

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.57949 of 2017

Arising Out of PS. Case No.-105 Year-2010 Thana- KATIHAR MUFFASIL District- Katihar

1. Dr. Seema Kumari @ Seema Kumari wife of Late Dr. Shashi Shekhar and daughter of Sri Rajeshwar Prasad Sinha.
2. Chandan Kumar, son of Sri Rajeshwar Prasad Sinha.
Both Resident of Mohalla- Makhania Kuan Road, Patna P.S. Pirbahore,
District Patna.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Thakur, Advocate Mrs. Vaishnavi Singh, Advocate Mr. Ritwik Thakur, Advocate
For the Opposite Party/s :		Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

4 22-01-2024 1. Heard Mr. Ajay Kumar Thakur, learned counsel for the petitioners as well as Mr. Jharkhandi Upadhyay, learned APP for the State.

2. The learned counsel for the petitioners submit that the present quashing application has been filed seeking quashing of the order dated 08.09.2017 passed by the learned Sessions Judge, Katihar in Sessions Trial No.281 of 2015 whereby application filed on behalf of the petitioners under Section 227 of the Cr.P.C. seeking discharge has been rejected.

3. The learned counsel for the petitioners next submit that from perusal of the allegations as alleged in the FIR, it would manifest that the petitioners have been falsely implicated



in the present case. It is next submitted that petitioner no.1 is wife of the deceased and petitioner no.2 is brother of the petitioner no.1. The learned counsel further submits that despite there being no material on record to arrive at a conclusion that it was a case under sections 302, 120B and 34 of the IPC, the learned Trial court took cognizance of offence under the aforesaid sections when initially the FIR was instituted under Sections 306 and 34 of the IPC. It is further submitted that the deceased as well as petitioner no.1 were pursuing their master degree in medicine as well as Gynecology, the deceased was pursuing the degree of medicine from Dharan Medical College, Nepal while the petitioner no.1 was pursuing Gynecology from Medical College, Katihar.

4. The learned counsel further submits that the informant who is father of the deceased instituted Mufassil P.S. Case No.105 of 2010 dated 08.12.2010 alleging therein that the relationship of the deceased with the petitioner no.1 was not cordial as petitioner no.1 while studying in PG at Katihar Medical College had entered into an illicit relationship with some doctor and further that for this reason the deceased intended to take the petitioner no.1 herein to Dharan (Nepal), but in spite of his repeated request she refused, on which the



deceased asked her to stay at Patna for some days, further alleges that in-laws family of his son used to threaten and torture his son, further on 28.11.2010 his son came to Katihar and requested petitioner no.1 to accompany him to Nepal.

5. It is next alleged that petitioner no.1 all of a sudden on 29.11.2010 reached Patna and asked to arrange her return ticket on 04.12.2010 and went to her parental home on 01.12.2010 and on the same day she returned back to Katihar through Capital Express. It is next alleged that on 03.12.2010 the petitioner no.1 asked the deceased to come to Katihar so that she can accompany him to Dharan (Nepal), but when he reached Katihar the petitioner no.1 refused to accompany him, as a result of which, an occurrence took place at Katihar Medical College and petitioner no.1 was admitted in Emergency where the deceased stayed with her till 08:00 AM on 04.12.2010, further at about 08:00 AM the deceased said that he will return back after freshening up, but elder brother of petitioner no.1 i.e. petitioner no.2 along with one unknown person came and abused and scuffled with the deceased and forcibly took him to the room of petitioner no.1, on which the deceased was unable to bare the shock as a result of which the present occurrence took place.

6. The learned counsel submits that from perusal of



the allegation as alleged in the FIR it would manifest that the informant alleges that on account of matrimonial dispute in between the deceased and the petitioner no.1 on the ground that petitioner no.1 was having an illicit relationship and thus was refusing to accompany the deceased to Dharan where he was studying led to matrimonial bitterness but for some ulterior reason the petitioner no.1 called the deceased at Katihar on the pretext that she intends to accompany him to Dharan, but when the deceased reached Katihar Medical College she refused to accompany him on account of which an altercation took place and the deceased assaulted the petitioner no.1 and thereafter she got admitted in Emergency Ward of the Hospital where her brother i.e. petitioner no.2 also came and then he had an altercation with the deceased and forced the deceased to come back to the room of the petitioner no.1 but the deceased felt humiliated and thus committed suicide.

