

(2024) 04 RAJ CK 0136

In the Rajasthan High Court

Case No : Criminal Miscellaneous (Petition) No. 1071 Of 2024

Jetha Ram

APPELLANT

Vs

State Of Rajasthan And Others

RESPONDENT

Date of Decision : 30-04-2024

Acts Referred:

Indian Penal Code, 1860 — Section 34, 306, 498A
Code Of Criminal Procedure, 1973 — Section 161, 173(8)

Citation : (2024) 04 RAJ CK 0136

Hon'ble Judges : Kuldeep Mathur, J

Bench : Single Bench

Advocate : Dharendra Singh, Priyanka Borana, Vikram Sharma, Ramawatar Singh

Final Decision : Dismissed

Judgement

Kuldeep Mathur, J

By way of filing the present criminal misc. petition, the petitioner has prayed for following relief-:

"It is, therefore, most humbly and respectfully prayed that the Misc. Petition may kindly be allowed and the FIR No.39/2023, dated 15.03.2023, Police Station Bajju, District Bikaner may kindly be quashed and set aside."

Briefly stated, facts of the case are that respondent No.2-Dedaram lodged an FIR No.39/2023, registered at Police Station Bajju, District Bikaner alleging inter-alia that the marriage of his daughter- Basanti Devi was solemnized with one Nakhtaram S/o Mangilal about 9 years ago. Soon after the marriage, the present petitioner along with the co-accused persons started harassing his daughter in connection with dowry demand. In the FIR, it was further alleged that on 14.10.2023 at about 10:00 PM., his daughter was brutally murdered by her husband Nakhtaram, Jetharam i.e. present petitioner and Smt. Mohini Devi (mother-in-law). The accused persons after murdering the deceased- Basanti Devi had thrown her body in a Tanka (well) with an intention to destroy the

evidence.

Learned counsel for the petitioner submitted that after lodging of the FIR, the Investigating Agency conducted a thorough investigation in the matter and has found offences under Section 498-A, 306 and 34 of IPC proved to be true against Nakhtaram and Mohini Devi only. The charge-sheet against Nakhtaram and Mohini Devi has already been filed before the competent criminal court. Learned counsel for the petitioner submitted that the present petitioner is an elder brother of Nakhtaram and he has not played any role in commission of the alleged crime. Therefore, offences were rightly not found to be proved against the present petitioner.

Learned counsel for the petitioner contended that after filing of the charge-sheet against Nakhtaram and Smt. Mohini Devi, the Investigating Agency has started harassing the petitioner. Though admittedly, as per the investigation conducted in the present case, there is no direct or circumstantial evidence available on record indicating his involvement in commission of the alleged crime.

Lastly, learned counsel for the petitioner submitted that a bare perusal of the material available on record i.e. the impugned FIR, and/or the investigation/further investigation in the present case would reveal that the offences alleged are clearly not sustainable against the present petitioner and therefore, the impugned FIR deserves to be quashed and set aside. Reliance was placed on the following judgments:-

? M.C. Abraham VS State of Maharashtra reported in (2003) 2 SCC 649

? Abhinandan Jha VS Dinesh Mishra reported in AIR 1968 SC 117

? Kahkashan Kausar @ Sonam and Others VS State of Bihar and Others reported in (2022) 6 SCC 599.

Per contra, learned Public Prosecutor as well as learned counsel for the complainant submitted that serious allegations have been levelled against the present petitioner in the impugned FIR. Learned counsel for the respondent submitted that though in the initial investigation made by the Investigating Agency, the offences punishable under Sections 498-A, 306 and 34 of IPC were found to be proved against Nakhtaram and Smt. Mohini Devi only and the charge-sheet against them has already been filed before the competent criminal court, however, in the FSL report dated 09.05.2023, issued by Regional Forensic Science Laboratory, Bikaner, upon conducting the chemical examination of Visceras and blood samples, the same gave positive test for presence of "Organophosphorous Insecticide" in the body of the deceased-Smt. Basanti Devi.

