

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.43961 of 2016**

Arising Out of PS. Case No.-134 Year-2011 Thana- KAMTAUL District- Darbhanga

1. Sanjay Kumar @ Sanjeev Ram Son of Victor Joseph
2. Kalawati Devi wife of Victor Joseph both resident of Village- South of Telephone Exchange Ansihabad By-pass Road, P.S.- Beur, Dist- Patna.
3. Urmila Devi wife of Surendra Kumar, Daughter of Victor Joseph
4. Surendra Kumar Son of Ram Bilash Das
5. Sabita Devi wife of Om Prakash @ Prakash Kumar, Daughter of Victor Joseph
6. Om Prakash @ Prakash Kumar @ Raju Prasad Son of Late Devi Das petitioner no.3 to 6 are resident of Village- Ranipur ki Khiraki, Patna City, P.s.- Khaje Kala District- Patna.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Dulari Devi W/o Ram Swaroop Ram resident of Village- Ratanpur, P.S.- Kamtaul, District- Darbhanga.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Jagdish Prasad, AdvMr.Anirudh Mishra, Adv
For the O.P. No. 1	:	Mr. Sanjay Kumar Singh, APP
For the O.P. No. 2	:	Mr. Pankaj Kumar Das, Adv

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 12-12-2019

Heard learned counsel for the parties.

This petition under Section 482 of the Cr.P.C has been filed for quashing the order dated 22.07.2016 passed by learned 2nd Additional Sessions Judge, Darbhanga, in Kamtaul P.S. Case No. 134 of 2011/ S. Tr. No. 558 of 2011, in which the petition of the petitioners filed under Section 227 of the Cr.P.C has been rejected.



Complainant/Informant Dulari Devi who is mother of deceased had filed a complaint case on 02.06.2011 in the court of CJM, Darbhanga which was referred to police under Section 156(3) of Cr.P.C upon which Kamtaul P.S. Case No. 134 of 2011 dated 07.07.2011 was instituted under Section 304(B) of IPC against accused petitioners.

In the complaint case it has been alleged by the complainant/informant that husband of complainant/informant is employed as Fuse Man in Irrigation Department and resides at Raghunath Tola in Anishabad in a rented house and all accused persons also reside at Harnichak, Anishabad, Patna, in their own house.

Daughter of complainant-Sangeeta Kumari was married to accused petitioner no. 1 on 06.06.2010 and at the time of marriage Rs. 1,21,000/- cash and one PULSAR Motorcycle valued at Rs. 65,000/- was given as present to accused petitioner nos. 1 and 2 and husband of complainant also gave one golden chain, one golden ring valued at Rs. 20,000/- and one watch and clothes of Rs. 25,000/- and gave other articles of Rs. 1,50,000/- to her daughter.

After marriage, her daughter went to her matrimonial house where accused persons started demanding Rs. 50,000/- as



dowry and for non fulfillment of said demand she was being tortured. It is further alleged that in the year 2010 during Diwali/Chhath complainant along with her husband came to her ancestral house at village Ratanpur, PS Kamtaul, with her daughter and her Son-in-Law also came and stayed there for 2-3 days and there also he demanded Rs. 50,000/- and thereafter returned back to Patna and she and her family members including her daughter also returned to Patna. Complainant/Informant was not sending back her daughter to her matrimonial home for which a Panchayati was held on 23.10.2010 at Anishabad and petitioner/accused no. 1 undertook in writing that he will not beat his wife and on 23.10.2010 her daughter went to her matrimonial home, however, she was told on phone by her daughter that she is being tortured.

Complainant has further alleged that on 25.05.2011 her daughter informed her from village Ratanpur that accused persons have assaulted her, and her husband (accused/petitioner no. 1), has dropped her at Bus-stand of Ratanpur Chowk and returned back Patna by Bus and at that time her daughter was carrying pregnancy of 7^{1/2} months and upon hearing it informant and her husband came to village Ratanpur and immediately took her to Singhwara Hospital and after



examining Doctor referred her to DMCH and she was taken to DMCH where she died on 27.05.2011 at about 8:30 pm.

Complainant/informant has further stated that she asked Doctor to conduct post mortem but he said that as child died in womb her mother also died. Complainant and her husband informed accused persons on phone but they did not come and thereafter deceased was cremated at Ratanpur and informant/complainant went to Police Station on 01.06.2011 after performing last rites but police refused to institute the case and thereafter she filed complaint case in the court of CJM, Darbhanga, which was sent to police station upon which FIR was registered.

After investigation, police found the case to be true and filed chargesheet against accused-petitioners under Section 498A and 304 of IPC, upon which court took cognizance against accused/petitioners and issued summons for their appearance to face trial and case was committed to the court of Sessions.

A petition under section 227 of the Cr.P.C was filed on behalf of accused/petitioners for discharge as there were no materials against accused/petitioners in order to constitute offences punishable under section 304 and 498A of IPC.

It is alleged in the complaint petition that during



Diwali-Chhath, complainant went to her ancestral house in village Ratanpur P.S Kamtaul where she brought her daughter also and thereafter her Son-in-Law also came who remained there for 2-3 days and returned back to Patna and there also he demanded Rs. 50,000/- and thereafter complainant returned back to Patna on next day of Chhath with her family. It is further alleged that on 23.10.2010 after assurance given by accused no. 1 in writing that he will not torture his wife, complainant and her husband send her daughter with accused no. 1. It is submitted that Chhath in the year 2010 fell on 12.11.2010 as such whole case as made out is false and concocted.

