

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.344 of 2019

Arising Out of PS. Case No.-401 Year-2018 Thana- CIVIL LINE District- Gaya

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Himanshu Chorasias @ Himanshu Bhusan Chhotaray, Son of Lingaraj Chhotaray, Resident of H. No. 172/c, Near Iter, Jaganmohan Nagar, Jagamara, Bhubaneswar, P.S.- Khandagiri, District - Khorda, State-Odisha was posted as Cluster Head, Wholesale Banking Operation, HDFC Bank Ltd. District -Gaya and presently posted as Cluster Head, Wholesale Banking Operation, HDFC Bank Ltd., District-Hajipur

... .. Petitioner

Versus

1. The State of Bihar, through the Principal Secretary, Department of Home, Government of Bihar, Patna.
2. The Director General of Police, Patna, Bihar.
3. The Senior Superintendent of Police, Gaya, Bihar.
4. The Officer-in-charge, Civil Line Police Station, Gaya

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Girijish Kumar, Advocate

For the Respondents-State: Mr. Kumar Vikram, AC to GA-4

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 30-04-2019

Heard learned counsel for the petitioner and learned counsel for the State.

2. This application under Article 226 of the Constitution of India has been filed by the petitioner for quashing the First Information Report (for short 'FIR') of Civil Lines P.S. Case No.



401 of 2018 registered under Sections 109, 304A and 507 of the Indian Penal Code (for short 'IPC').

3. In the FIR, it has been alleged by the informant Bhagwat Pandey that he received a call on 27.09.2018 at 10:18 a.m. from Mobile No.9560710103 on his Mobile No.7717704869. The caller said that he is an employee of HDFC Bank, Gaya. He informed that the condition of his son is not good and requested to him come immediately. At that time, he was in Patna Secretariat. He informed his son-in-law, Bharat Pandey immediately about the contents of the call he received. Another call from Mobile No.9931279780 was received at his house on Mobile No.7717704869 and it was informed that his son has died. Thereafter, he along with his son-in-law and his own brother Laxman Pandey and his friend Dinesh Pandey went to Abhay Institute of Medical Sciences (for short 'AIMS'), Gaya. They reached there at about 3:45 p.m.. At that time, several employees of the bank were present in AIMS. One Himanshu Chorasias @ Himanshu Bhusan Chhotaray claiming himself to be Manager of the bank informed him that his son Binay was working in the bank with him. When he asked from him as to how he died, he disclosed that his son had arrived in the bank at about 9:15 a.m.. After occupying his seat, he took water and two biscuits and suddenly,



fell down and became unconscious. Thereafter, he was taken to AIMS where the doctor conducted his ECG and disclosed that he was brought dead. Having received the body of his son, he brought the same to Patna in an ambulance. He reached at his residence at about 9:00 p.m. and performed the cremation at Gulabi Ghat, Patna about 2:00 a.m. on 28.09.2018. After cremation, when he came back to his house, a telephone call was received by his son-in-law. The callers disclosed themselves to be the friends of his deceased son. They further disclosed that the main cause of the death of his son was the mental torture meted to him by the petitioner Himanshu Chorasias. They further disclosed that on 27.09.2018 when his son had arrived in the bank, the Manager had subjected him to severe mental torture, which he could not bear and lost his senses. Since he had fallen down, several employees tried to provide him the immediate assistance. They were trying so that he may regain his consciousness but, when their efforts did not yield any result for about 20-25 minutes, he was taken to AIMS where doctor declared him brought dead. They further disclosed that the mental cruelty meted out to the deceased can be assessed from the official e-mail sent to the deceased. On inquiry, it was found that the messages made by the deceased with his fellow employee had been deleted from the mobile of his son.



4. On the basis of the aforesaid written statement, the information suspected that due to the mental torture meted out by the petitioner, his son had died.

