

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.19199 of 2014

Arising Out of PS.Case No. -165 Year- 2013 Thana -KATIHAR District- KATIHAR

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1. Yog Narayan Jha, Son of Late Shila Nath Jha
2. Mira Devi @ Anmol Devi @ Hira Devi Wife of Yog Narayan Jha
3. Pranay Kumar Jha @ Pranay Jha Son of Yog Narayan Jha
All resident of village- Sonpur Ujan, P.S.- Sakatpur, District- Darbhanga
..... Petitioners

Versus

1. The State of Bihar
2. Vina Devi @ Vina Kumari W/o Late Krishna Kant Mishra, resident of village-
Bhushkaul, P.S.- Sadar, District- Darbhanga
..... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Bindhyachal Singh, Advocate
Subhash Kumar Jha, Advocate
For the Opposite Party/s : Mr. Aditya Narayan Singh-I, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 22-07-2016

By way of the instant application preferred under
Section 482 of the Code of Criminal Procedure, the petitioners seek
quashing of the first information report (for short 'FIR') of Katihar
P.S. Case No. 165 of 2013 registered under Sections 304-B and 34
of the Indian Penal Code.

It is submitted by the learned counsel for the
petitioners that in absence of any material during investigation, the
police submitted charge-sheet against the petitioners under Sections
304-B and 498-A of the Indian Penal Code. There is no allegation
in the FIR that soon before death, the victim was subjected to



cruelty for non-fulfilment of demand of dowry. It is also submitted that from perusal of the post-mortem report, it would be evident that the doctor did not find any external or internal injury on the body of the deceased. No definite opinion regarding cause of death was given by the doctor and the viscera was preserved for chemical examination. The investigating officer of the case sent the viscera to the Forensic Science Laboratory and the Forensic Science Laboratory report would also indicate that it was not a case of poisoning. On these grounds, learned counsel for the petitioners submits that there was no material before the Magistrate to take cognizance of the offence punishable under Section 304-B of the Indian Penal Code.

On the other hand, learned counsel for the State has submitted that there is allegation in the FIR that the victim was being subjected to cruelty by the husband and in-laws' in her matrimonial home for dowry. The materials collected in course of investigation were considered by the Magistrate at the time of taking cognizance of the offence and summoning the petitioners. So far as the offence punishable under Section 304-B is concerned, the petitioners may raise these plea before the court at the stage of framing of charge.

I have heard respective counsel for the parties.

I find substance in the submission made by the learned counsel for the State. On prima facie satisfaction about a cognizable offence having been taken, the Magistrate took cognizance and summoned the petitioners. However, the trial court would be in a better position to appreciate the arguments advanced by the learned counsel for the petitioners at the stage of framing of charge, as it would have the privilege of examining not only the post-mortem report and the viscera report, but also the statements of the witnesses recorded under Section 161(3) of the Code of Criminal Procedure.

In that view of the matter, the application is disposed of with liberty to the petitioners to raise all the points available to them at the stage of framing of charge and in case, such a plea is taken before the court below, the court below shall consider the same and dispose of the application preferred under Section 227 of the Code of Criminal Procedure by passing a reasoned order.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	
CAV DATE	N.A.
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