It is further submitted that in complaint petition, it is alleged that daughter of complainant informed her on 25.05.2011 from village Ratanpur P.S. Kamtaul that her husband has brought her on bus and left her at Ratanpur Chowk and returned back to Patna from next bus and she has been brutally assaulted by accused/petitioners and she was carrying pregnancy of 7 to 7^{1/2} months and thereafter complainant and her husband reached village Ratanpur and took her to Singhwara Hospital from where Doctor referred her to DMCH where she was admitted and died on 27.05.2011 at 8:30 pm, however, in her statement recorded by police she stated that she



was present in village and thereafter called her husband. However, during investigation it has come that deceased was brought to Primary Health Centre, Dighwara on 26.05.2011 at 8:15 am and date of discharge is 26.05.2011 and thereafter referred her to Darbhanga Medical College Hospital, and the attendant who took away deceased to DMCH is Mintu Kumar who has also signed as guardian of patient and not the informant or her husband which makes her case as stated in complaint petition doubtful. Even statement of said Mintu Kumar has not been recorded by the I.O. nor the statement of the driver or the Doctor who examined the deceased was recorded by the police.

It is further submitted that from documents available on record deceased was referred by the Doctor of PHC Singhwara on 26.05.2011 to DMCH and she was admitted there on 26.05.2011. From Bed Head Ticket it is apparent that she died due to complication arising out of pregnancy. The allegation of beating is not supported by any medical document prepared during treatment of deceased.

Allegation of demand of dowry and torture due to non fulfillment of said demand is vague and unspecific and is concocted and afterthought to frame petitioners in false case after death of daughter of complainant. There is no independent



witness supporting the accusation made against the accused/petitioners. No witness is eye witness and all are hearsay witness.

There is no evidence against petitioners that deceased died due to any overt act committed by petitioners rather there is sufficient medical documents that she was admitted in Hospital on account of complications arising out of her pregnancy and died due to said reason as reported by Doctors who treated her.

It is submitted that all in-laws have been made accused, and even married sisters and her husbands have not been spared by the complainant. Charges are groundless and there is no material on record on the basis of which even suspicion can be raised against petitioners or any evidence has come against petitioners on the basis of which even prima facie case is made out under sections 304 and 498A of IPC against them.

Learned counsel for the petitioners has relied upon a decision of the Apex Court in the case of **Dilawar Balu Kurane Vs. State of Maharashtra** since reported in **(2002) 2 SCC 135**, relevant paragraph whereof has been quoted below:-

“12. Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal



Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift and weight the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. ”

He has further relied upon the decision of the Apex Court in the case of **Yogesh @ Sachin Jagdish Joshi Vs. State of Maharashtra** since reported in **(2008) 10 SCC 394**, relevant portion has been quoted hereinbelow:-

“15. Chapter XVIII of the Code lays down the procedure for trial before the Court of Sessions, pursuant to an order of commitment under Section 209 of the Code. Section 227 contemplates the circumstances whereunder there could be a discharge of an accused at a stage anterior in point of time to framing of charge under Section 228. It provides that upon consideration of the record of the case, the documents submitted with the police report and after hearing the accused and the prosecution, the Court is expected, nay bound to decide whether there is "sufficient ground" to proceed against the accused and as a consequence thereof either discharge the accused or



proceed to frame charge against him.

16. It is trite that the words "not sufficient ground for proceeding against the accused" appearing in the Section postulate exercise of judicial mind on the part of the Judge to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. However, in assessing this fact, the Judge has the power to sift and weigh the material for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine a prima facie case depends upon the facts of each case and in this regard it is neither feasible nor desirable to lay down a rule of universal application. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused. At this stage, he is not to see as to whether the trial will end in conviction or not."

Learned counsel for the petitioners submit that proceeding can be quashed at the preliminary stage relying upon the judgment of the Apex Court in the case of **Inder Mohan Goswami and Os Vs. State of Uttaranchal and Ors** since reported in **(2007) 12 SCC 1**, relevant portion whereof reads as follows:-

31. This Court in *Madhavrao Jiwajirao Scindia and Ors. v. Sambhajirao Chandrojirao Angre and Ors. (1988 CriLJ 853)*, observed in para 7 as under:

7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to



continue. This is so on the basis that the court cannot be utilized for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.

It is well settled proposition of law that the charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by defence evidence, if any, cannot show that the accused committed the particular offence.

After going through the case record, it is apparent that daughter of complainant/informant was taken to PHC Singhwara on 26.05.2011 in the morning from where she was referred to DMCH where she was admitted and died on 27.05.2011 due to complications arising out of pregnancy. No complaint or FIR was instituted at that time. Complaint was lodged in the court of CJM on 02.06.2011 i.e. after 5 days of death. There is no proper explanation for said delay. As no FIR was instituted, no post-mortem was performed on the basis of which allegations as made could be established. Deceased was in her parental home in company with her parents, who got her



admitted in Hospital for treatment where she died and last rites were also performed by her parents and relatives and thereafter instituting case after 5 days raises doubt about the truthfulness of prosecution rather suggests the case to be an afterthought and instituted after much deliberation.

For the reasons as stated above, there is no sufficient ground to proceed against petitioners as such the order dated 22.07.2016 passed by learned 2nd Additional Sessions Judge, Darbhanga, in Kamtaul P.S. Case No. 134 of 2011/ S. Tr. No. 558 of 2011, is set aside.

The criminal miscellaneous petition is allowed.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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