

(2007) 01 PAT CK 0178

In the Patna High Court

Case No : Criminal Miscellaneous No. 40852 of 2006

Ajab Lal Mahto and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 15-01-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 202, 482
Penal Code, 1860 (IPC) — Section 120B, 182, 201, 211, 304

Citation : (2007) 2 PLJR 221

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : Suraj Narain Sinha, for the Appellant; Jharkhandi Upadhyay, for the Respondent

Final Decision : Dismissed

Judgement

Abhijit Sinha, J.—This application u/s 482 Cr.P.C. is directed against the order dated 28.4.2006 passed by Sri Jai Ganesh Singh, Judicial Magistrate, Dalsingsarai, Samastipur in C.R. No. 2 of 2004/Tr. No. 1814 of 2006 whereby he has taken cognizance of offences under Sections 304, 201 and 120B of the Indian Penal Code against the three petitioners herein. It appears that one Chandra Bhushan Mahto filed the aforesaid complaint case in the Court of Sub-Divisional Judicial Magistrate, Dalsingsarai impleading 7 persons including the petitioners as accused and the same was transmitted u/s 156(3) Cr.P.C. to the concerned police station where Aangarghat P.S. Case No. 2 of 2003 was registered. After due investigation the police submitted final report showing that the deceased Kunti Devi aged 65-70 years was suffering from ailment for the past one year which according to the public caused her death and that she was cremated with the help of the co-villagers. The police also recommended for prosecution of the informant under Sections 182 and 211 I.P.C. However, on the basis of the protest petition filed by the informant/complainant the complaint case proceeded.

2. Briefly stated the prosecution case is that Kunti Devi aged about 60 years was issueless and living all alone as her husband Achchelal Mahto had pre-deceased her. It is said that in the morning of 29.12.2002, Ram Chandra Mahto, own "Zout" (nephew of her husband) informed Awadhesh Kumar, the son of the informant, that accused Ajab Lal Mahto had got all the plots of land of his grandmother transferred in his name some 3-4 years back by seduction and had not even paid the agreed amount and when Kunti Devi raised hulla, accused nos.1 to 5 forcibly caught hold of Kunti Devi and took her to their house and bathed her in chilled water and when Ram Chandra Mahto objected thereto he was driven away therefrom and Kunti Devi was taken inside the house. It is further said that on the next day he learnt that Kunti Devi had died and her dead body was surreptitiously buried at about 10 A.M. by the accused persons on the bank of the river. On the aforesaid premise, it has been alleged that it appears that Kunti Devi had been killed by the accused persons in order to usurp her lands and money by bathing her in chilled water during the winter months and her dead body was surreptitiously buried to hide evidence of the crime.

3. It has been submitted on behalf of the petitioners that the learned Magistrate had erred in taking cognizance on the basis of the inquiry u/s 202 Cr.P.C. since in the police investigation as also the supervision by the Deputy Superintendent of Police, Dalsingsarai and Superintendent of Police, Samastipur, it was found that the case was false and that Kunti Devi was fairly advanced in age and had been suffering from ailment for the past one year and was being cared for by the petitioner no.1 herein and had died a natural death which would be evident from the Death Certificate dated 8.1.2003 (Annexure-"4"). It has also been submitted that Ram Chandra Mahto had not asserted that Kunti Devi had been killed by the petitioners. Further contention of the learned counsel was that though admittedly Kunti Devi had been bathed in the evening there was no nexus between bathing and her death and it could not be said with certainty that it was the bathing which had caused the death of Kunti Devi.

4. Though the submissions advanced by the learned counsel for the petitioners appear to be very persuasive and alluring, I am unable to interfere with the impugned order at the present moment. This Court in exercise of jurisdiction u/s 482 Cr.P.C. is not required to hold a roving inquiry into the cause of death and it is only for the trial court to come to a finding regarding the cause of death of Kunti Devi after a full-fledged trial. Even otherwise the petitioners have the liberty of raising and pressing these matters at the time of framing of charge. Due regard being had to the facts and the circumstances of the case, I find no merit in this application which is accordingly dismissed.