

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.31543 of 2015

Arising Out of PS. Case No.-52 Year-2013 Thana- NOKHA District- Rohtas

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1. Meena Devi, Wife of Jai Nath Sharma,
 2. Jai Nath Sharma, Son of Late Sukhdeo Sharma.
 3. Om Prakash Sharma @ Titu Sharma, Son of Jai Nath Sharma,
 4. Upendra Sharma, Son of Late Sukhdeo Sharma.
 5. Raju Sharma, Son of Jainath Sharma. All are resident of Village- Lewra, Police Station- Nokha, District- Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Haribansh Sharma, Son of Late Jagdeo Sharma, resident of Village- Baligaon, P.S.- Rajpur, District- Rohtas.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Choubey Jawahar
For the Opposite Party/s : Mr. B.N.Pandey(App)

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT

Date : 30-04-2018

This petition has been filed for quashing the order dated 26.11.2013 by which cognizance has been taken against the petitioners.

Heard learned counsel for the petitioners, counsel for the informant and counsel for the State.

Learned counsel for the petitioners has submitted that police after investigation submitted final form against petitioner nos. 1 to 4 finding the case false against them. Police submitted charge sheet under Section 306 of the I.P.C. against petitioner no.5 who is husband of the deceased. The witnesses in paragraph nos. 41,42, 43 and 44 of the case diary have not



alleged any demand of dowry against petitioners. The victim girl has died due to suicide and doctor has found no any internal injury during the postmortem of the deceased. It is further submitted that witnesses have stated that petitioner no.5 was not present at the place of occurrence rather he was working at Karnataka. It is further submitted that the case of petitioners is fully covered by judgment reported in 1992 Supp (1) SCC 335 (State of Haryana & Ors. vs. Bhajan Lal & Ors., as it is a case of malicious prosecution.

Learned counsel for the informant has submitted that in the inquest report at para 2 of the case diary, there is mention of injuries found on the person of the deceased. It is further submitted that witnesses, in paragraph nos. 4, 31 and 32 of the case diary, have stated that there was demand of dowry by the accused persons followed by torture and she has been done to death for non-fulfillment of the dowry demand. It is further submitted that the postmortem report also suggests that cause of death is said to be hanging which was unnatural death happened in the Sasural of the deceased.

Learned APP has submitted that there is no illegality in the impugned order.

Having heard both the parties and on perusal of the



allegation in the written report and the material in the case diary, this Court finds that the informant in the written report has levelled allegation against these petitioners of making demand of dowry and of committing murder of the deceased for non-fulfillment of the same. This allegation has been corroborated during investigation by the witnesses in their statements recorded in paragraph nos. 4, 31 and 32 of the case diary. The inquest report at para 2 of the case diary shows that injuries were found on the neck of the deceased. In the post mortem report ligature mark was also found on the neck of the deceased. The doctor has opined that the cause of death is asphyxia due to hanging and the victim died within 07 years of her marriage in the matrimonial home. The Court below is only required to see *prima facie* case at the time of taking cognizance after submission of charge sheet. The Court below, on the basis of the materials available in the case diary and the injuries found on the person of the deceased, has taken cognizance against these petitioners after differing with the finding given by the investigating officer. The learned Magistrate has found the case true for the offence under Section 304 B and other allied sections of the penal code as mentioned in the impugned order. Therefore, this Court does not find any illegality in the



impugned order . The petition is, accordingly , dismissed.

Petitioners are given liberty to raise all the points as raised in this petition at the appropriate stage at the time of framing of charge which shall be considered by the Court below in accordance with law without being prejudiced by the present order.

(Sanjay Priya, J)

shyambihari/-

AFR/NAFR	NAFR
CAV DATE	N/A
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