5. It has been submitted by the learned counsel for the petitioner that the allegations made in the FIR are an afterthought. The petitioner is a Cluster Manager of the HDFC Bank, Wholesale Banking, Gaya. His role is limited to providing leadership, management and development of staff and volunteers within area of responsibility through effective work force, planning, recruitment and selection. The deceased son of the informant was working as an authorizer. He had jointed the bank on 12.02.2018 and was confirmed on 12.08.2018. His duty was to report to the Branch Manager. There was no direct interaction between the petitioner and the deceased son of the informant. He contended that allegation of death due to mental cruelty is not supported by any evidence. The entire evidence is based on wild suspicion, surmises and conjecture. When the condition of the deceased employee deteriorated, an information in this regard was immediately sent to his father. He was immediately taken to nursing home of repute. The doctor conducted his ECG at 10:13 a.m., i.e. within half an hour from the time when the condition of the son of the informant deteriorated. The doctor found him dead.



He issued a death certificate. The body was handed over to the parent of the deceased in the nursing home itself. After being satisfied that it was a natural death, the informant took the body of the deceased employee to Patna from Gaya and got it cremated in the same night even without informing the police. Though the death of the son of the informant took place on 27.09.2018 within the knowledge of the informant and the other family members, an FIR was belatedly instituted after six days on 03.10.2018. The further contention of the petitioner is that none of the ingredients of the offences alleged is made out.

6. A counter affidavit has been filed on behalf of the State. Learned counsel for the State referred to the averments made in the counter affidavit and submitted that in course of investigation and supervision, it has been found that none of the witnesses have supported the case of the informant and, as such, the supervising authority has given opinion that any decision with respect to the involvement of the petitioner would be taken after proper analysis. He submitted that in course of investigation it has transpired that as usual, on 27.09.2018 also, the deceased employee Binay Kumar had arrived in the bank at 9:00 a.m.. He was not feeling well. The petitioner Himanshu Chorasias had also arrived in the bank. He also inquired about the well being of the



deceased. After a few while, the deceased took some medicine, which is also recorded in CCTV. Thereafter, he became unconscious and fell down from his seat. The employees of the bank immediately took him to AIMS and while he was being taken to in a nursing home, his father was also informed on mobile. However, when he reached the nursing home, the doctor declared him brought dead. He has further contended that even in the supervision conducted by the SDPO, no witness has come forward to support the allegation of mental torture meted out to the deceased by the petitioner.

7. Learned counsel for the State submitted that since the investigation is still in progress, the writ petition may be disposed of with a direction to the investigating agency to conclude the investigation and submit a report before the court.

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

9. The admitted facts of the case are as under:-

(a) The deceased Binay Kumar was an employee of the HDFC Bank, Gaya. He reached in the branch on 27.09.2018 at about 9:15 a.m.

(b) He became unconscious in the bank immediately after he had arrived in the bank after taking biscuit, water and some medicine.



- (c) He was immediately taken to a private nursing home by the employees and was declared brought dead.
- (d) An information in this regard was sent to the informant on mobile.
- (e) The informant reached in the nursing home at 3:45 p.m. on 27.09.2018 along with his other relatives.
- (f) He received the body in the nursing home. At that time, employees of the bank and the petitioner were present.
- (g) He took the body of the deceased to Patna in an ambulance and reached at his residence in Patna at 9:00 p.m. on 27.09.2018.
- (h) The body was cremated in the morning at 2:00 a.m. on 28.09.2018 at Gulabi Ghat, Patna.
- (i) An information has been given to the police regarding suspected mental torture being meted out to the deceased Binay Kumar at the hands of the petitioner being the cause of his death.

10. The FIR has been instituted under Sections 109, 304A and 507 of the IPC. It is to be seen as to whether the offences as alleged are made out on the facts and in the circumstances of the case.

11. Section 304A of the IPC reads as under:-

“304A. Causing death by negligence.-

Whoever causes the death of any person by doing any rash or negligent act nor amounting to culpable homicide shall be punished with imprisonment of



either description for a term which may extend to two years, or with fine, or with both.”

12. This section deals with homicide by negligence. The essential ingredients of the aforesaid provision of the IPC are as under:-

- (i) Death of any person must have been caused;
- (ii) It must have been caused by rash or negligent act; and
- (iii) Such act must not amount to culpable homicide.

