

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.388 of 2016

Arising Out of Patahi PS.Case No. -90 Year- 2014 Thana -PATAHI District-
EASTCHAMPARAN(MOTIHARI)

=====

1. Lal Babu Sah @ Lalbabu Sah son of Ramdayal Sah Resident of village -
Belahi Ram P.S. - Patahi, District - East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Sugandhi Devi wife of Lal Babu Sah residence of village - Belahi Ram,
P.S. - Patahi, District - East Champaran.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Sunil Kumar No.Iii

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

=====

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

6 10-05-2016

Heard learned counsel for the parties.

The petitioner who is languishing in custody since 29.9.2015 in connection with Patahi P.S. Case No. 90 of 2014, has preferred the present application with a prayer for bail in a case registered under sections 341,323,326,307 and 498A of IPC and sections 3 & 4 of Dowry Prohibition Act.

The prosecution case as per the written report of Sugandhi Devi is to the effect that she was married with the petitioner on 10.5.2009 but thereafter the petitioner and other family members started inflicting torture for non fulfillment of dowry demands. The petitioner and his parents put poisonous substance (Akawan Milk) in the eyes of the informant, as a result she lost her vision completely.



This Court vide order dated 5.1.2016 called for the case diary of Patahi P.S. Case No. 90 of 2014. On receipt of the case diary the learned APP pointed out that final report(chargesheet) has been submitted on conclusion of investigation under sections 326 and 307 of the Indian Penal Code without injury report on record, hence the Superintendent of Police, East Champaran at Motihari and the I.O. of Patahi P.S. Case No. 90 of 2014 were directed to be present before this Court with injury report with an explanation on affidavit for not collecting the same during investigation. The matter was fixed for 4th April, 2016.

On 5.4.2016, a show cause was filed on behalf of the Superintendent of Police, East Champaran to the effect that the I.O. collected information regarding treatment of the informant and the report of the doctor incorporated in paragraph 20 of the case diary but the same could not be placed before this Court. Statements made to that effect in paragraphs 4 and 5 of the show cause dated 5.4.2016 read as follows:

“4. That it is hereby mentioned that the I.O. has collected the information regarding the treatment from the doctor who had administered treatment to the victim lady. This aspect is mentioned in Para – 20 of the case-diary but the same could not be placed before the

Hon'ble Court.

5. That the police has collected report from the doctor who had administered treatment to the victim lady. Photo copy of the Injury Report is annexed herewith and marked as Annexure –A to this show-cause petition.”

From paragraph 20 of the case diary, it appears that it is neither injury report nor the doctor treated the informant.

Paragraph 20 of the case diary reads as follows:

“इस काण्ड में वादीनी सुगन्धी देवी पति लाल बाबु साह सा० पताही जि० पू० चम्पारण मोतिहारी का जख्म जाँच रिपोर्ट प्राप्त हुआ। जख्म जाँच रिपोर्ट में चिकित्सा पदा० ने निम्नवत लिखे।

I examined Sugandhi Devi w/o Lal Babu Sah age 25 yrs, village Belahi Ram, P.S. Patahi, Dist. East Champaran dated 13.9.14 at 28 P.M. and found this patient is old and treated case before 1 ½ months.”

The aforementioned recording in the case diary suggests the casual manner in which the Superintendent of Police, East Champaran filed the cause, hence vide order dated 5.4.2016 the District Magistrate, East Champaran, Superintendent of Police, East Champaran and the concerned Medical Officer were directed to file show cause as under what circumstances the actual injury report is not on record and what action has been taken against the



concerned Medical Officer, Investigating Officer and the supervising officer. The matter was fixed for 3.5.2016 when on the prayer made by learned counsel for the State, the matter was adjourned to 9.5.2016. Another show cause was filed on behalf of the Superintendent of Police, East Champaran dated 3.5.2016 where contrary stand was taken in para 4 of the show cause to the effect that the S.D.P.O., Pakridayal supervised the case and found the case true under sections 326,307 and 498A/34 IPC and sections 3 and 4 of Dowry Prohibition Act but the injury report at the relevant point of time was not available on record hence on the basis of oral evidence, he came to the conclusion that the case is true against the accused persons. However, he directed the I.O. to obtain injury report from the concerned doctor. The para 4 of the show cause reads as:-

“That the S.D.P.O., Pakaridayal supervised the case and in his Supervision Note vide his memo No. 184/15 dated 28.02.2015, found the case to be true u/s 326, 307, 498(A), 34 I.P.C and 3/4 of Dowry Prohibition act but the injury report on very point of time was not available on record but on the basis of oral evidence, he came to conclusion that the case is true against the accused

persons, however he seems to be cautious while directing the I.O. to obtain injury report connected with the victim”

Hence, on the basis of supervision note of SDPO, Report II was issued at the level of S.P. In paragraph 6 of the show cause just contrary stand was taken to the effect that SDPO, Pakridayal submitted final progress report vide memo no. 1397/15 dated 20.11.2015 wherein he has mentioned that the I.O. has obtained the injury report and the same is mentioned in paragraph 20 of the case diary and simultaneously he mentioned that investigation is complete and recommended for submission of charge sheet against the accused persons, accordingly Report III was issued directing submission of charge sheet. The paragraph no. 6 of show cause reads as:-

“That, the S.D.P.O, Pakridayal submitted Final Progress Report of the case vide his memo no. 1397/15, dated 20.11.2015, in which he mentioned that the I.O. has obtained the injury report and the same has been mentioned in Para 20 of the case diary no. 02, simultaneously he mentioned that the investigation is completed and he recommended

for submission of charge sheet against the accused persons and accordingly, the Report-03 was issued by the Superintendent of Police, Motihari directing the submission of chargesheet.”

