

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.35279 of 2011

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

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1. Kiran Devi W/O Uday Singh Resident Of Mohalla Tedhinath Temple Mianchak Bharti Niwas (Khemka Sadan) Ward No. -34 P.S. Nagar District - Begusarai.
 2. Mritunjay Kumar S/O Uday Singh Resident Of Mohalla Tedhinath Temple Mianchak Bharti Niwas (Khemka Sadan) Ward No. -34 P.S. Nagar District - Begusarai.
 3. Santosh Kumar S/O Uday Singh Resident Of Mohalla Tedhinath Temple Mianchak Bharti Niwas (Khemka Sadan) Ward No. -34 P.S. Nagar District - Begusarai.
 4. Uday Singh @ Uday Shankar Singh S/O Late Suresh Pd.Singh Resident Of Mohalla Tedhinath Temple Mianchak Bharti Niwas (Khemka Sadan) Ward No. -34 P.S. Nagar District - Begusarai.

.... Petitioners

Versus

1. The State Of Bihar
2. Madhuri Kumari W/O Late Birendra Kumar Anil Resident Of Dhanour Lodge, Pankha Toli Rauma P.S. - Kauchi Makhdumpur, District - Muzaffarpur.

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Ashok Kumar & Mr. Amarnath Singh,
Advocates.
For the State : Mr. J. Upadhyaya, A.P.P.
For the Opp. Party no.2 : Mr. Hare Krishna Prasad & Mr. Subhash
Pandey, Advocates.

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

Date: 21-11-2017

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.

2. This Criminal Miscellaneous has been filed for quashing the order dated 13.07.2011 passed in Complaint Case No. 438 C of 2011, whereby and whereunder, prima-facie offence has been found to be made out under sections 323, 341, 504, 448 and 304 A of the I.P.C. against the petitioners by Sri Rajiv Ranjan Sahay, the then Judicial Magistrate, 1st Class, Begusarai.

3. Briefly stated, the case of the complainant is that she was living in the house of brother of Rajesh Kumar @ Tinku along with her husband and children and was giving the rent on time but the accused persons who were residing also besides the rented house of the complainant used to make quarrel and used to cause threats to vacate the house as the house fell in their share. On the alleged date and time of the occurrence the children of the complainant were making noise over a matter relating to teaching and in the meanwhile all the accused persons including the petitioners entered into the room and said that they are repeatedly saying to vacate the house and if the house will not be vacated then all will be thrown from the house, then the husband of the complainant resisted and then accused nos. 1 and 2 became angry and started beating the husband of the complainant with fists and legs and tried to take him away by catching his neck, upon which the complainant and her



children tried to catch their father then the accused nos. 3 and 4 threw away them in the back and accused nos. 1 and 2 took away husband of the complainant by beating him near the ladders. Accused nos. 1 and 2 pushed the husband of the complainant from the ladder resulting husband of the complainant dashed with fifth ladder and was badly injured. The brother of the complainant who had come at the house of the complainant just an hour before the incident also tried to save the husband of the complainant and in that course he also got injured and his head was also injured. In the meantime, when the complainant and her children again tried to come near their father then accused no.3 beaten him and said that he will meet with your father in the heaven. The husband of the complainant fell down in unconscious state and upon hulla neighbourers came there and saw the occurrence. Thereafter the husband of the complainant was brought to the nursing home of Dr. Shashi Bhushan Sharma where after giving First Aid he was advised for C.T. Scan and after seeing the C.T. Scan advised to go to Patna for better treatment but while she was coming to Patna on the Ambulance husband of the complainant succumbed to the injuries at Fatuha and thereafter she went to Muzaffarpur where husband of the complainant was cremated. The complainant thereafter was examined under section 200 of the Cr.P.C. and four witnesses, namely, Neha Kumari, Nidhi Kumari, Mirtunjay Kumar and Noor



Aalam were also examined under section 202 of the Cr.P.C and after enquiry the learned Magistrate passed the impugned order.

4. Submission is that all the allegations made in the complaint petition are false and baseless and has been leveled with malice and revenge. On the basis of the documentary evidences it will reveal that the husband of the complainant was suffering from epilepsy and other ailments and for that he has taken loan for his treatment and after the death the complainant applied for payment of death benefit in the L.I.C. of India Branch, Begusrai then she also has not disclosed any reason of death. In the statements of the enquiry witnesses there are contradictions which creates doubt over the whole prosecution case and the criminal prosecution is upon that malice and revenge. The deceased died due to disease. After the occurrence no information was given to the concerned police station and after death also no information was given to any where at the police station and after five days of the occurrence the complaint case has been filed. Postmortem of the deceased was also not done and as such on that basis it can be held that the prosecution case is concocted and has been prepared with the advice of legal expert only with a view to falsely implicate the petitioners with the false charges in a false case. The order taking cognizance is also bad in law as well as on facts in view of non examination of doctor who first treated the deceased and



thereafter non examination of the C.T. Scan reporter. The order of cognizance has been passed only on the basis of oral evidence of the family members whose statements are also very contradictory. In absence of non examination of any independent eye witness, non examination of doctor and the medical evidences no offence as alleged is made out against the petitioners and as such the order of cognizance dated 13.07.2011 is fit to be quashed. Before the registering authority Municipal Corporation, Muzaffarpur Aman Ujjawal, the son of the deceased, has filed petition for issuance of death certificate, vide Annexure-4 of the supplementary affidavit wherein also cause of death has not been disclosed and only it has been stated that Birendra Kumar Anil died on 10.03.2011 at his residence and accordingly death certificate has been issued. The statements of the enquiry witnesses has been annexed as Annexure- 5 series of the supplementary affidavit and from perusal of those documents it reveals that there are contradictions. Informatory petition -Cum -Sanha was also filed against the complainant by the petitioners, vide Annexure-6 to the supplementary affidavit and on perusal of those documents it is manifest that the deceased died natural death due to his ailments and not in the alleged occurrence and as such the impugned order is fit to be quashed.

5. On the other hand, the learned counsel for the



opposite party no.2 and the learned A.P.P. submit that all these things cannot be adjudged at the stage of taking cognizance. The defence of the accused persons can well be adjudged at the time of framing of charge and not at this stage and as such there is no need of any interference by this Court in the impugned order.

6. Having considered the submissions urged at the Bar, going through the record, the impugned order, annexures attached with the original petition as well as the supplementary affidavit, it is manifest that the complainant has filed application before the Senior Branch Manager, L.I.C, Begusarai for the L.I.C. claim on account of death of her husband wherein she has stated that her husband was maintaining the family and he died on 10.03.2011 and on that ground death claim has been sought. There is nothing in that application that her husband was killed in the incident. Further the son of the deceased has also filed application for issuance of death certificate wherein also he has not alleged that his father was killed in the incident. On the basis of the aforesaid materials and further considering that the complaint case has been filed after delay, no information was given regarding death of husband of the complainant, no information was given at the police station regarding the occurrence, no postmortem was done and the learned Magistrate ignoring all these facts has passed the impugned order which appears



not sustainable and is fit to be quashed. Accordingly, the impugned order is hereby quashed.

7. In the result, this Criminal Miscellaneous stands allowed.

(Jitendra Mohan Sharma, J)

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AFR/NAFR	NAFR
CAV DATE	
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