

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No. 684 of 2019

Arising Out of PS. Case No.-130 Year-2017 Thana- VISHNUPAD District- Gaya

Radha Devi, wife of Rajendra Sharma, Resident of Village - Karshilli, P.S.-
Vishnupad, Distt - Gaya.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Home Department,
Government of Bihar, Patna
2. The Director General of Police, Bihar, Patna.
3. The Inspector General of Police, Patna Zone, Patna.
4. The Deputy Inspector of Police, Magadh Range, Gaya.
5. The Senior Superintendent of Police, Gaya.
6. The Officer-in-charge, Vishnupad Police Station, District-Gaya.
7. Manisha Devi, D/o Harishankar Sharma, Resident of Village - Baroura, P.S.-
Guraru, Distt - Gaya.
8. Harishankar Sharma, Son of Ramdas Sharma, Resident of Village - Baroura,
P.S.- Guraru, Distt - Gaya.
9. Manjusa Sharma, wife of Harishankar Sharma, Resident of Village -
Baroura, P.S.- Guraru, Distt - Gaya.

... .. Respondents

Appearance :

For the Petitioner/s : Dr. Kamal Deo Sharma, Advocate
For the Respondent/s : Md. Nadim Seraj, GP-5

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 23-04-2019

This application under Article 226 of the Constitution of India has been filed by the petitioner for directing the respondents to conduct prompt and fair investigation in Vishnupad P.S. Case No.130 of 2017.

2. Learned counsel for the petitioner submitted that the son of the petitioner was married to respondent no.7. On 27th April,



2016. On 30th May, 2017, he went to his *sasural* to take back his wife, but he returned alone. He disclosed his family members that his wife did not behave with him properly. Thereafter, he said that he is going to sleep. In the morning, when the petitioner woke up, she found that the door of the room of his son was closed. In spite of knocking of the door when his son did not open the door, she broke open the door and found that he had committed suicide by hanging himself from the ceiling fan. He contended that on the basis of the aforesaid allegation, the First Information Report (for short 'FIR') vide Vishunpad P.S. Case No.130 of 2017 was instituted against respondent nos. 7 to 9 under Section 306 read with 34 of the Indian Penal Code. However, till date, the accused persons have not been arrested.

3. He has submitted that despite several requests made by the petitioner to the police for arrest of the accused persons in the criminal case launched against them, the police have taken no steps in this regard so far.

4. On the basis of the aforesaid submissions, learned counsel for the petitioner submitted that the police are not investigating the case in a fair and impartial manner.

5. On the other hand, learned counsel appearing for the State submitted that though an FIR has been instituted against the



accused persons pursuant to the information given by the petitioner under Section 306 read with 34 of the Indian Penal Code, the narration given in the FIR would itself show that the ingredients of Section 306 are not attracted. He contended that in order to constitute the offence of abetment, the abeter must be shown to have intentionally aiding that person for commission of crime. Though, there is allegation in the FIR that the daughter-in-law of the petitioner and her parents did not behave well with the son of the petitioner, the same by itself would not be sufficient to hold a person guilty of abetment. He contended that since investigation is going on, no direction should be given by the Court to arrest a person merely because he has been named in the FIR. Once the FIR is instituted, it is for the police to find out as to whether there is any material to support the allegations made in the FIR or not. He contended that there is nothing on record to show that the police have not acted properly and fairly in the matter of investigation.

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

7. To hold investigation into a cognizable offence is the statutory duty of the police. There is no doubt about the fact that a sensitive and committed investigation is a must for criminal justice



system. However, the sensitivity or commitment cannot be assessed merely on the basis of the fact that an accused named in the FIR is arrested or not.

8. The police have got jurisdiction to arrest a person, who is suspected or is made accused in a criminal case under Section 41 of the Code of Criminal Procedure even without a warrant. However, such arrest should not be made without verifying the veracity of the allegation.

9. It has rightly been submitted by the learned counsel for the State that the power of arrest vested in the police should not be resorted to mechanically. Before exercising such power, the police officer should have reason to believe on the basis of information that the accused has committed the said offence.

10. Having regard to the facts and circumstances of the case, in absence of any material to support the allegation that the investigation has not been done properly, I do not see any reason to issue any direction to the respondents.

11. The application is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.04.2019
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