In paragraph 7 of the show cause S.P admits that the SDPO, Pakridayal submitted final progress report without perusing the medical report mentioned in paragraph 20 of the case diary, hence explanation has been called for from the SDPO, Pakridayal. The paragraph no. 7 of the show cause reads as:-

“That, as per the directions of the Hon’ble Court Superintendent of Police, Motihari perused the record of the case and found that the S.D.P.O, Pakridayal, while supervising the case and submitting Final Progress Report did not pursue and analyze the so called medical report mentioned in Para 20 in the case diary no. 02. For this an explanation from the S.D.P.O, Pakridayal vide memo no. 4415/CR, dated 29.04.16 has been called for.”

Paragraph 8 of the show cause S.P admits that the I.O. wrongly acknowledged the statement of the doctor

recorded in para 20 of the case diary as injury report, hence a departmental proceeding has been initiated against the doctor. The para no. 8 of the show cause reads as:-

“That, the victim was sent for medical examination to which the doctor concerned submitted an evasive report dated 13.09.14 which the I.O. took to be an injury report out of his ignorance and he entered the same in Para 20 of the case diary no. 02. For this Superintendent of Police, Motihari passed an order vide memo no. 4414/CR, dated 29.04.16 initiating departmental proceeding against the I.O. concerned”

The Superintendent of Police, East Champaran further stipulates in paragraph 9 of the show cause that on 28.4.2016 he directed the S.H.O. Patahi for obtaining injury report and to start further investigation. The Medical Board was constituted and the informant was examined on 29.4.2016 which suggests that in the right eye there is optic atrophy due to congenital anomaly hence some abnormality was found in the eyes but at this stage the exact cause of abnormality could not be ascertained due to lapse of time.

This court vide its order dated 02.03.2016



recorded that final report was submitted without injury report but neither the I.O. nor the supervising officer SDPO nor the S.P. ever bothered to see that there is no injury report on record. The further investigation was directed in order to create an excuse to file show cause before this Court but no formal order to that effect has been brought on record to have been made by the Superintendent of Police, East Champaran nor the concerned learned Magistrate was informed for carrying further investigation under section 173(8) of the Code of Criminal Procedure as the investigation has already been concluded.

The District Magistrate, East Champaran has also filed show cause dated 2.5.2016 wherein it has been stated that the Civil Surgeon East Champaran has been directed to enquire into the matter and take appropriate action against the concerned doctor. Moreover the S.P. has been directed to take appropriate action against the concerned erring police officer.

The Doctor Prem Sagar Prasad in his show cause dated 3.5.2016 at paragraph 3 has stated that he found no injury on the person of the informant and since the patient produced photo copy of medical prescription of eye specialist dated 21.8.2014 and conveyed that treatment is going on, hence neither he treated the patient nor prepared the injury report.

Paragraphs 3 and 5 of the doctor's show cause read as follows:



“3.That above mentioned medical officer examined the above mentioned patient on 13.9.2014 and Patient complaint that she is old patient of eye problem and she any how wanted to procure injury report upon which present Doctor Examined her and found no such injury as alleged by police on forwarding letter of injured and on quarry patient shown and given photo copy of Medical Prescription of Dr. S.P. Yadav, Eye specialist Patna dated 21.8.14 and said that her treatment was going on. The true/photo copy of medical prescription dated 21.8.14 of Sugandhi Devi is annexed herewith and annexure – A.

5.That present medical officer was not an eye specialist and there was no fresh injuries was found on patient as alleged by police or patient and as per statement of patient and her earlier medical report there was no requirement of primary treatment therefore neither he treated her nor he prepared any medical report and on police forwarding endorsed the facts and also written in his injury register and also kept photo copy of medical prescription of patient in the register and further noted that “Patient is old and treated case before 1 ½ month.”

The show cause on behalf of Civil Surgeon, East Champaran dated 5.5.2016 suggests that the Medical Board was constituted but the Medical Board did not find the cause of

abnormality in the eye due to lapse of time. Though disciplinary action against the concerned doctor Prem Sagar Prasad has been recommended.

The above narrative will give a clear inkling to the Director General of Police, Bihar as how the police officers from the level of Sub Inspector/Inspector to Superintendent of Police are functioning, registering the case and investigating the same. It is high time that the Director General of Police, Bihar should streamline the system.

In view of the above, since the doctor has not found any injury nor treated the informant, considering the callous manner in which the investigation has been carried out and concluded, this Court is constrained to release the petitioner on bail. Accordingly, let the above named petitioner be released on bail on furnishing bail bond of Rs. 10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of learned ACJM – VIII, East Champaran at Motihari.

Let the copy of order be transmitted to D.G.P, Bihar and S.P., Nalanda.

(Dinesh Kumar Singh, J)

Shageer/Anil.

U		T	
---	--	---	--