

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1161 of 2017

Arising Out of PS. Case No.-33 Year-2005 Thana- PATNA COMPLAINT CASE District-
Patna

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1. Deva Nand Ram
 2. Sachidanand Ram Both Sons of Hanuman Ram,
 3. Kajal Devi W/o Devanand Ram, All R/o Kachahari Road, Jamtara, P.S.-
Jamtara, Jamtara.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Sudhir Kumar S/o Sri Sachindra Prasad (Paswan), R/o Village- Rawaich,
P.S.- Bakhtiarpur, District- Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar Singh, Advocate
	:	Mr. Ravi Shankar, Advocate
For the Respondent/s	:	Mr. Sunil Kumar Pandey, APP

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL ORDER

5 03-12-2019 Notice has already been served on Opposite Party
No.2.

2. The petitioners along with others are accused in
Complaint Case No.33(c) of 2005 filed by Opposite Party No.2
Sudhir Kumar in the Court of learned Additional Chief Judicial
Magistrate, Barh, Patna.

3. According to complaint petition, Neelam, the sister
of the complainant was married with co-accused Parmanand
Ram on 30.11.1996. Thereafter, she was being tortured by the
in-laws for non-fulfilment of demand of 20 *tola* gold. On one



occasion, Parmanand Ram and petitioner Kajal Devi had assaulted her. Allegation is that Kajal Devi who is *Bhabhi* of Parmanand had developed illicit relation with Parmanand Ram and that was not liked by the deceased which resulted in unnatural death of Neelam by sustaining burn injuries on 29.10.2004. The complaint petition was filed at Barh as the Ranchi police did not entertain the written report for lodging of the FIR.

4. The complaint case was committed to the Court of Sessions for trial and the same was registered as Sessions Trial No.786 of 2013.

5. By the impugned order dated 09.12.2013, the learned trial Judge (Additional Sessions Judge, Barh) refused the prayer of the petitioner to discharge under Section 227 of the Cr.P.C. Learned counsel for the petitioners submits that the death was caused beyond seven years of marriage, hence, presumption of dowry death is not there against the petitioners nor entire averment in the complaint petition would reveal that the death was the result of torture soon before death. The next contention is that there is no eye witness of the occurrence of murder, hence criminal prosecution of the petitioners who are relatives of the husband is abuse of the process of the Court.



6. Learned counsel submits that the complainant has suppressed the material fact about this case, inasmuch as for the same occurrence, the father of the complainant as well as the deceased, namely, Sachidanand Paswan had lodged Jamtara P.S.Case No.163 of 2004 dated 24.10.2004 allegedly for an occurrence dated 23.10.2004 wherein Neelam sustained burn injuries and was carried to the hospital for treatment. Sachidanand Paswan suspected her in-laws for burning Neelam. During investigation, statement of Neelam was recorded by the police and in that statement, she stated that since her husband was insisting her to remain in the village home for some time more, this infuriated the victim and she burnt herself finally. The police submitted final form in this case finding the allegation untrue, a copy of the FIR is Annexure-4, statement of the victim at Annexure-5 and final form submitted in this case is a mistake of fact at Annexure-5(a). After notice of the informant, the Court accepted the final form in the police case on 05.12.2008.

7. Submission is that the material fact was suppressed by the complainant while lodging a fresh criminal proceeding for same cause, which the police had already found untrue after investigation and the report of the police was accepted by the competent court.



8. From the materials available on the record following facts emerges as undisputed fact.

(i) Victim Neelam was married with co-accused Parmanand Ram on 30.11.1996 in village-Rabaich, P.S. Bhakhtiyarpur, district-Patna. Thereafter, she went to her matrimonial house in Jamtara. On 23.10.2004 she sustained burn injuries at Jamtara. On 30/31-10-2004, she died in Appolo Hospital, Ranchi during course of treatment. The aforesaid places falls within the jurisdiction of the Jharkhand High Court.

(ii) For the occurrence wherein Neelam sustained fire arm injury on 23.10.2004. Her father Sachindra Prasad Paswan lodged Jamtara P.S.Case No.163 of 2004 on 24.10.2004 under Sections 498A, 324 and 307/34 of the Indian Penal Code.

(iii). During investigation of the case, the statement of Neelam Devi was recorded wherein she stated a different reason for committing suicide as referred above. After investigation, the police submitted final form under Section 173 of the Cr.P.C. as mistake of fact. The final form was submitted after death of the victim. Thus, entire occurrence took place within the territorial jurisdiction of a different Court where the matter was instituted as police case and investigated and final form was accepted by the learned Magistrate after notice to the



informant of the case on 05.12.2008. Thus, for the same cause of action, the Court at Barh had complete lack of territorial jurisdiction as no part of occurrence is alleged within the jurisdiction. Moreover, the complainant who is the son of the informant of the police case has suppressed in the complaint petition that a police case was also lodged for the same occurrence and after investigation, the allegation was found not substantiated. Thus, the bonafide of the complainant is itself under doubt and a prosecution based on complaint petition suffers from malice as well.

9. Considering the entire facts of this case as discussed above, it is evident that the criminal proceeding against the petitioners is nothing but an abuse of the process of the Court which cannot be allowed in absence of direct evidence of commission of dowry death or murder in the complaint case as well as culmination in closures of the police case after investigation. Hence the impugned order and entire proceedings stand quashed and this application is set aside.

(Birendra Kumar, J)

B.Kr./-

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