
(2009) 08 PAT CK 0080
In the Patna High Court
Case No : Cr. Misc. No. 25610 of 2007

Munna Sharma @ Munna Mistry and Others

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 13-08-2009

Acts Referred:

Citation : (2009) 08 PAT CK 0080

Final Decision : Dismissed

Judgement

Mihir Kumar Jha, J.—Heard counsel for the Petitioners, counsel for the opposite party No. 2 and counsel for the State.

2. The impugned order dated 4.4.2007 rejecting the prayer of Petitioners for discharge is sought to be assailed primarily on the ground that the court below has failed to take into account the fact that even after reading of the complaint petition and the statement u/s 202 Code of Criminal Procedure no offence u/s 304B of the Indian Penal Code was made out. Thus, according to the learned Counsel for the Petitioner the impugned order rejecting the prayer made for discharge by the court below by the impugned order would reflect its mechanical application of mind. Counsel for the Petitioners in this context has placed reliance on judgments of Hon"ble Apex Court in the case of Satish Mehra Vs. Delhi Administration and Another, and also in the case of Ranveer Singh v. State of M.P. reported in 2009 AIR SCW 1182 to buttress his submission that the court below as well as this Court is well empowered to look into even the contemporaneous documents not forming part of the case records for considering the prayer for discharge and arriving at the conclusion as to whether there was sufficient ground for prosecuting the accused persons.

3. Counsel for the Petitioners in this context is quite empathetic that if the court below or this Court would look into the prescription of lady doctor as contained in (Annexure-2/1) OPD slip of PMCH dated 22.6.2005 (Annexure-2/2), certificate of death dated 19.7.2005 issued by the Deputy Superintendent of PMCH, Patna (Annexure-2/3), the receipts dated 21.6.2005 showing payment of Rs. 200/-

towards expenditure for engaging an ambulance (Annexure-2/4), receipt dated 22.6.2005 given on a plain paper showing payment of Rs. 800/- to the vehicle owner (Annexure-2/5), photographs as contained in Annexure-3 series at the time of cremation and undated public petition (Annexure-4) signed by 29 villagers filed before the Officer-in-charge as well as the report of Sub-Inspector of Jehanabad Police Station dated 9.8.2005 (Annexure-5) they would definitely go to show that the entire story of the complainant as with regard to death of his daughter by alleged physical and mental torture in terms of Section 304B I.P.C. was absolutely false and unsustainable. Counsel for the Petitioner would further submit that in view of the aforesaid unimpeachable documentary evidence the court below ought to have come to a conclusion that there was no chance of conviction of the accused Petitioners and should have as such also allowed their prayer for discharge.

4. Counsel for the complainant/opposite party No. 2 on the other hand would submit that a bare reading of paragraph 2 of the complaint petition would go to show that there was already subsisting fear in the mind of the victim girl who had always been tortured by her husband and in-laws for dowry and also for bringing other gift items. In this context, he. has produced before this Court two letters allegedly written by the victim girl to the father showing her discomforts due to physical and mental torture caused by the Petitioners and other relatives of her husband.

5. Counsel for the complainant has also referred to two judgments of this Court in the case of Suresh Singh and Others Vs. The State of Bihar, and in the case of Bharath Singh Vs. State of Bihar and Others, to contend that scope of Sections 227 and 228 Code of Criminal Procedure is very limited and at this stage neither the defence of the accused persons can be gone into nor the truth, veracity and the effect of evidence can be examined.

6. Having given anxious consideration to the aforesaid submissions as also upon perusal of the materials on record this Court is of the considered opinion that the present case is not one of those cases where it can be said with a sense of certainty that there was no allegation either in the complaint petition or in the solemn affirmation of the complainant. As a matter of fact, when the complainant's averments with regard to the letter his deceased daughter the victim alleging part of the torture was sought to be substantiated by counsel for the complainant even before this Court, it would be difficult to hold that there was no materials before the court below for coming to the conclusion that the accused Petitioners had sufficiently tortured and harassed the victim girl leading to her death. It is not the case of the complainant that his daughter was done to death by poisoning or that she had died in course of her treatment relating to her pregnancy rather the specific case of the complainant is that in the background of earlier history of her torture when her daughter was actually killed by the Petitioners which constituted offence u/s 304B I.P.C. In view of the admitted position that her marriage was solemnized only few years ago not beyond seven

years and that the death of his daughter was on account of torture of the Petitioners and other family members of her husband.

