

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.407 of 2016**

Arising Out of PS. Case No.-4104 Year-2014 Thana- VAISALI COMPLAINT CASE
District- Vaishali

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Yogendra Singh, Son of late Rajdeo Singh, Resident of Village- Husana
Raghav, PS and District Vaishali.

... .. Petitioner

Versus

1. The State Of Bihar
2. Ajay Kumar Singh,
3. Abhay Kumar Singh, both sons of Late Kedar Singh
4. Manju Devi, w/o Late Kedar Singh, all resident of village Sri Rampur, P.S.
Hajipur Sadar, Dist. Vaishali

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr.Lakshmi Kant Tiwary, Advocate
For the opposite parties	:	None
For the State	:	Mr. Parmeshwar Mehta, APP

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**CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
CAV JUDGMENT**

Date : 16-07-2019

This revision application is directed against the order dated 3.2.2016 passed by Sri Akhilesh Kumar, Judicial Magistrate, 1st Class, Vaishali at Hajipur in Case No. 4104 of 2014/Trial No. 1528 of 2016 whereby the protest-cum-complaint of the complainant-petitioner has been rejected and also for direction to the learned Magistrate to take cognizance or to make further inquiry.

2. The case of the complainant-petitioner is that he filed a complaint petition on 8.1.2013 being Complaint Case No. 97 of 2013 for the offences under Sections 304B, 498A and 120B of the Indian Penal Code against respondent Nos. 2 to 4. The above complaint was sent to the police for registration of police case under Section 156(3) of the Criminal Procedure Code and Hajipur Sadar P.S.Case No. 08 of 2014 was registered under Sections 304B and 498A IPC. It is also his case that since the police neglected



in conducting investigation and arresting the accused persons, petitioner filed a protest-cum-complaint petition on 6.3.2014 itself before the Magistrate. It is also his case that during investigation neither police traced out the dead body of the deceased nor arrested the accused persons nor taken statement of the witnesses and in connivance final form has been submitted on 21.9.2014 stating that aforesaid case appears to be a mistake of fact against the accused and in spite of protest petition filed by the complainant the final form was accepted by the Magistrate vide order dated 10.12.2014. However, he has proceeded with protest-cum-complaint petition which was numbered as 4104 of 2014 and sent for inquiry before Sri Akhilesh Kumar, Judicial Magistrate, 1st Class, Vaishali at Hajipur. Learned Magistrate after inquiry dismissed the protest-cum-complaint petition filed by the petitioner vide impugned order.

3. Being aggrieved by the dismissal of the complaint case on inquiry the present revision application has been filed on the ground that it is settled principle of law that during inquiry under Section 202 Cr.P.C. while deciding whether to proceed with the matter, Magistrate has only to see that sufficient ground for proceeding in the matter is available and allegation itself makes out the offence, nothing more he has to look into but in the present case in spite of the material collected during inquiry, i.e., statement of witnesses that the daughter of the complainant was subjected to cruelty with respect to demand of land and she was made traceless, the protest-cum-complaint petition filed by the petitioner has been rejected. Further ground is that there are also errors on record as while passing the impugned order, the learned Magistrate has observed that the witnesses examined during inquiry are not the cited witnesses of the complaint petition, but all the witnesses examined during inquiry are named in the protest-cum-complaint petition.



Further learned Magistrate has observed that there is no eye-witness to the occurrence and there is no scientific or direct proof of the death of daughter of complainant and though there is material to show that there was demand of money and she was tortured for that in her sasural but no complaint was made anywhere but all the above findings are absurd in view of the fact that in a case under Section 304B or 498A IPC ordinarily direct evidences are not available and complainant has come with a case that she is traceless from the house leading to the fact that she has been killed but the Magistrate in spite of the above facts dismissed the complaint-cum-protest petition filed by the petitioner.

4. Heard learned APP.

5. In this case, notice was issued to opposite party Nos. 2 to 4, the accused persons. It further appears that they have filed Vakalatnama but in spite of giving opportunity to appear they have not appeared.

6. On perusal of the impugned order it appears that there is error apparent on the record as learned Magistrate has wrongly come to the finding that the witnesses are not cited witnesses in the complaint petition, whereas from the protest-cum-complaint petition it appears that they are cited witnesses. It further appears that learned Magistrate has dismissed the complaint petition on the ground that there is no direct evidence nor there is direct proof of death and no complaint was lodged about demand or torture but learned Magistrate failed to consider that ordinarily in a case under Section 304B and 498A IPC direct evidence is generally not available, except the evidence of persons from the Maikie side, who are natural witnesses with regard to demand and torture. No doubt, there is nothing available on the record to show that dead body has been found but that itself is not a ground



for rejecting the complaint petition as they had come with a definite case that she is traceless from her sasural with respect to demand.

7. Learned counsel for the petitioner has also relied upon various decisions of Hon’ble Apex Court as well as of this Court, 2010(3) PLJR 717, 2010(3) PLJR 133 SC, 2010(1) PLJR 706 and AIR 1963 SC 1430.

8. Considering the above facts and settled principle of law laid down by Hon’ble Apex Court as well as by this Court, the order dismissing the complaint petition does not appear to be sustainable as it suffers from inherent illegality and impropriety, accordingly, the impugned order dated 3.2.2016 is set aside.

9. This revision application is allowed and the matter is remitted back to the court of Judicial Magistrate for further inquiry.

(Vinod Kumar Sinha, J)

spal/-

AFR/NAFR	
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