

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.27756 of 2014

Arising Out of PS.Case No. -60 Year- 2013 Thana -BASOPATTI District- MADHUBANI

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Jageshwar Singh, Son of Late Binda Singh, resident of Village Rajauli, P.S-
Deodha, District- Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar
2. Hari Narayan Thakur, son of late Nageshwar Thakur, resident of village-
Gamharia, P.S.- Basopatti, District- Madhubani.

.... Opposite Party/s

with

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Criminal Miscellaneous No. 27834 of 2014

Arising Out of PS.Case No. -60 Year- 2013 Thana -BASOPATTI District- MADHUBANI

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Biru Singh, Son of Sri Jageshwar Singh, Resident of village - Rajauli, P.S. -
Deodha, District - Madhubani.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

(In Cr.Misc. No.27756 of 2014)

For the Petitioner/s : Mr. Ravindra Kumar, Advocate.

For the Opposite Party/s : Mrs. Renu Kumari, A.P.P.

(In Cr.Misc. No.27834 of 2014)

For the Petitioner/s : Mr. Ravindra Kumar, Advocate.

For the Opposite Party/s : Mr. R.P.S. Singh, A.P.P

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 07-08-2017

Heard learned counsel for the parties.

2. The petitioner, in Cr. Misc. No. 27756 of 2014, filed
this application, under Section 482 Cr.P.C. 1973, seeking quashing of
order dated 04.05.2014/05.05.2014 passed by the Judicial Magistrate,
1st Class, Madhubani in G.R. No. 1126 of 2013, whereby he has taken
cognizance against the petitioner under Section 304B/34 of the Indian



Penal Code and issued summons to stand trial.

3. whereas petitioner, in Cr. Misc. No. 27834 of 2014, filed this application for quashing order dated 18.11.2013 passed by the Chief Judicial Magistrate, Madhubani in the aforesaid case i.e., G.R. No. 1126 of 2013, whereby he has taken cognizance against the petitioner under Section 304B/34 of the Indian Penal Code and issued summons to stand trial

4. Learned counsel for the petitioners submits that petitioner Jageshwar Singh is the father of petitioner Biru Singh and against both these petitioners, there is no allegation relating to demand of dowry and torture to the deceased, so they are not named in the FIR. The informant in his restatement, for the first time named both these petitioners and the petitioners have challenged the impugned order on the ground that they are not relative of the husband of the deceased and there is no allegation of committing cruelty soon before the death in connection with demand of dowry. Learned counsel referring paragraph nos. 21 and 22 of the case diary states that Jageshwar Singh and Biru Singh are the brother-in-law of the maternal uncle of the father-in-law of the deceased. In support of his defence, he placed reliance in the case of *State of Punjab v. Gurmit Singh* reported as (2014) 9 SCC 632.

5. Learned counsel for the State submits that petitioners



are also relative of the husband of the deceased and in next morning of the alleged occurrence, they were also seen in the house of the accused persons.

6. Having considered rival submissions of both sides, let us first analyse the allegation and evidence collected against the petitioners during investigation. It is fact that the petitioners are not named as accused in the FIR. There are four accused named in the FIR father-in-law, mother-in-law, brother-in-law including the husband of the deceased. The marriage of the informant's daughter was solemnized in the year 2010 with Jaishankar Choudhary, one of the accused. There is specific allegation that a motorcycle and Rs. 50,000/- cash was being demanded by the named accused persons i.e., husband and others after marriage. It is alleged that on 04.06.2013, all accused persons killed her daughter and escaped away from the house. During investigation, postmortem of the deceased was also done and as per postmortem report cause of death is due to asphyxia caused by hanging. The names of these two petitioners transpired during investigation in the restatement of the informant by merely naming their involvement in the alleged offence admitting that he could not give their names in the FIR. There is no any allegation against these two petitioners of making any demand of dowry either from the deceased or from the informant, father of the deceased and torturing



the deceased in that connection. The relationship of these two petitioners are said to be the brother-in-law of the maternal uncle of the father-in-law of the deceased and in para-24 of the case diary, witness says that these two petitioners were seen in the morning of the following day of the occurrence.

Section 304-B IPC 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.”

7. One of the main ingredients for drawing the offence under this penal provision against the accused persons is that there must be allegation of subjecting the victim to cruelty or harassment by them in connection with any demand of dowry. This is one of the ingredients of this case, but in the case of the present petitioners, there is absence of such allegation in the FIR as well as lack of evidence in



the case diary.

8. In case of *U. Suvetha vs. State* reported as (2009) 6 SCC 757, the Hon'ble Supreme Court has observed as follows:

“10. In the absence of any statutory definition, the term ‘relative’ must be a meaning as is commonly understood. Ordinarily it would include father, mother, husband or wife, son, daughter, brother, sister, nephew or niece, grandson or granddaughter of an individual or the spouse of any person. The meaning of the word ‘relative’ would depend upon the nature of the statute. It principally includes a person related by blood, marriage or adoption.”

9. The expression ‘relative of the husband’ especially in the context of Section 304B of the Indian Penal Code has been defined by the Hon'ble Supreme Court in the case of *Vijeta Gajra v. State (NCT of Delhi)* reported as (2010) 11 SCC 618, the reference of which finds place in the case of *Gurmit Singh* (supra) in para 10 of the judgment, which is as under:

“Relying on the dictionary meaning of the word ‘relative’ and further relying on P.Ramanatha Aiyar’s Advanced Law Lexicon (Vol.4, 3rd Edn.), the Court went on to hold that Section 498-A IPC being a penal provision would deserve strict construction and unless a contextual meaning is required to be given to the statute, the said statute has to be construed strictly. On that behalf the Court relied on the judgment in *T.Ashok Pai v. CIT*; (2007) 7 SCC 162. A reference was made to the decision of this Court, it was held that reference to the word ‘relative’ in Section 498-A IPC would be limited only to the blood relations or the relations by marriage.”



10. In the case of **Gurmit Singh** (supra), the Hon'ble Supreme Court has held that the word 'relative of the husband' in Section 304-B IPC would mean such persons who are related by blood, marriage or adoption.

11. Here both the petitioners are not related either by blood, marriage or adoption with the husband of the victim. The relationship is categorically stated in the case dairy that they are brother-in-law of the maternal uncle of the father-in-law of the deceased. So applying principles in reference to the aforesaid decision regarding the husband's relative, as has been defined, these two petitioners do not come under the ambit of husband's, relation. In case of **Gurmit Singh** (supra), the Hon'ble Supreme Court has also held that a person, not relative of the husband, may not be prosecuted for the offence under Section 304-B IPC but this does not mean that such a person cannot be prosecuted for any other offence viz. Section 306 of the Indian Penal Code, in case the allegation constitutes offence other than Section 304-B. However, in the present case, charge sheet has been submitted only under Section 304-B/34 of the Indian Penal Code, therefore, for the aforesaid reasons, *prima facie*, case under Section 304-B/34 of the Indian Penal Code, being not made out against these two petitioners only so the entire criminal proceeding including the order taking cognizance dated 04.05.2014/05.05.2014



passed by the Judicial Magistrate, 1st Class, Madhubani and order taking cognizance dated 18.11.2013 passed by the Chief Judicial Magistrate, Madhubani in G.R. No. 1126 of 2013 with respect to only these two petitioners are set aside.

12. Accordingly, both the applications stand allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	31.08.2017
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