IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.19499 of 2018

Arising Out of PS. Case No.-139 Year-2010 Thana- BHAGALPUR KOTWALI District-Bhagalpur

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Ashok Sah @ Ashok Kumar Son of Shyam Sundar Sah, resident of Village-Tilkamanjhi Hat, P.S.- Tilka Manjhi, District- Bhagalpur.

... ... Petitioner/s

Versus

1. State Of Bihar and Anr
2. Ruman Devi, Wife of Rajesh Sah, Resident of Village Mohalla Tilkamanjhi Hatiya, P.S. Tilkamanjhi, District- Bhagalpur.

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr.Vibhakar Kumar
For the Opposite Party/s : Mr.Smt. Sharda Kumari

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT
Date : 25-04-2019

Heard learned counsel for the parties.

Petitioner, by means of this application under section 482 of the Code of Criminal Procedure, has invoked the inherent jurisdiction of this Court with prayer to quash the order dated 08.12.2011, passed by the learned Chief Judicial Magistrate, Bhagalpur in Kotwali P.S. Case No. 139 of 2010, whereby cognizance has been taken against the petitioner for the offences under sections 302 and 34 of the Indian Penal Code.

The brief facts of this case is that while the informant came back after attending her natural call on 15.02.2010 at 6 O' Clock, the petitioner poured kerosene oil

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on her and fled away and one Balmiki Sah thrown a burning match stick upon her resultantly she sustained burnt injuries. She further alleged that on hearing her crying sound, her husband along with other came and save her by treating her in house and thereafter she was taken to J.LN.M.C.H., Mayaganj for her treatment on 28.02.2010 but after lapse of one month she succumbed before her injuries and died.

Learned counsel for the petitioner has submitted that petitioner is innocent and has not committed any offence. In fact, the petitioner happens to Bhaisur of the deceased and he has been living for his livelihood in Puruanchal where he works as Caterer. He has falsely been implicated in this case merely on the basis of suspicion. Moreover, in the trial of other co-accused who happens to be brothers and mother of the petitioner altogether eight witnesses have been examined but none of them have supported the prosecution version and on that ground, the learned Magistrate has acquitted them form their charges vide order dated 05.01.2015 which is evident from Annexure-2. But, the learned Magistrate without appreciating the materials available on record has taken

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cognizance against the petitioner under Sections 302/34 of the Indian Penal Code in mechanical manner. Therefore, the same deserves to be quashed.

Learned counsel appearing for the State opposes the application by contending that there is direct allegation of pouring Keresone oil upon the informant against the petitioner resultantly she sustained burnt injuries and she succumbed to death during her treatment which is evident form the F.I.R. itself. Therefore, learned Magistrate after appreciating the materials available on record has found prima facie case against the petitioner and has rightly taken cognizance against the petitioner under Sections 302/34 of the Indian Penal Code. Moreover, although the other co-accused persons after facing trial have been acquitted from their charges by the learned Magistrate but this petitioner cannot be extended the same benefit of acquittal from his charges as he has not faced the trial as yet and he has been declared absconder. Therefore, the learned Magistrate has rightly taken cognizance against this petitioner under Section 302/34 of the Indian Penal Code and no ground for quashing the entire proceedings is made out.

From perusal of the material on record and

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looking into the facts of the case, this Court is of the view that the learend Magistrate found prima facie material to proceed against the petitioner and has rightly taken cognizance against the petitioner under Section 302/34 of the Indian Penal Code. Therefore, the prayer for quashing the order taking cognizance is refused.

The application, accordingly, stands dismissed.

(Arvind Srivastava, J)

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CAV DATE	
Uploading Date	03.07.2019
Transmission Date	

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