
(2012) 03 PAT CK 0017

In the Patna High Court

Case No : Criminal Miscellaneous No. 26155 of 2010

Md. Mister Mian and Another

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 23-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319
Penal Code, 1860 (IPC) — Section 304B, 34

Citation : (2012) 3 PLJR 751

Hon'ble Judges : Vikash Jain, J

Bench : Single Bench

Advocate : Md. Nadim Seraj, for the Appellant; J.K. Singh No. 1 for the State and Mr. Bimlesh Kumar Pandey for the Opp. Party No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Vikash Jain, J.—The present application has been filed for quashing the order dated 21.5.2010 passed by the learned Additional Sessions Judge, West Champaran, Bettiah in connection with Sessions Trial Case No. 353/2009 arising out of Kangali P.S. Case No. 16/2008 whereby summons u/s 319 Cr.P.C. has been issued against the petitioners. According to the fardbeyan of one Md. Murtza his daughter Hossan Tara Khatoon was married in April, 2003 to the petitioner no. 1 according to Muslim rites and customs. It appears that on 22.6.2008 the informant's daughter Hossan Tara Khatoon was set ablaze for non-fulfilment of dowry demand by the members of the family of petitioner no. 1 resulting in her death and accordingly FIR was instituted alleging offences under Sections 304B/34 IPC.

2. Learned counsel for the petitioners submits that the name of the petitioner no. 1 was not even mentioned in the FIR and he was not made an accused therein for the alleged offence. He submits that the summons u/s 319 Cr.P.C. had been issued without there being any materials on the record to proceed against the petitioner. It is further submitted that the case has been instituted only to put

pressure on the petitioner's family on the ground that the petitioner's father did not accede to the request of the informant for the marriage of the petitioner no. 1 with the informant's younger daughter.

3. The Opposite Party No. 2 being the informant has appeared and filed a counter affidavit. It has been submitted that three witnesses were examined by the prosecution, all of whom have deposed against the petitioners and have supported the fact of dowry demand (Annexure-A). It has further been stated that the reason for not making the petitioner no. 1 an accused in the FIR was that the informant was under the mistaken belief that the petitioner no. 1 was not in the village at the time of the occurrence. However, it was known subsequently that the petitioner no. 1 was in fact present in the village which fact has been duly acknowledged by the petitioner no. 1 himself in his affidavit dated 26.8.2008 (Annexure-B). It is therefore, submitted that the petitioners' complicity in the alleged offence cannot be doubted and summon u/s 319 Cr.P.C. has rightly been issued. It has also been contended that the petitioners' claim that he had tried to save his wife appears to be ex-facie incorrect in view of the post mortem report (Annexure-C) which shows that no part of the body was found unburnt. It is submitted that had the petitioner in fact tried to save his wife as claimed at least some part of the body would have remained unburnt.

4. Considering that the petitioner no. 1 was present at the time of occurrence as is evident from his affidavit dated 26.8.2008 and also considering the serious nature of offence alleged which is duly supported in the statements of the witnesses recorded on oath. I am not inclined to interfere in the matter at this stage as it cannot be said that there is no material on record to summon the petitioner to face trial. I do not find any illegality in the impugned order dated 21.5.2010 wherein after consideration of all the materials on record the learned Additional Sessions Judge has found sufficient materials to proceed against the petitioners. This application therefore, stands dismissed.