

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.28695 of 2012

Arising Out of PS.Case No. -55 Year- 1998 Thana -null District- MADHEPURA

- =====
1. Kumar Das S/O Late Ramphal Das Resident Of Village- Hathapur, Police Station- Basopatti, District- Madhubani
 2. Dhoria Devi W/O Ramphal Das Resident Of Village- Hathapur, Police Station- Basopatti, District- Madhubani
 3. Sundar Das S/O Late Ramphal Das Resident Of Village- Hathapur, Police Station- Basopatti, District- Madhubani
 4. Birjan Das S/O Late Kapur Chand Das Resident Of Village- Hathapur, Police Station- Basopatti, District- Madhubani
 5. Bambhola Das S/O Birjan Das Resident Of Village- Hathapur, Police Station- Basopatti, District- Madhubani

.... Petitioners

Versus

1. The State Of Bihar
2. Ram Lakhan Das Son of Late Badri Das, resident of Village- Akuli, P.S. Arez, District- Madhubani.

.... Opposite Parties

=====

Appearance :

For the Petitioner	:	Mr. Kripa Nand Jha, Advocate
For the Opposite Party No.2	:	Mr. Gagan Deo Yadav, Advocate.
For the State	:	Mr. Vinod Kumar (APP)

=====

CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

Date: 07-12-2017

This Criminal Miscellaneous has been filed for quashing the order dated 20.04.2011 passed in C.R. No. 1671 of 2007/ Trial No. 217 of 2010 by the learned Judicial Magistrate, 1st Class, Madhubani, whereby and whereunder, after finding prima-facie case to be made out against the accused persons (petitioners) under sections 304 (B) and 201 of the I.P.C they have been summoned to face trial.



2. Heard the learned counsel for the petitioners, the learned A.P.P. for the State and the learned counsel for the opposite party no.2.

3. The opposite party no.2 Ram Lakhan Das filed the complaint case bearing Complaint Case No. 588 of 1998, alleging therein, that his daughter Munni Devi was married with Kuwar Das and after Gauna she went to her in-laws house where in-laws started demanding Buffalo and cycle and due to non fulfillment of the demand she was done to death by sprinkling kerosene oil and setting her on fire and the dead body was disposed of without giving any information to the complainant's family.

4. The aforesaid complaint petition was forwarded to the concerned police station under section 156 (3) of the Cr.P.C and accordingly Basopatti P.S. Case No. 55 of 1998 was registered and the police took up investigation of the case. The police after completing investigation found the case false and submitted final form as during investigation all the villagers have stated that the daughter of the complainant was suffering from Cholera and she died in course of treatment. The brother of the deceased during course of investigation has categorically stated that his sister died due to Cholera and he along with his family members had participated in the Sradh Karma of his sister. The investigating officer also made



recommendation for taking action against the complainant under sections 182 and 211 of the I.P.C.

5. During investigation the complainant filed protest petition and thereafter, the learned C.J.M. after noticing the informant (complainant) and hearing the parties accepted the final form and directed to proceed on the basis of the protest-complaint petition treating the same as the complaint petition. Accordingly, protest petition was registered as a complaint case and the complainant was examined on the solemn affirmation and further four witnesses have been examined on behalf of the complainant during enquiry. The learned Magistrate after considering the materials collected during enquiry passed the impugned order dated 20.04.2011.

6. Submission on behalf of the petitioners is that the complaint petition is based on false allegations. The deceased died on 12.06.1998 and on the very next day all the members of the deceased family were given information and all of them have participated in the Sradh Karma of Munni Devi, but thereafter the complaint petition was filed on 20.06.1998 after lapse of more than eight days. During investigation all the villagers including the family members of the complainant were interrogated and except the complainant all of them have stated that Munni Devi was suffering from Cholera and she died in course of treatment. Mahendra Das, brother of the deceased, had



stated that one Lal Singh son of Deonandan Singh of Village-Brahmpur had instigated his father for filing the complaint petition with the assurance that after filing protest petition his son-in-law will give money to him. During course of investigation the police examined Dr. A. Rahman who certified that the deceased was suffering from severe Cholera and inspite of his best effort she could not be saved. Nirmala Devi, niece of the deceased in paragraph-9 of the case diary has stated that the deceased had died due to suffering from Cholera and all the family members of her family participated in her Sradh Karma. The Dy. S.P. and the S.P. supervised the case and found that the allegations leveled against the petitioners are absolutely false and accordingly final form was submitted. The final form was submitted in the year 1999 and after lapse of 12 years the impugned order has been passed which is complete misuse of the process of law and is fit to be quashed. All the enquiry witnesses are relatives to each other and no independent witness has been examined. However, in the statements of the enquiry witnesses there are major contradictions and as such the impugned order is fit to be quashed. The learned counsel for the petitioners has argued that the Magistrate is not empowered to review its own order, once final form was accepted-finding no evidence in the case diary against the petitioners then impugned order passed is not sustainable. The learned counsel for the petitioners has



relied upon the decision reported in **(2004) 7 Supreme Court Cases 338** (Adalat Pradhan & Anr.- Appellants Vs. Ranglal Jindal & Ors- Respondents) and has stated that the court has no power to recall or review its own order.

7. The learned A.P.P. and the learned counsel for the opposite party no.2, on the other hand, submit that acceptance of final form and proceeding on the basis of the protest-complaint is permissible in the eye of law and it does not amount to review or recall its own order. The decision relied upon by the learned counsel for the petitioners in this regard is not applicable in the present case. Here final form was accepted by the separate order and thereafter on the basis of the protest-complaint the complainant was examined on the solemn affirmation and four enquiry witnesses have also been examined and on the basis of the materials collected during enquiry the learned Magistrate has passed the order dated 20.04.2011 which is quite legal, proper and correct and there is no need of any interference by this Court. At the time of taking cognizance the defence of the accused persons cannot be looked into rather that can be adjudged at the proper stage. The argument that the brother and niece of the deceased have stated otherwise can well be considered during trial and not at this stage.

8. Having considered the submissions urged at the



Bar, going through the record and noticing that the complainant in his statement on the solemn affirmation and the four enquiry witnesses have supported the allegation as made out in the complaint petition that the daughter of the complainant died within seven years of her marriage and as such the learned Magistrate after considering sufficient materials collected during enquiry has passed the impugned order which appears quite proper, legal and correct and there is no need of any interference by this Court. The points raised by the learned counsel for the petitioners can well be considered at the later stage and not at this stage.

9. In the result, finding no merit in this Criminal Miscellaneous the same stands dismissed.

(Jitendra Mohan Sharma, J)

Abhay/-

NAFR	
Uploading Date	04.01.2018
Transmission Date	04.01.2018