7. The learned counsel further submits that when the occurrence was reported to the police, the police came and after breaking the door entered the room where the body of the deceased was found hanging. It is thus submitted that the room was bolted from inside as such it cannot be presumed that the deceased was killed and thereafter hanged. It is also submitted



that even presuming what has been alleged is true without admitting then there was a matrimonial dispute and it may be a possibility that on account of bitterness in the matrimonial relation the deceased committed suicide, for which the petitioners cannot be faulted. It is also submitted that the petitioner no.1 earlier had instituted criminal cases against the deceased and his parents under Section 498A read with other sections of the IPC and Dowry Prohibition Act.

8. It is next submitted that the case for further investigation was handed over to the CID and the CID after investigation submitted charge sheet under Section 302 read with other sections of the IPC when initially the case was instituted under Section 306 and other sections of the IPC. It is thus submitted that despite no material transpiring during the course of investigation to remotely connect the petitioners with the offence under Section 302 but still the charge sheet in a mechanical manner came to be submitted and the cognizance was also taken in a mechanical manner under Section 302 of the IPC.

9. The learned counsel for the petitioners next submit that at the stage of discharge the learned trial court is not to act like a mouth piece of the prosecution but has to appreciate the



material which has transpired during the course of investigation in order to arrive at a conclusion whether trial of the accused is warranted or not. It is also submitted that though the court will not delve deep into the facts but then will have to appreciate the findings recorded by the investigating officer for arriving at a conclusion whether trial is required or not.

10. The learned APP, Mr. Jharkhandi Upadhyay vehemently opposes and rebuts the submission of the learned counsel for the petitioner and submits that the order dated 08.09.2017 passed in S.T. No.281 of 2015 by the learned Sessions Judge requires no interference. It is next submitted that from perusal of the order dated 08.09.2017, it would manifest that the learned District Judge while dismissing the application of the petitioners under Section 227 Cr.P.C. seeking discharge has taken into consideration the entire material facts which surfaced during the course of investigating pointing towards the role of the accused in the case. It is next submitted that the learned Sessions Judge has relied on various paragraphs of the case diary and the judgment of this Court and the Hon'ble Supreme Court while rejecting the application seeking discharge on behalf of the petitioners. It is next submitted that para-27 of the case diary records that doctors have found the cause of death



to be asphyxia due to strangulation and hanging. Further in the postmortem report the doctor has found two round ligature mark all around the neck over the upper part connected with each other leading to a conclusion that the cause of death was asphyxia by effect of strangulation and hanging, which also gets corroborated from para-96 of the case diary wherein it has been recorded that the second ligature were oblique in direction of hanging and the same was due to suspending the body after strangulating the victim. It is next submitted that para-147 of the case diary records that petitioner no.2 was also present at the place of occurrence and para-48 supports the factum of assault by petitioner no.2 and his associates to the deceased. Further para-147 also corroborates the presence of petitioner no.2 as per his call details report. It is next submitted that para-172 of the case diary in which the detail FSL report is recorded has mentioned that plastic rope of length 10 feet is not sufficient for self hanging a person as shown in the photographs, further the inner middle bolt of the room in which the occurrence took place can be fixed and closed from outside the room with the help of thin strong string.

11. The learned APP thus submits that though it has been submitted on behalf of the petitioners that it was a case



of suicide as the police on informantion came and broke the door and found the body of the deceased hanging, but then during the course of investigation this fact has also transpired that it was possible to lock the door from outside. It is thus submitted that at this stage when charges have been framed and trial has commenced the court should not interfere with the trial. The learned APP fairly submits that if what has been submitted by the learned counsel for the petitioner is true in that event the said facts will surface during the course of trial and the petitioner can be acquitted or the charges can be altered, but at the stage of discharge in the nature of investigation, it is difficult to ascertain whether the death was homicidal or suicidal.

12. Considering the submission made by the learned APP the Court finds no merit in the quashing application, accordingly the quashing application is rejected.

(Satyavrat Verma, J)

Prakash Narayan

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