

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.42980 of 2016

Arising Out of PS. Case No.-72 Year-2014 Thana- AGIAON District- Bhojpur

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1. Pritam Kumar, son of Sri Bhagwan Singh
 2. Sri Bhagwan Singh, Son of Late Ramanand Singh
 3. Babita Devi, D/o Manoj Kumar Singh
 4. Manoj Kumar Singh, son of Sri Bhagwan Singh
 5. Pappu Kumar @ Pappu Kumar Singh, son of Sri Bhagwan Singh
 6. Kiran Devi, wife of Pappu Kumar Singh
 7. Shushila Devi, wife of Sri Bhagwan Singh
 8. Priti Kumari, D/o Manoj Kumar Singh, All resident of Village - Ratnardh, P.S. - Grahani (Agiaon), District - Bhojpur
 9. Ajay Singh @ Ajay Kishore Prasad, son of Late Ram Briksha Prasad, Resident of Village - Mokhalisa, P.S. - Koilwar, District - Bhojpur

... .. Petitioner/s

Versus

1. The State of Bihar
2. Anuranjan Singh, D/o Late Madan Singh, Resident of Village - Bautipur, P.S. - Jagdishpur, District - Bhojpur

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Aditya Narayan Singh-1, Advocate
For the O.P. No. 2	:	Mr. Surendra Kumar Singh, Advocate
		Mr. Tulika Singh, Advocate
For the State	:	Mr. Shyam Kumar Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 26-08-2019

Heard the parties.

2. The petitioners have sought for quashment of order of cognizance dated 03.03.2016 passed by the learned 7th Additional Chief Judicial Magistrate, Ara, Bhojpur in Agiaon (G) P.S. Case No. 72 of 2014 corresponding to Session Trial No. 315



of 2016 (Trial No. 1121 of 2016) registered under Sections 304(B), 406 and 498(A)/34 of the Indian Penal Code.

3. The challenge is on the ground that criminal prosecution of the petitioners is manifestly attended with mala fide and the proceeding has been instituted maliciously with an ulterior motive to wreak vengeance on the accused and with a view to harass them.

4. In support of the aforesaid ground, learned counsel for the petitioners submits that daughter of the informant died while she was residing along with her husband in Government Quarter No. 3, Veer Chand Patel Path on 03.02.2014. The death was caused in an unnatural circumstances as the victim caught fire while drying the clothes of her newly born child and died during course of treatment at Patna Medical College and Hospital, Patna (in short 'P.M.C.H.'). On 07.02.2014. The full-brother of the victim, namely, Abhishek Kumar was present at the time of occurrence and treatment. He gave statement to Pirbahore Police Station camped at P.M.C.H. stating therein that he was also present along with her sister when she caught fire and all the people residing in that quarter attempted to rescue her and all carried her to the hospital where she died on 06.02.2014, during course of treatment. Pirbahore Police Station immediately forwarded the



matter on 07.02.2014 itself to Kotwali Police Station because place of occurrence falls within the territorial jurisdiction of Kotwali Police Station. Kotwali Police registered U.D. Case No. 01 of 2015 on 12.01.2015. The inquest report of the victim was prepared at P.M.C.H. on 07.02.2014 at 11:40 A.M.

5. Thereafter, the dead body was cremated and after cremation of the dead body, the father of the victim filed Complaint Case No. 796(C) of 2014 before the learned Chief Judicial Magistrate, Bhojpur at Ara stating therein that place of occurrence is village Ratnardh, P.S. Garhani (Agiaon), District Bhojpur and the occurrence took place continuously from 02.03.2012 i.e. the date of marriage. The contents of the complaint petition speaks that the victim was married with petitioner no. 1 Pritam Kumar on 01.03.2012. In spite of payment of huge quantity of gift, the husband of the victim and other family members were demanding dowry of rupees five lacs more and for non-fulfillment of the demand, they used to torture the victim. On one occasion, another son of the informant, namely, Akash Kumar went to the village of the matrimonial house and there, he was informed that the victim had gone to Patna. Then Akash returned back to his house and the information created suspicion in the mind of the complainant. Thereafter, the complainant and others went to the



matrimonial house of the victim. None of the house inmates gave a satisfactory reply. Thereafter, the complainant started inquiry and gathered that the accused persons have committed death of the victim for dowry by causing burn injury.

