

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.42845 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- JAMUI

- =====
1. Ramesh Burnwal S/O Late Shashi Bhushan Burnwal
 2. Kaushlya Devi W/O Late Shashi Bhushan Burnwal
 3. Rohit Burnwal S/O Late Shashi Bhushan Burnwal
 4. Ganesh Burnwal S/O Late Shashi Bhushan Burnwal

All are resident of Village - Hussainbad, Police Station - Devipur, District - Deoghar (Jharkhand).

.... Petitioner/s

Versus

1. The State Of Bihar
2. Lal Mohan Burnwal S/O Late Bharat Lal R/O Village - Saraon, Police Station - Chakai, District – Jamui.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Pankaj Kumar Sinha
For the State : Dr. Rabindra Kumar,A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 09-10-2017

Heard learned counsel for the petitioners and the State.

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 18.09.2010 passed in Complaint Case No. 379C/2010 by which the learned Judicial Magistrate, 1st Class, Jamui after holding enquiry has found prima facie case against the petitioners for the offences under Section 498(A) of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act.

Opposite party has appeared through lawyer by filing Vakalatnama but none appeared during the course of hearing of this petition.

Learned counsel for the petitioners has submitted that the death of the deceased took place due to failure of Kidney on 16.04.2009 in Deoghar



Hospital. Thereafter cremation took place on 17.04.2009. The complainant did not participate in the cremation as the marriage of son of the complainant was fixed on 17.04.2009. The police after investigation has submitted final form on 06.07.2007 finding the case untrue against the petitioners, which was accepted by the learned Chief Judicial Magistrate, Jamui. Thereafter the complainant filed a protest petition on 15.09.2009 (Annexure 1). The learned court below on the basis of the aforesaid protest petition, after holding enquiry, found, prima facie case against the petitioners for the offences under Section 498A IPC and ¾ of Dowry Prohibition Act by the impugned order.

Learned counsel for the petitioners has submitted that no occurrence has taken place at Jamui but the case has been filed in Jamui. As per case of the complainant the deceased died in Deoghar Hospital. Learned counsel for the petitioners also submitted that the protest petition, which was treated as complaint, was not filed in proper format. There is no mention of specific allegation or date of occurrence against the accused persons. The protest petition filed by the complainant is totally vague and on such vague protest petition the learned court below has found, prima facie, case against the petitioners. In this connection learned counsel for the petitioners has relied upon decisions in the case of **Neelu Chopra –v- Bharti, reported in (2009) 10 SCC 184 and Preeti Gupta –v- State of Jharkhand, reported in 2010(4)PLJR (SC) 36.**

Learned A.P.P. has submitted that there is no illegality in the impugned order. Counsel for opposite party no.2 has not appeared although his name is appearing in the Cause List.

In the original complaint petition filed by the Complainant which was sent to police station under Section 156(3) Cr.P.C it was alleged that the daughter of the complainant was married with Ramesh Burnwal. She was tortured



in her Sasural. She developed Kidney problem. She was not provided proper treatment. The complainant brought his daughter to his house and got her treatment in Delhi and in Ranchi. The husband, Ramesh Burnwal came to the house of the informant on 16.04.2009 and took his daughter. She died on 16.04.2009 in the house of accused no1 (husband of the deceased) but no information was given to the complainant.

Case diary has been received. It has been mentioned in the case diary that the daughter of the complainant died on account of kidney failure. The police after investigation submitted final form on 06.07.2009. Thereafter after lapse of two months the protest petition was filed by the complainant (Annexure 1) levelling vague allegation. From perusal of Annexure 1, it appears that it has not been filed in proper format and mere vague and omnibus allegation has been made. There is no mention of any specific overt act against any of the accused persons. The learned court below treated the protest petition as complaint and proceeded for enquiry under Section 202 Cr.P.C. The learned court below recorded S.A. of the complainant and the statement of three witnesses. Copies of all those statements are enclosed with the petition as Annexure 6 series. From perusal of those statements it appears that all the witnesses have stated that the deceased died on account of Kidney failure. The complainant has enclosed various prescriptions to show that proper step was taken by the husband and other family members. Prescriptions are enclosed as Annexure 2 series. Hon'ble Supreme Court in the case of **Neelu Chopra –v- Bharti reported in (2009) 10 SCC 184** has held that particulars of offence committed by each accused and role played by them in committing that offence need to be stated.

In the instant case it appears that the complainant has nowhere stated particulars of the offence committed by each of the accused. The said



complaint was totally vague. It did not show which accused has committed what offence and what role has been played by them in commission of the offence. The court below has not found prima facie case under Section 304B IPC and has found , prima facie, case for the offence under Section 498A IPC and ¾ of Dowry Prohibition Act.

From the averment made in the complaint petition(Annexure 1) and statement of the witnesses recorded during enquiry (Annexure 6 series) this Court finds that there was no sufficient material against the petitioners for the offence under Section 498A IPC and ¾ of Dowry Prohibition Act. The witnesses have stated that the deceased died due to failure of Kidney.

Therefore, the impugned order dated 18.09.2010 passed in Complaint Case No. 379C/10 by Sri Abhishek Mishra, Judicial Magistrate, 1st Class, Jamui, along with entire criminal proceeding against the petitioners is hereby quashed.

This Criminal Miscellaneous application is, therefore, allowed.

(Sanjay Priya, J)

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AFR/NAFR	AFR
CAV DATE	
Uploading Date	13-10-2017
Transmission Date	13-10-2017

