

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.18385 of 2016**

Arising Out of PS. Case No.-56 Year-2015 Thana- SURYAGARHA District- Lakhisarai

Nawal Kishore Prasad @ Nawal Kishore @ Damodar Prasad Gupta S/o
Ramotar Prasad Gupta Resident of Village- Surajgarha, Bazar, PS Surajgarha,
District Lakhisarai.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner : Mr. Anil Kumar Singh, Advocate.

For the State : Mr. Chandra Sen Prasad Singh, APP

**CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER**

17 21-01-2025 The present petition under Section 482 Cr.PC has

been preferred by the petitioner for quashing and setting aside
the impugned order dated 14.08.2015, passed by learned Chief
Judicial Magistrate, Lakhisarai, in Surjgarha P.S. Case No. 56 of
2015 corresponding to G. R. No. 491 of 2015, titled State Vs.
Manju Devi and Ors., whereby learned Chief Judicial
Magistrate has taken cognizance of offence punishable under
Section 302 read with Section 34 of the Indian Penal Code
against all FIR named accused persons including the petitioner.

2. The prosecution case as emerging from the written
report of the informant/brother of the deceased/sister Anju Devi
is that the sister of the informant was married with co-accused



Raj Kishore Gupta in the year 2002, and she was being subjected to torturing by all the accused including the petitioner since 2013, for which, information was given to Police Station. It is further alleged that on 23.03.2015 at 9:30 PM he got information that his sister Anju Devi has been burnt to death by all the accused persons including the petitioner and her dead body was lying in their house. It is also alleged that there was demand of rupees 2,00,000/- as additional dowry and on account of non-fulfillment of the same, the offence has been committed.

3. After investigation charge-sheet bearing no. 78 of 2015 dated 23.06.2015 was submitted against three co-accused, but the petitioner and other two co-accused Manju Devi and Arjun Gupta were exonerated by the police. However, learned Chief Judicial Magistrate has taken cognizance of the offence against all the FIR named accused persons including the petitioner holding that the *prima facie* case under Section 302 read with Section 34 of the Indian Penal Code is made out against all the FIR named accused persons, including the petitioner.

4. I heard learned counsel for the petitioner and learned APP for the State.



5. Learned counsel for the petitioner submits that the petitioner is innocent and has falsely been implicated in this case. He further submits that in the case diary the son and daughter of the deceased who are aged about 11 and 7 years respectively, have stated to the police under Section 161 Cr.PC that the petitioner was not present at home at the time of occurrence. He further submits that even other witnesses have said that the petitioner lives in Patna and only occasionally he visits his house.

6. Learned APP for the State vehemently defends the impugned order submitting that there is no illegality or infirmity in it. He refers to postmortem report, as per which, the deceased died due to severe shock as a result of extensive burn injury caused by fire flame. It is also on the record that the deceased has died in the joint house of the petitioner. He further submits that the informant has clearly supported the prosecution case against the petitioner as stated in his written report. Other witnesses have also supported the case of the prosecution against the petitioner. He also submits that in view of the aforesaid facts and circumstances, there is sufficient material to take cognizance of the offence against the petitioner also because for taking cognizance even strong suspicion is



sufficient, and as per material on record there is sufficient material against the petitioner. Hence, the present petition is liable to be dismissed.

7. I considered the submissions advanced by both the parties and perused the material on record. I find that in the written report, the informant has clearly made allegation that the petitioner along with other family members have burnt the deceased by fire flames on account of non-fulfillment of demand of dowry. However, the occurrence has taken place beyond seven years of marriage and, hence, Section 304B of the Indian Penal Code is not attracted, but *prima facie* case is made out under Section 302 read with Section 34 of the Indian Penal Code. Moreover, the prosecution case is supported not only by the re-statement of the informant, but also by the statements of other prosecution witnesses and the postmortem report.

8. Hence, I find no illegality or infirmity in the impugned order. Accordingly, the present petition is dismissed.

9. However, the petitioner is at liberty to raise his plea of *alibi* or any other defence at the stage of framing of charge or during trial.

(Jitendra Kumar, J)

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