13. Apparently, the offence under Section 304A is outside the range of sections 299 and 300 and covers those cases where death has been caused without intention or knowledge. It applies only to such acts which are rash and negligent and directly the cause of death of another person. In order to attract the ingredients of Section 304 of the IPC, there must be direct nexus between the death of the person and the rash and negligent act. A vague allegation of mental torture made by the informant against the petitioner would not in any manner attract the ingredients of the offence punishable under Section 304A of the IPC. On the facts and in the circumstances of the case where the petitioner being the Cluster Manager of the bank has in some way or the other may have asked the deceased employee to perform in the interest of the bank or may have asked to do some duty. Except a



vague and wild oral allegation of mental cruelty meted out to the deceased and that too on the basis of hearsay evidence levelled after several days of the date of death, there is no material on the basis of which it can be said that there was any direct nexus between the death of the deceased and any act of the petitioner. There is also no allegation that at any point of time the petitioner acted in a rash or negligent manner. In the absence of any allegation of rash or negligent act on the part of the petitioner, by no stretch of imagination, he can be prosecuted for the offence punishable under Section 304A of the IPC.

14. As far as Section 507 of the IPC is concerned, the same provides punishment for the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes.

15. The offence of criminal intimidation is defined under Section 503 of the IPC. It reads as under:-

“503.Criminal intimidation.-Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any



act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.”

16. The essential ingredients of the offence of ‘criminal intimidation’ are:-

1. Threatening a person with any injury:

- (i) to his person, reputation, or property; or
- (ii) to the person or reputation of any one in whom that person is interested.

2. Threatening a person with any injury:

- (a) to cause alarm to that person, or
- (b) to cause the person to do any act which he is not legally bound to do as the means of avoiding the execution of such threat, or
- (c) to cause that person to omit to do any act which that person is legally entitled to do as the means of avoiding the execution of such threat.

17. There is no allegation that the petitioner in any way threatened the deceased with injury to his person, reputation or property or to the person or reputation of anyone. There is also no allegation that the petitioner threatened the deceased with any injury to compel him to do any act, which he was not legally bound to do, or compelled him to omit to do any act, which he was legally entitled to do. In absence of any such allegation, the petitioner cannot be prosecuted for the offence of criminal intimidation.



18. The only other section under which the FIR has been instituted is section 109 of the IPC.

19. Section 109 of the IPC provides punishment of abetment, if the act abetted is committed in consequence of the abetment, and where no express provision is made for its punishment of such abetment. It reads as under:-

“109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.-
Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment for the offence.”

20. In order to attract an offence under section 109 of the IPC, the first requirement is that as a result of abetment, there must have been caused an offence. Here, in the present case, there is no existence of any offence. The deceased died in presence of several employees of bank. When he had fallen from his seat and lost his consciousness, he was taken in an ambulance to a private nursing home immediately. His father was informed about his condition. Even calls were made at his residence. The doctor conducted his ECG but, unfortunately, by the time he reached in the nursing home he had died. His father reached at the nursing



home alongwith his other relatives made inquiries from the employees of the bank present there including the petitioner and, on being satisfied that the death of his son was a natural one brought his body back to Patna at his residence and performed cremation at Gulabi Ghat. These are all admitted facts which do not point out commission of any offence.

21. It is not the case of the prosecution that the petitioner abetted any offence. In absence of any allegation of abetment of any offence, there can not be any prosecution under Section 109 of the IPC.

22. It is well settled principle of law that if the allegations made in the FIR are taken at their face value and accepted in their entirety do not prima facie constitute any offence, the extraordinary powers under Article 226 can be exercised to prevent the abuse of any process of the court.

23. In the instant case, even if the entire allegations made in the FIR are accepted to be true at their face value, none of the ingredients of the offences alleged in the FIR would be attracted against the petitioner.

24. In that view of the matter, allowing the prosecution to continue would amount to an abuse of the process of the court.



25. Accordingly, the FIR of Civil Lines P.S. Case No.401 of 2018 is quashed.

26. The writ petition is allowed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.05.2019
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