Learned counsel for the respondent submitted that the presence of "Organophosphorous Insecticide" in the body of the deceased- Smt. Basanti prima facie establishes the allegations levelled by the complainant in the FIR to be correct that his daughter had been murdered and thereafter, her body was thrown in a Tanka (well) with an object to destroy the evidence and stage the

incident as a suicide.

Learned counsel for the respondent submitted that looking to the serious lapses in the investigation, an application was filed by the Deputy Superintendent, Circle Kolayat before the Court of Addl. Sessions Judge (Women Atrocities Cases) Bikaner under Section 173(8) Cr.P.C. for seeking permission to further investigate the matter and the same was allowed vide order dated 12.07.2023.

Learned counsel for the respondent submitted that the order dated 12.07.2023 passed by the learned Addl. Sessions Judge (Women Atrocities Cases) Bikaner has not been challenged by the petitioner.

It was contended that a further investigation in the matter would only help the Court in arriving at the truth in the case and do substantial as well as effective justice, therefore, the same does not call for any interference by this Court.

Lastly, learned counsel submitted that the present criminal misc. petition may be dismissed being devoid of any merit.

Heard learned counsel for the parties at length. Perused the material available on record.

It is not in dispute before this Court that the petitioner has been named in the FIR No.39/2023 dated 15.03.2023. The complainant- Dedaram and the other material witnesses of the case viz. Nakhtharam S/o Dedaram, Ranaram, Rameshwar, Smt. Raju Devi, Smt. Pani Devi, Rampratap, Jassaram, Bhagwanaram, Champalal, Durjaram, Bhagwanaram S/o Prabhuram, Vishal Singh etc., in their statements recorded under Section 161 of Cr.P.C. have levelled serious allegations against the present petitioner and the co-accused persons.

It is also not in dispute before this Court that the FSL report dated 09.05.2023 gave positive report regarding the presence of "Organophosphorous Insecticide" in the body of the deceased-Smt. Basanti Devi, the consumption of which is poisonous and sufficient to end the life of a human being. It is really shocking and surprising that despite specific allegation in the impugned FIR of the deceased being murdered by the named accused persons and despite availability of FSL report dated 09.05.2023 on record, the previous Investigating Officer filed a charge-sheet dated 25.05.2023 before the competent criminal court for the offences under Section 498-A, 306 and 34 of IPC only against the co-accused persons Nakhtaram and Mohini Devi.

The powers of the competent criminal court to ensure proper investigation in the criminal cases are well recognized in law. The competent criminal court can order further investigation in terms of Section 173(8) Cr.P.C., even in the cases where charge-sheet has been filed to do complete justice where facts of the case so demand.

Hon'ble Apex Court in the case of Ram Lal Narang Vs. State (Delhi Admn.)

reported in AIR 1979 SC 1791 was pleased to hold that further investigation is not altogether ruled out merely because cognizance has been taken by the court. When defective investigation comes to light during the course of trial, it may be cured by further investigation, if circumstances so permit. It would ordinarily be desirable and all the more so in this case, that the Investigating Agency should inform the court and seek formal permission to make further investigation when fresh facts come to light instead of being silent over the matter keeping in view only the need for an early trial since an effective trial for real or actual offences found during the course of proper investigation is as much relevant, desirable and necessary as an expeditious disposal of the matter by the trial court.

In view of aforesaid position of law and keeping in view the fact that the order dated 12.07.2023 passed by the Court of Addl. Sessions Judge (Women Atrocities Cases) Bikaner, ordering further investigation in the matter has not been challenged before this Court, this Court is not inclined to stand in the way of further investigation in the impugned FIR, if that would help the learned trial court in arriving at the truth and do real and substantial justice.

The present misc. petition is accordingly dismissed. However, it is made clear that this Court has not expressed any opinion on the merit of the case.

All pending applications also stand disposed of accordingly.