

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.48877 of 2017

Arising Out of PS.Case No. -271 Year- 2015 Thana -PATNA COMPLAINT CASE District-
PATNA

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1. Dileep Kumar,
2. Rakesh @ Rakesh Kumar @ Mukesh Kumar.
3. Santosh Kumar @ Avinash Kumar,
All Sons of late Arjun Pandit
4. Parwati Devi @ Girja Devi, W/o Late Arjun Pandit,
All resident of Mohalla- Pajawapur, P.S.- Barh, District- Patna.

.... Petitioners

Versus

The State of Bihar. Opposite Party

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Choudhary, Advocate
Mr. Tripurari Nath Ambastha, Advocate
Mr. Akshansh Ankit, Advocate
For the State : Smt. Pronati Singh, APP
For the opposite party no. : Mr. Krishna Prasad Singh, Sr. Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 12-07-2018

Heard learned counsel for the petitioners, learned
counsel for the State and learned counsel for the
complainant-opposite party no.2.

2. This application under Section 482 of the Code of
Criminal Procedure (for short 'Cr.P.C.') has been filed by the
petitioners for setting aside the order dated 13.07.2017 passed by the
learned Additional Chief Judicial Magistrate-II, Barh, Patna in
Complaint Case No.271(C) of 2015 whereby and whereunder the
learned Additional Chief Judicial Magistrate-II, Barh has summoned
the petitioners to face trial for the offences punishable under



Sections 498A, 304B, 302 and 201 of the Indian Penal Code.

3. The complainant is the grand-father of the wife of the petitioner no.1. He has alleged that his grand-daughter Sanjana Raj @ Guriya was done to death on 24.08.2012 by her husband Dileep Kumar and in-laws in her in-laws' house at village-Paijawapur, P.S.-Badh, District-Patna for non-fulfilment of demand of dowry and her body was hurriedly disposed of in order to conceal the offence.

4. Learned counsel for the petitioners submitted that on the same allegation, the complainant had earlier instituted Complaint Case No.607(C) of 2012 which was sent to the police in exercise of power conferred under Section 156(3) of the Cr. P.C. for investigation pursuant to which Barh P.S. Case No.257 of 2012 was registered under Sections 498A, 304B, 120B, 201 read with 34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act against the petitioners. In the said police case, a final report holding the accusation to be false was submitted on 20.01.2013 and a recommendation was made for prosecuting the complainant under Sections 182 and 211 of the Indian Penal Code for instituting a false complaint. As the complainant had filed an application during pendency of the investigation of the case making allegation against the police in respect of investigation of the case, while accepting the



final report, after hearing the complainant, the learned Magistrate directed for institution of a complaint under Section 200 of the Cr.P.C. on the petition filed by the complainant, pursuant to which, the instant Complaint Case No.271(C) of 2015 has been registered in which vide impugned order dated 13.07.2017 the petitioners have been summoned to face trial.

5. He submitted that the entire case of the complainant is false would be apparent from the fact that for the alleged murder of the grand-daughter of the complainant, the petitioner no.1 Dileep Kumar had already instituted Barh P.S. Case No.191 of 2012 on 25.08.2012 alleging therein that since she had married to him in the year 2008 against the will of her family members and it was an inter-caste marriage, her family members including her father, mother and brothers called her after from year in 2012 after taking into confidence and killed her on 24.08.2014 in the night and disposed of her dead body. The said case was registered under Sections 302 and 201 read with 34 of the Indian Penal Code and in course of investigation, the police had found the case to be true and the accused persons were charge-sheeted and some of them have already been convicted after trial of the charges punishable under Sections 302 read with 34 and 201 of the Indian Penal Code and have been sentenced to undergo life imprisonment



for life. He submitted that in such view of the matter, the learned Magistrate ought not to have summoned the petitioners to face trial.

6. *Per contra*, Mr. Krishna Prasad Singh, learned Senior Advocate appearing for the complainant-opposite party no.2 submitted that the ground on which the petitioner is seeking quashing of the order summoning the petitioners to face trial is erroneous. He submitted that as far as the police case is concerned, right from the beginning the investigation was not fair and impartial and, as such, the complainant had filed an application before the court while the investigation itself was pending that he has no confidence in the police investigation. He submitted that once the police submitted a final report and the case proceeded on the basis of complaint, the Magistrate was not required to look into any other material except the materials collected in course of inquiry conducted under Section 202 of the Cr. P.C. In the present case, since the complainant and all the witnesses examined on his behalf have supported the allegations made out in the complaint that the victim Sanjana Raj was done to death in her matrimonial home at the hands of the petitioners for non-fulfilment of dowry, no error can be found with the order passed by the learned Magistrate.

7. Learned Additional Public Prosecutor for the State has also supported the contentions advanced on behalf of the



complainant. She submitted that at the stage of taking of cognizance and summoning the accused persons, only prima facie material is to be seen and since the learned Magistrate has found prima facie materials against the petitioners, no error can be found with the impugned order.

8. I have heard learned counsel for the parties and carefully perused the record.

9. Apparently, there are two versions of the incident of murder of grand-daughter of the complainant. One alleging her murder to have been orchestrated by her parents and other family members and the other alleging that she was done to death at the hands of her husband and his relatives. It is true that in course of investigation, the police found the allegations made against the petitioners to be false and submitted final report recommending prosecution of complainant under Sections 182 and 211 of the Indian Penal Code. However, the conclusions arrived at by the police after conducting the investigation alone cannot be a ground for holding the impugned order passed by the learned Magistrate to be bad in law. The complainant has alleged that the investigation conducted by the police was tainted. Under such circumstance, when a complaint was instituted after acceptance of the police report, at the stage of taking cognizance, it was not permissible for the



Magistrate to look into any other material except the materials available in the complaint and the materials collected in course of inquiry.

10. Since the witnesses including the complainant have supported the allegations made in the complaint, it would not be proper for this Court to arrive at any conclusion about the innocence of the petitioner on the basis of defence taken by him.

11. As the order impugned does not suffer from any illegality, the application filed on behalf of the petitioners cannot be allowed. Accordingly, the application is dismissed.

12. However, in case an application is filed by the petitioners at the stage of framing of charge for discharge, the court concerned shall be required to look into all the materials on record and pass a reasoned order in accordance with law without being prejudiced by any observations made by this Court in the present application.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.07.2018
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