

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.20645 of 2015

Arising Out of PS.Case No. -246 Year- 2008 Thana -JAHANABAD District- JEHANABAD

1. Sanjay Kumar Verma, son of Late Sonu Lal

2. Madhuri Devi wife of Late Sonu Lal

Both residents of Mohalla - Barhi Sangat, Police Station - Jehanabad in the town and district of Jehanabad.

.... Petitioners

Versus

1. The State of Bihar.

2. Balkeshwar Prasad son of Late Ram Kishun Sao, resident of village - Hasua Bazar, Police Station - Hasua in the district of Nawada.

.... Opposite Parties

Appearance :

For the Petitioner/s : Mr. Akhileshwar Prasad Singh, Sr. Advocate

For the Opposite Party/s : Ms. Anita Kumari, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 23-06-2015

This application under Section 482 of the Code of Criminal Procedure (For short “the Cr. P.C.”) has been filed for quashing the order dated 17.03.2015 passed by the learned Ad hoc Additional Sessions Judge-I, Jehanabad in Sessions Trial No. 470 of 2008/476 of 2013 arising out of Jehanabad P.S. Case No. 246 of 2008 by which the application filed by the petitioners under Section 227 Cr. P.C. seeking discharge from the case has been dismissed.



2. According to the first information report, the daughter of the informant, namely, Neelam Kumari @ Munni Kumari was married to the petitioner no. 1 Sanjay Kumar Verma in December, 2001, and only after few months of the marriage, said Sanjay Kumar Verma, his father Sonu Lal, mother Madhuri Devi and sisters Ruby and Lucy started demanding Rs. 1, 00,000/- as dowry. As the demand being made by the husband and in-laws could not be fulfilled due to poverty, the daughter of the informant was regularly being subjected to mental and physical cruelty. It has further been alleged that in November, 2007, Rs. 50,000/- was paid by the informant to the petitioner no. 2 Madhri Devi but despite that the accused persons continued to humiliate and harass his daughter. On 26.07.2008 a relative of the informant, namely, Kapil Prasad intimated him on phone that the accused persons had severely assaulted his daughter and her condition was critical. On receipt of the aforesaid information, when the informant went to the matrimonial home of his daughter, the accused persons tried to escape from their house. It has been alleged that on inquiry made by the informant regarding the whereabouts of his daughter Neelam Kumari @ Munni Kumari, the accused persons could not give any satisfactory reply. Thereafter, the informant went inside the house and found the dead body of his daughter in the courtyard of the

house. The informant has claimed that the accused persons killed his daughter due to non-fulfilment of demand of dowry and while they were trying to dispose of the dead body, he reached at the place of occurrence.

3. Having received the aforesaid written statement of the informant, the police registered Jehanabad P.S. Case No. 246 of 2008 under Sections 304-B read with 34 of the Indian Penal Code against five persons including the two petitioners and took up investigation of the case.

4. After completing the investigation, the police submitted its report and the petitioners were sent up for trial for the offence under Section 498A of the Indian Penal Code. However, after taking into consideration the materials available on record of the case, the learned Chief Judicial Magistrate, Jehanabad took cognizance of the offences punishable under Sections 498A and 304B of the Indian Penal Code vide order dated 21.10.2008.

5. The order taking cognizance was challenged by the petitioners before this Court in Cr. Misc. No. 49993 of 2008 which was dismissed vide order dated 25.02.2014. The petitioners challenged the aforesaid order dated 25.02.2014 before the Supreme Court in S.L.P. (Crl.) No. 19574 of 2014. It would appear from perusal of the impugned order dated 17.03.2015 that the petitioners

withdrew the special leave petition filed before the Supreme Court.

6. At the stage of charge, an application under Section 227 Cr. P.C. was filed by the petitioners before the trial Court seeking their discharge from the case. The trial court rejected the prayer of the petitioners vide order dated 17.03.2015 which is under challenge in the present application.

7. Learned counsel for the petitioners has submitted that since the police had found the case to be true only under Section 498A of the Indian Penal Code, the Court of Magistrate was not justified in taking cognizance under Section 304-B of the Indian Penal Code. He has further submitted that as a matter of fact the victim was married to petitioner no. 1 Sanjay Kumar Verma in 1999 and she died in 2008. Since the victim died after more than seven years of marriage, the essential ingredient for constituting an offence under Section 304-B of the Indian Penal Code is wanting in the present case.

8. On the other hand, learned counsel for the State has submitted that as per prosecution case the deceased was married to the petitioner no. 1 in December, 2001 and she died in other than natural circumstances within seven years of marriage. He has further submitted that the witnesses have fully corroborated the allegations made in the first information report in their statements recorded

under Section 161 of the Code of Criminal Procedure during investigation of the case and the medical report also corroborates the ocular version of the informant and witnesses.

9. I have heard respective counsel for the parties and perused the record.

10. Section 304-B of the Indian Penal Code has been introduced by Act 43 of 1986 with effect from November 19, 1986 by creating a new substantive offence. It reads as under:-

“304-B. Dowry death.-(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

Explanation.- for the purpose of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”

11. For making out an offence of dowry death under

Section 304-B of the Indian Penal Code, the following ingredients have to be proved by the prosecution:-

- (i) the death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances;
- (ii) such death must have occurred within seven years of marriage;
- (iii) soon before her death the woman must have been subjected to cruelty or harassment by her husband or any relative of her husband;
- (iv) such cruelty or harassment must be for or in connection with the demand of dowry;

12. Section 227 of the Code of Criminal Procedure confers special power on the Judge to discharge an accused at the threshold, if upon consideration of the records and documents he finds that there is no sufficient ground for proceeding against the accused. At this stage, consideration of the record and the document is for the limited purpose of ascertaining whether or not there is sufficient ground for proceeding against the accused. If the trial Judge comes to a conclusion that there is sufficient ground to proceed, he will frame charge under Section 228, and if not, he will discharge the accused.

13. In the case on hand, the trial Judge has assigned detailed reasons for dismissing the discharge petition filed under



Section 227 Cr. P.C. 13. He has discussed about the nature of allegation made in the FIR and the materials collected in course of investigation before recording his findings on merit. According to him, there are sufficient materials to show that the victim suffered an unnatural death in her matrimonial home within seven years of marriage and soon before her death, she was being subjected to cruelty for non-fulfilment of demand of dowry by her husband and his relatives. In the impugned order dated 17.03.2015, the court below has recorded that the witnesses examined in course of investigation have fully corroborated the prosecution case as alleged in the FIR. Their statements have duly been reduced in writing by the investigating officer of the case in paras 13, 14, 16, 17, 18, 19 and 51 of the case diary. The forensic test report of the viscera of the deceased would indicate that highly poisonous substance (celphos) was detected by the chemical analyst.

14. After evaluating the materials produced by the prosecution and after considering the probability of the case, I am of the opinion that the allegations made in the first information report have duly been corroborated by witnesses examined in course of investigation and the medical report fully corroborates the fact that the victim died due to poisoning. Further, the death of the victim occurred in her matrimonial home within seven years of marriage.

Under such circumstances, there was no reason for the trial court to discharge the petitioners under Section 227 Cr. P.C.

15. For the reasons aforesaid, the application, being devoid of any merit, is hereby dismissed.

(Ashwani Kumar Singh, J.)

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