7. This Court would also find that the consistent version of the complainant and his witnesses is only relating to the cruelty inflicted on the daughter of the complainant because no one had actually seen the death of the daughter of the complainant. Therefore, the defence of the Petitioners that the victim had died natural death in course of pregnancy cannot be said to be proved only because there was a prescription or that she was taken to PMCH. Normally in fact it was not required for this Court to make any comment on the documents relied upon by counsel for the Petitioners but as the Petitioners had placed reliance on the judgment of Hon''ble Apex Court in the case of Satish Mehra (supra) to contend that this Court while exercising power u/s 482 Code of Criminal Procedure can go into the correctness or otherwise of such documents, it must be recorded that at least from the OPD slip of PMCH it cannot be said that victim had died natural death because certificate of death only shows admission of victim on 22.6.2005 and she was shown dead within three hours of her entry in which her condition was shown very precarious. When the Petitioners rely on document of use of ambulance it can also be said that trip to PMCH was a mere show or pretence or an attempt of accused persons to create an impression that she was being cared at the stage of pregnancy because if they were interested in saving the life of the deceased, they could have gone to PMCH well in advance.

8. Similarly, this Court would find that producing of photographs of cremation can only give an impression that such cremation had taken place in a normal circumstance. From perusal of undated public petition filed by 29 villagers it would not transpire that as to why 29 villagers would go to officer-in-charge and file a petition in defence of the Petitioner. Finally, report of police officer dated 9.8.2005 being a date after filing of the complaint case cannot but be held to be a creation of the Petitioners for improving their defence version.

9. Counsel for the opposite party No. 2 also seems to be correct in saying that at the stage of framing of charge or deciding the matter of discharge the court cannot consider the defence of the accused and the High Court in exercise of inherent power u/s 482 Code of Criminal Procedure would not be required to look into such defence of accused or go into question of correctness and sufficiency of evidence. As a matter of fact, the trial court at the stage of framing of the charge even cannot go into the truth, veracity and effect of evidence proposed to -be adduced inasmuch as there would be no mini-trial at the stage of framing of the charge.

10. Added to all these, this Court has not also found a single ground even in the application filed by the Petitioners seeking discharge in the court below which has been raised only in the present application and therefore it must be held that at least the court below was fully justified in looking only to the material on record before it for arriving to the conclusion that there were sufficient material for framing of charge and consequently the prayer of discharge made by the

Petitioners was fit to be rejected. This however is an additional reason for rejecting the prayer of the Petitioners because whatever has been recorded above on the basis of submission made by learned Counsel for the Petitioners before this Court were actually never sought to be canvassed as is clear from a bare perusal of the discharge petition.

11. It has to be kept in mind that the present criminal proceedings is based on a complaint petition and the cognizance of the offence was taken after holding enquiry u/s 202 Code of Criminal Procedure. The complainant, father of the victim girl in the solemn affirmation while supporting the allegations of demand of dowry causing torture both mentally and physically to his daughter, the deceased, by giving repeated threatening of her being sent to the father's home (Naihara) if the demand of dowry was not fulfilled, had in reply to the Court question produced two letters to support his allegation in the petition of complaint, one of such letter was written by the daughter of the complainant, the deceased and the other by the husband of the deceased. Thus, these two letters had formed part of the records of the complaint case. Such allegation of the complainant duly supported in his solemn affirmation was further corroborated by examination of as many as three witnesses in course of enquiry u/s 202 Code of Criminal Procedure.. and all of them have clearly stated as with regard to demand of colour T.V., fan, utensils and cash from the victim girl as also repeated abusing on account of non-fulfilment of the demand of dowry. Their statement gets corroborated from the letter of the victim girl wherein she had informed both her parents as with regard to the demand of dowry. The said materials forming part of the records of the complainant case, the court below while considering the prayer of discharge could not have discarded them altogether for arriving at a conclusion that whatever was being suggested by the Petitioner relating to natural death of the deceased in course of her treatment during her pregnancy was correct. Such defence of the Petitioners could not have been gone into much less could not have been made the basis for recording an order of discharge in fact the court below has recorded in the impugned order that the correctness of such documents sought to be referred to by the Petitioners can only be examined in course of trial. This Court would not find any error in such approach of the court below while passing the impugned order.

12. True it is that in the case of Satish Mehra (supra), the Apex Court on the basis of some admitted documents have interfered with the prosecution at the initial stage but then from the reading of the text of the judgment it would be clear that there was inconsistent version of the complainant herself inasmuch as whatever was reported before the trial court in the complaint case went contrary to the earlier version of the complainant with Newyork Police and the report of the Newyork Police was brought on record to substantiate the plea. It is thus clear that the case of Satish Mehra was decided by the Apex Court in the facts and circumstances thereof which cannot be of universal application pertaining to exercise of power under Sections 227 and 228 in all the cases where there are clinching materials on record produced by the prosecution to make out the

offence. In a given case if there are two consistent version, one of the prosecution and the other of the accused in their defence, the same in fact cannot be decided at the stage of considering the prayer of discharge. Thus, even if the documents relied by the Petitioners are taken on their face value, they would not prove innocence of the Petitioners as discussed above unless they are proved and subjected to scrutiny and cross-examination by the complainant and his witnesses.

13. Thus for the reasons recorded above, this Court does not find any merit in this application and the same is, accordingly, dismissed.