

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7894 of 2014

=====

Nurul Emam Son of Late Shah Alam Resident of Village - Gokula, Police Station -
Banjaria, District - East Champaran at Motihari.

.... Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, East Champaran at Motihari.
3. The Sub Divisional Magistrate (Sadar), East Champaran at Motihari.
4. The Block Development Officer, Banjaria, East Champaran at Motihari,
5. The District Statistical Officer-cum-Additional District Registrar, (Birth &
Death), East Champaran at Motihari.

.... Respondent/s

=====

Appearance :

For the Petitioner/s	:	Dr. Amrendra Kumar with Mr. Ravi Shanker Pankaj, Advocates
For the Respondent/s	:	Dr. Anil Kumar Upadhyay, SC 2 with Mr. Rohit Rajershi, AC to SC 2

=====

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 22-11-2016

Heard learned counsel for the parties.

The petitioner has moved the Court seeking a direction
for issuance of death certificate of his father who was kidnapped on
09.01.2005 and since then has become traceless.

Learned counsel for the petitioner submitted that
pursuant to kidnapping of his father on 09.01.2005 at 7:00 P.M.,



Turkaulia (Banjaria) P.S. Case No. 6 of 2005 dated 10.01.2005 was instituted under Sections 363/364/34 of the Indian Penal Code by the uncle of the petitioner, i.e., the full brother of the victim. Learned counsel submitted that pursuant to trial, two persons were convicted by judgment and order dated 31.05.2008 in Sessions Trial No. 763 of 2006 under Sections 364/34 of the Indian Penal Code. It was submitted that in view of the same, the authorities are required to issue Death Certificate to the petitioner, as he has been put at loss with regard to getting his name corrected in various records and other purposes, for which such certificate is necessary.

Learned counsel for the State submitted that as per the guidelines issued by the Central Government, such issuance of Death Certificate with regard to missing persons can only be pursuant to an order of the competent Court.

Having considered the matter, the Court is of the considered opinion that in the facts and circumstances of the present case, the concerned authorities are acting in a hyper technical manner which is also arbitrary. The issuance of a Death Certificate is contingent upon death having occurred. In the present case, pursuant to an F.I.R. being lodged, two persons have been convicted under Sections 364/34 of the Indian Penal Code. The said sections read as under:

“364. Kidnapping or abducting in order to murder.- *Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with [imprisonment for life] or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.*

34. Acts done by several persons in furtherance of common intention.- *When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.”*

From bare perusal of the same, it is clear that the Court has come to the finding that the accused persons had kidnapped/abducted the father of the victim in order to murder him. Once the Court comes to such conclusion, presumption would be that the accused have murdered the victim, due to which, the Court, beyond reasonable doubts, has convicted them. This being the position, the Court directs the respondent no. 3 to issue Death Certificate with regard to the father of the petitioner, and since the abduction was on 09.01.2005, as per the presumption under Section 108 of the Indian Evidence Act, where death is presumed of the person missing if not seen or heard of for seven years by those who would naturally have heard of him if he had been alive and, thus, in the present case, the kidnapping having occurred on 09.01.2005 and

since then the victim not having been either heard of or located, coupled with the fact that the Court has convicted two persons under Sections 364/34 of the Indian Penal Code, let the date of death be indicated as 09.01.2012 and such certificate be issued within one month from the date of production of a copy of this order before the respondent no. 3.

The writ petition stands allowed in the aforementioned terms.

(Ahsanuddin Amanullah, J)

Anjani/-

AFR/NAFR	NAFR
Uploading Date	26.11.2016