murdered him. Cognizance was taken and

then the matter committed to the Court of Sessions.

At the time of framing charge, an application under Section 227 Cr.P.C. was filed by the petitioner for discharge. By the impugned order, the court below has rejected the application.

The learned counsel for the petitioner submitted that in Annexure-2 the High Court has found that there is absolutely no evidence against the petitioner and that on suspicion only the petitioner has been made accused in the case. The learned counsel further submitted that in fact the petitioner has been falsely implicated.

Perused the order, Annexure-2.

It appears that the order has been passed in anticipatory bail application filed by the petitioner. Therefore, on the basis of any observation made by this Court in anticipatory bail application, it cannot be made the basis for quashing the order which was passed by the court below on the basis of the materials available on record. From perusal of the impugned order, it appears that the court below after perusal of the case diary recorded a finding that this petitioner had got relation with the deceased for last three years and the petitioner was giving programmes and the deceased was taking her to the programmes i.e. cultural programme. The F.S.L. report was obtained wherein it

was found that the cause of death is because of administration of poison.

The Hon'ble Supreme Court in the case of Rishipal Singh Vs. State of U.P., (2014) 7 Supreme Court Cases 215 has held that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made in the complaint prime facie establish the case, and High Court should not convert itself into a trial court and dwell into disputed questions of fact. If allegations leading to criminal prosecution prima facie do not disclose or constitute offence then power under Section 482 Cr.P.C. can be exercised, however disputed questions of fact cannot be decided like trial court. In the present case, from perusal of the impugned order, it appears that prima facie case was found against the petitioner. In exercise of jurisdiction under Section 482 Cr.P.C., therefore, this court cannot covert itself into a trial court and then record a finding at this stage that the petitioner's prosecution is abuse of process of court. For framing charge, strong suspicion is also sufficient. The court below after perusal of the case-diary recorded the finding that there is sufficient material for framing charge, therefore, I find no reason to interfere with the order passed by the court below.

Accordingly, this criminal miscellaneous application is
hereby dismissed.

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(Mungeshwar Sahoo, J)

