

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.42866 of 2012

1. Sita Ram Prasad Singh @ Sita Ram Singh S/O Late Shiv Singh Resident  
Of Village- Dumduma, P.S.- Mashrakh, District- Saran (Chapra)

.... .... Petitioner/s

Versus

1. The State Of Bihar

.... .... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Udit Narayan Singh, Advocate with Mr.  
Gajendra Kumar Singh

For the Opposite Party/s : Mr. Choubey Jawahar, APP

CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL ORDER

2      21-05-2015                      This criminal miscellaneous petition filed under section  
  
482 of the Code of Criminal Procedure raises certain questions of  
  
general importance as regards the investigation of cases and trial  
  
in the State of Bihar.

2. The marriage between the petitioner and one Munni  
Devi took place on 17-6-2014 and they were blessed with  
children. Munni Devi suffered serious burn injuries on 11-11-  
2010, and she died on 15-11-2010 while undergoing treatment.  
The father of the deceased woman Munni Devi submitted a  
complaint before the concerned police station alleging that his  
daughter was put to death by the petitioner herein. On the basis of  
the same, Masrak P.S. Case No. 26 of 2011 was registered only on

26-3-2011. The Chief Judicial Magistrate, Saran at Chapra, took cognizance of the offence punishable under section 304(B)/34 of the Indian Penal Code through his order dated 21-6-2012. The said order is challenged in this criminal miscellaneous petition filed under section 482 of the Code of Criminal Procedure.

3. Learned counsel for the petitioner submits that the dying declaration of Munni Devi was recorded in the afternoon of 12-11-2010 by the Station House Officer(SHO) of the Masrak Police Station and in that declaration, Munni Devi has clearly stated that she suffered injuries due to flame that emanated from the stove, at the time of preparation of tea and that no one is responsible for the same; in that view of the matter, the very basis to register the case against the petitioner, does not exist.

4. The learned Public Prosecutor , on the other hand, submits that once the cognizance of offence under section 304(B) I.P.C. is taken, it is only in the trial court, that the truth or otherwise against the accused is decided.

5. After noticing the phenomenal increase in the offences against women, and in particular, in relation to matrimonial disputes, the Parliament stepped in and introduced section 304(B) stipulating that if the death of an woman occurs within seven years of her marriage, then the presumption shall be that the death is the



result of harassment by the husband and other family members towards the deceased woman. The issue is so sensitive that once the incident of that nature occurs, the police must unhesitatingly register a case, at the earliest, and then proceed to investigate. If, in course of investigation, it emerges that there was no complicity or criminality on the part of the accused shown in the first information report, necessary modification can be done. Unfortunately in the State of Bihar the provision is implemented more in breach. In the instant case itself, the F.I. R. was registered 4 ½ months, after the incident. In several cases where a woman died within seven years of marriage, virtually no interest is evinced by the police and that is utilised to manipulate facts and records, by the family members of the deceased. In the recent past this Court came across an instance where a case under section 304(B) I.P.C was registered after great effort made by the mother of the deceased woman, and without even arresting the husband of the deceased, a Senior Official of the Police Department has submitted a report to the effect that it is a mistake of fact. On the basis of the order passed by this Court, disciplinary proceeding have been initiated against the said officer.

6. Heavy reliance is placed upon by the learned counsel for the petitioner, on the alleged dying declaration of the deceased.



A perusal of the same discloses that it was recorded by the Station House Officer, and no assistance of a judicial officer was taken. The surprise of this Court is further aggravated when it is represented that there is no practice of intimation being given to the judicial officers for the purpose of recording the dying declaration. It is a serious lapse and gross dereliction of duty, on the part of the investigating agencies.

7. The Evidence Act attaches very limited importance to the acts done and steps taken by the police officers in a criminal case. It is only when the statement is recorded by a judicial officer, that a semblance of authenticity gets attached to it. The judicial officers are obliged as a duty, to record the dying declaration, even if the intimation is given at odd hours. At the time of recording dying declaration, necessary precautions are to be taken, such as the introduction of the officer to the victim, ascertainment of the condition of the patient from the doctor as regards the ability to speak or making statement, and then to inform the victim or the patient that he or she is free to speak truth and he or she does not have to be afraid of any one. Care is required to be taken to ensure that no one is present around the place where the required statement is recorded. When such is the requirement under law, giving complete go-by to the same is

unacceptable All the concerned agencies, including the Courts have to take the blame for it.

8. In case the statement is recorded by a Magistrate wherever it is possible, it would be so authenticated that very little scope exists for ignoring it. In contrast, the statement recorded by the police, even where it was possible for arranging the presence of a Magistrate , would suffer from the possibility of unacceptability.

9. On the facts of this case, this Court is not inclined to quash the order passed by the Chief Judicial Magistrate dated 21-6-2012 taking cognizance against the petitioner. Therefore, this criminal miscellaneous petition is dismissed.

10. However, the Director General of Police, State of Bihar is directed to issue general instruction to all the police stations of the State to the effect that: (1) when it is found that a woman died within seven years of her marriage, invariably a case under section 304(B) of the Indian Penal Code against her husband at the first instance, and against other family members, depending upon the allegations that are made in the complaint. It is only in course of investigation, that the relevant facts must be ascertained ;(2) whenever a person is found struggling for life after receiving injuries in a crime, the Station House Officer shall

take immediate steps to intimate the same to the immediately available Magistrate with respect to record the statement of such person, and the necessary arrangement for arrival of the Magistrate shall generally also be made, wherever necessary.

11. In this regard the Registrar General, Patna High Court, shall issue Circular to all the judicial officers in the rank of Magistrate that whenever they receive intimation from the police that a victim of a crime is struggling for life, they shall proceed immediately to the place and record the dying declaration of the victim duly following the procedure. The Registrar General shall also circulate the copies containing the procedure to be followed while recording dying declaration. He would also make it clear that the Magistrate shall proceed to the spot even if the intimation is received at odd hours.

12. Let a copy of this order be sent immediately to the Director General of Police, Bihar, Patna, and the Registrar General shall also be informed immediately.

B.KRoy/-A.F.R.

**(L. Narasimha Reddy,CJ)**

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