6. The complaint petition was filed on 19.04.2014 and it was forwarded by the learned Magistrate to the Superintendent of Police, Bhojpur on 19.04.2014 itself for registration of a police case. Accordingly, Agiaon (G) P.S. Case No. 72 of 2014 was registered on 06.07.2014. After investigation, the police submitted charge-sheet and, accordingly, impugned order has been passed.

7. Contention is that entire complaint petition has been cooked up after death of the victim, just to pressurize for illegal demand of the informant and to harass the petitioners maliciously. Further submission is that during whole of the investigation, the first son of the informant, namely, Abhishek Kumar was kept out of the picture as he was never produced before the police for examination nor his statement disputing fardbeyan was filed before the learned Magistrate on oath. Therefore, submission of learned counsel for opposite party no. 2 that signature of Abhishek Kumar was taken on blank sheet of paper which was converted into a fardbeyan, has no substance.



8. Learned counsel for the informant (O.P. No. 2 here) submits that the witnesses have consistently supported before the police that there was demand of dowry and torture for the same and the unnatural death of the victim was result of non-fulfillment of dowry demand and torture. In the circumstance, presumption of law is there against the petitioners and the burden is on the petitioners to discharge the same in view of the provision under Section 113(B) of the Indian Penal Code. Therefore, once the learned court below has taken cognizance, this Court should not interfere in exercise of extra ordinary jurisdiction under Section 482 Cr.P.C. He further submits that the police did not fairly investigate Agiaon (G) P.S. Case No. 72 of 2014. Hence, the informant filed Cr.W.J.C. No. 231 of 2017 for redressal of his grievance. Learned counsel for the informant submits that it is admitted position that the victim was alive for four days, during course of her treatment, but no step was taken for recording her statement. In the circumstance, the petitioners cannot be absolved to face trial.

9. The case diary does not show any medical report to substantiate that the victim was in a position to make statement during her treatment. Therefore, it cannot be alleged that the statement of the victim was not recorded for any other reason. The



necessary inference would be that she was not in a position to make statement, during the period of three days, when she was under going treatment in P.M.C.H.

10. Now the question to be determined is whether the factual position stated above and uncontroverted facts manifestly shows that the criminal prosecution has been launched against the petitioners with malice leading to abuse of the process of the Court. It is evident from the record that one of the full-brothers of the deceased, namely, Abhishek Kumar gave his fardbeyan before Pirbahore Police Station on 07.02.2014 itself stating therein that unnatural death of the victim took place. The aforesaid statement has not been controverted by Abhishek Kumar either before the Investigating Officer of this case or by filing a petition or affidavit before the learned Magistrate where the case is pending. The police, who investigated the present case, collected all the materials of the U.D. case i.e. the fardbeyan, the inquest report etc. and incorporated in the case diary. However, did not record a finding that the same were bogus and forged documents, rather submitted charge-sheet in mechanical manner only on the basis of statement of some of the witnesses that there was dowry demand and torture for the same.



11. A tendency is growing whenever such death occurs to implicate the family members in a planned manner. The present case is example of such malicious prosecution which cannot be allowed to go on only on the basis of some material coming against the petitioners in the statement of some witnesses before the police. Unless the earliest version of the occurrence was disbelieved in the police investigation, another case of the same act put-forward cannot be accepted to allow miscarriage of justice. There is no material to substantiate that Abhishek Kumar was biased against the victim (his sister) nor Abhishek Kumar stated anywhere that he did not make any such statement before the police. That statement was received by the police who investigated the present case. Therefore, the earliest version of the occurrence was available with the police and without making any inquiry on the genuineness of that version, the police has accepted the subsequent case put-forward by the father of the deceased which must be thwarted to prevent the miscarriage of justice.

12. As a rule, this Court does not interfere with the order of cognizance when prima facie offence/s is/are disclosed. However, this one is exception to the rule in the peculiar background of the initiation of the criminal proceeding. Permitting the court below to proceed with the case would be travesty of



justice. Thus, interest of justice warrants quashing of the same to prevent abuse of the process of the Court.

13. Accordingly, the impugned order and entire criminal proceeding arising out of the impugned order against the petitioners is hereby quashed and this application stands allowed.

(Birendra Kumar, J)

Kundan/-

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