

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 10346 of 2013

Arising out of P.S.Case No.-1571 Year-2009 Thana-BEGUSARAI COMPLAINT CSAE District-

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1. Ram Balak Thakur, S/O Late Jageshwar Thakur, R/O Village - Narain Piper, P.S. - Cheira Bariarpur, Distt. - Begusarai
 2. Mithilesh Devi, W/O Ram Balak Thakur, R/O Village - Narain Piper, P.S. - Cheira Bariarpur, Distt. - Begusarai
 3. Nigam Devi, D/O Ram Balak Thakur, R/O Village - Narain Piper, P.S.- Cheira Bariarpur, Distt. - Begusarai
 4. Ajit Kumar @ Rajesh Kumar @ Rajesh Kumar Thakur, S/O Ram Balak Thakur, R/O Village - Narain Piper, P.S. - Cheira Bariarpur, Distt. - Begusarai
 5. Saket Kumar Thakur, S/O Ram Balak Thakur, R/O Village - Narain Piper, P.S. - Cheira Bariarpur, Distt. - Begusarai
 6. Jawahar Kumar Sharma @ Jawahar Sharma, S/O Yogendra Sharma, R/O Village - Narain Piper, P.S. - Cheira Bariarpur, Distt. - Begusarai
 7. Pratima Devi, W/O Jawahar Sharma, R/O Village - Narain Piper, P.S. - Cheira Bariarpur, Distt. - Begusarai

.... Petitioners

Versus

1. The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioners : Mr.

For the Opposite Party : Mr. Shailendra Kumar-I(App)

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL ORDER

2 14-05-2015

Heard learned counsel for the petitioners and the learned counsel for the State.

This is a petition for quashing the order dated 11.03.2011, passed by the Sub-Divisional Judicial Magistrate, Begusari in Complaint Case No. 1571C of 2009 by which process has been issued holding that the prima facie case is made out for the offence under Section 304B of the Indian Penal Code.

It is alleged that the marriage of petitioner no. 5 was



solemnized with Punam Kumari, the complainant on 06.06.1997 but the complaint was filed on 16.06.2009. It is further alleged that the complainant was subjected to cruelty for non-fulfilment of the demand of dowry and she was threatened to kill. On 06.06.2009 the complainant informed his father then his father came but was not allowed to meet the complainant. However, the accused persons with intention to kill the complainant started pressing her neck after putting cloth in her mouth and on raising hulla she could be saved, thereafter, her father took her to his house, i.e., her Naihar where she has been living but was not allowed to take her articles so a complaint was filed by the victim-complainant under Section 498 and 304 and allied Sections of the Indian Penal Code. However, the complainant died at her Naihar during enquiry.

However, on the complaint, the complainant was examined on oath but died during enquiry and, thereafter, the witnesses were examined under Section 202 of the Code of Criminal Procedure where it has been stated that the victim died on 01.09.2009 at Naihar and the cognizance has been taken under Section 304B of the Indian Penal Code.

Learned counsel for the petitioners submits that the victim died at her Naihar after lodging the complaint and the complaint does not mention about the death of the victim. It is



further submitted that the marriage of the complainant was solemnized on 06.06.1997 and death is in 2009 after more than seven years and not in connection with subjecting cruelty soon before her death for non-fulfilment of demand. Hence, the ingredients for the offence under Section 304B of the Indian Penal Code is not fulfilled though cognizance has been taken under Section 304B of the Indian Penal Code and process has been issued against the accused persons under Section 304B of the Indian Penal Code holding that the prima facie case is made out against the petitioners.

The ingredient for the offence under Section 304B of the Indian Penal Code requires that the death must have been within seven years of the marriage and the death of the victim in consequence of subjecting cruelty soon before the death in connection with demand of dowry. The statement of the witnesses in inquiry that complainant died out of the illness in her Naihar and not in connection with subjecting cruelty for non-fulfilment of demand soon before her death and hence, it appears that the learned Magistrate has not taken into consideration the aforesaid fact and without due application of mind has taken cognizance of the offence when occurrence took place after seven years of marriage.

Hence, having regard to the aforesaid fact, the order taking cognizance is without due application of mind as the ingredients of offence under Section 304B of the Indian Penal Code is not made out. Hence, the order dated 11.03.2011 passed by the Sub-Divisional Judicial Magistrate, Begusari in Complaint Case No. 1571C of 2009 is quashed and the case is remanded back to pass order afresh, as it is alleged that the death of the complainant took place after more than seven years.

With this observation, this petition is disposed of.

(Gopal Prasad, J.)

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