

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.25532 of 2016

Arising Out of PS. Case No.-97 Year-2005 Thana- NAUTAN District- Siwan

Rajendra Prasad Son of Late Sheo Lal Prasad Resident of Pachlakhi, P.S.
Nautan, District - Siwan

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Krishna Kant Singh

For the Opposite Party/s : Mr. Jharkhandi Upadhyay

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

12 23-06-2025 Heard the learned counsel for the petitioner and the
learned counsel for the State.

2. This application has been filed for quashing the order dated 18.07.2012 passed by the learned Chief Judicial Magistrate, Siwan in connection with Nautan P.S. Case No. 97 of 2005 by which the Court below after differing with the police report, took cognizance against the petitioner for the offence under Section 304B/34 of the IPC and Section 3/4 of the DP Act.

3. The prosecution story in brief is that one Amit Kumar in his written statement before the Police has stated that his younger sister Poonam Devi aged about 24 years was married to the son of the petitioner on 07.06.2005 as per Hindu rites and tradition. It has been alleged that at the time of marriage, a cheque amounting to Rs.80,000/- and cash



Rs.45,000/- was given to Rajendra Prasad (Petitioner) and one Hero Honda Splendor Motorcycle. Later, during a visit on 06.09.2005, Poonam disclosed to her father that she was being harassed by her in-laws—Madhuri Devi (mother-in-law), Rani Kumari (Nanad), and Rajendra Prasad (father-in-law)—for additional dowry including a TV, gas cylinder, and Rs. 25,000. It has been further alleged that when his father asked for 'Bidagri' of his sister then Rajendra Prasad and Madhuri Devi forced him out of the house. His father came back and narrated the entire occurrence. It has been further stated that due to financial problems they could not fulfill the demand. Thereafter, on 29.10.2005 the informant went to bring his sister but found his sister lying dead on the 'Palang'. The informant claimed that all the accused persons had killed his sister by hanging her due to non-fulfillment of dowry demand.

4. The learned counsel for the petitioner has submitted that after the investigation, police found no case against Rajendra Prasad and Rani Kumari. Charges were established only against Madhuri Devi and Rohit Kumar under Sections 306/412 IPC and Sections 3/4 of the Dowry Prohibition Act. However, the learned C.J.M., Siwan *vide* order dated 18.07.2012 has taken cognizance against the petitioner u/s



304B/34 of the I.P.C. and 3/4 of the D.P. Act completely ignoring the investigation as well as the settled preposition of law on mere presumption and assumption. While taking cognizance, the learned C.J.M. has taken the protest petition of the informant into consideration and has also looked into the case diary for taking cognizance which is impermissible in the eyes of the law. He further submits that learned C.J.M. has given much weightage to the supervision report which is not sustainable in the eyes of the law. During the investigation sufficient material was collected to demonstrate that the deceased had committed suicide.

5. It is next submitted by the learned counsel for the petitioner that during the investigation nothing came against the petitioner and there is no material to connect the petitioner either to murder or abetting. From the entire investigation it appears that the deceased due to certain misgivings and illusions ended her life which is apparent from the letters written by her which are mentioned in Para-48 of the case diary as also in the supervision note dated 03.04.2006. From the said letter it is apparent that the deceased was disturbed due to certain misgivings and was even contemplating ending her life but there is no mention of any torture or demand of dowry or any type of



abetment. From the aforesaid letter it appears that the aforesaid misgivings had arisen as the husband had left for Delhi after seven days of the marriage. He further submits that the petitioner was not aware of the order taking cognizance and as such he did not take recourse to any further legal proceeding at the earliest. It is further stated that no summons has ever been served on the petitioner otherwise he would have availed the remedy as available to him in law at the earliest.

6. The learned counsel for the petitioner has submitted that while passing the impugned order by which the learned Magistrate has differed with the final form and has taken cognizance. Though he has relied upon the materials collected during the investigation but he has also considered the protest petition filed by the petitioner and therefore the order taking cognizance is bad in law.

7. The learned counsel for the petitioner has relied upon the judgment of this Court in the case of *Ajay Jha & Ors vs. The State of Bihar & Anr* reported as **(2007) 1 PLJR 632**.

8. Mr. Jharkhandi Upadhyay, learned APP for the State has supported the cognizance order and has submitted that cognizance has rightly been taken on the basis of materials collected during the investigation and there is no discussion by



the learned Magistrate of the protest petition.

9. I have considered the submissions of the parties.

10. The impugned order by which cognizance has been taken by the learned Magistrate after differing with the final form so far as the petitioner is concerned, it is a well reasoned order and the same cannot be quashed merely because the prosecution argued the protest petition. There is no discussion with regard to the materials mentioned in the protest petition and the Magistrate has only said that the protest petition has also been argued.

11. In view of the aforesaid discussion, I am of the view that the judgment cited by the learned counsel for the petitioner i.e., *Ajay Jha & Ors vs. The State of Bihar & Anr (supra)* is not applicable in the facts of this case. Accordingly, this application is hereby dismissed with liberty to the petitioner to raise all the grounds at the stage of framing of charge or at an appropriate stage.

(Sandeep Kumar, J)

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