

(2012) 08 JH CK 0114
In the Jharkhand High Court
Case No : Criminal Rev. No. 951 of 2010

Sabhapati Prasad Kushwaha	Vs	APPELLANT
The State of Jharkhand and Another		RESPONDENT

Date of Decision : 09-08-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 228
Penal Code, 1860 (IPC) — Section 279, 304, 304A

Citation : (2012) 08 JH CK 0114

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Advocate : V. Shivnath, Mr. Birendra Kumar and Mr. Niraj Kishore, for the Appellant; Md. Hatim, Assistant Public Prosecutor for the State and Mr. Rajan Raj, Advocate for the Opposite Party No. 2, for the Respondent

Final Decision : Dismissed

Judgement

H.C. Mishra, J.—Heard learned counsel for the petitioner, learned counsel for the State, as also learned counsel for the accused opposite party No. 2. The petitioner is aggrieved by order dated 07.07.2010 passed by the learned Additional Sessions Judge, Fast Track Court No. 1, Dhanbad, in Sessions Trial No. 226 of 2009, whereby on an application filed by the accused opposite party No. 2, u/s 227 of the Cr.P.C. for discharge, the Court below has found that no offence is made out against him for the offence u/s 304 of the Indian Penal Code, rather the offence is made out u/s 304A and 279 of the Indian Penal Code and accordingly, in exercise of the power u/s 228 of the Cr.P.C. the learned Additional Sessions Judge transferred the case to the Court of the Chief Judicial Magistrate, Dhanbad, for framing the charge and trial of the accused in accordance with law.

2. Aggrieved by the said order the petitioner, who is the father of the deceased, has filed this revision, claiming that the offence is made out against the accused opposite party No. 2 for the offence u/s 304 of the Indian Penal Code, triable by the Court of Session, and as such, the impugned order cannot be sustained in

the eyes of law.

3. The facts of this case lie in a short compass. There was a collusion of two motorcycles and the F.I.R. was lodged by the pillion rider of one of the motorcycles, who has stated that on 27.03.1997 at about 8:00 p.m. the informant was returning back from the farm house of his friend Purnendu Shekhar on a motorcycle along with him, to Dhanbad and when they reached near Upper Bazar, a motorcycle going towards Tundi, which was being rashly and negligently driven, dashed against the motorcycle of the informant which was being driven by his friend Purnendu Shekhar. Both of them fell down and were injured and brought to hospital. On 31.01.2007 in the morning he learnt that his friend Purnendu Shekhar had died. On the basis of the Fardbeyan of the injured Prabhakar Prasad, Govindpur P.S. case No. 81 of 2007, corresponding to G.R. No. 998 of 2007 was instituted against unknown for the offence u/ss. 279 / 304A of the Indian Penal Code and investigation was taken up.

4. After investigation the police submitted charge-sheet against the accused O.P. No. 2 for the offence u/s 304 of the Indian Penal Code, as it transpired during investigation that the other motorcycle was being driven by the accused O.P. No. 2. The accused and the other two persons on his motorcycle were also injured and they were taken to the hospital by the police party which had reached the place of accident and the police personnel who had brought them to hospital had stated before the Investigating Officer that they were in a drunken state. The impugned order shows that the statements of S.I. Jitendra Kumar, Officer-in-charge of Govindpur P.S. as also of S.I. Akhilesh Sahar, were recorded in paragraphs 35 and 36 of the case diary, wherein they had stated that they had reached the place of accident after the accident and the three injured persons who were riding the motorcycle which had collided with the motorcycle of the informant were brought to Central Hospital, Seraidhella for treatment and they were smelling alcohol. Further, from para-147 of the case diary it had transpired that the accused opposite party No. 2 was not having the driving license. On the basis of these materials, the Investigating Officer converted the offence into one u/s 304 of the Indian Penal Code under the direction of the Dy. S.P., who had supervised the case and subsequently, the charge-sheet was filed against the accused for the offence u/s 304 of the Indian Penal Code.

5. It appears from the impugned order that subsequently the cognizance was also taken for the offence u/s 304 of the Indian Penal Code against the accused opposite party No. 2 and the case was committed to the Court of Session for trial. The accused opposite party No. 2 filed his application u/s 227 of the Cr.P.C., for discharge in the Court of Session, which was considered by the learned Additional Sessions Judge, Fast Track Court, 1st Dhanbad, and by order dated 07.07.2010 the Court below found that there was no medical evidence in the case diary to show that the petitioner was in a drunken state and the Court below also found that the statements of the witnesses recorded in paragraphs 35 and 36 and 147 of the case diary were not legally acceptable. The Court below

also found from the statements of the witnesses recorded In the case diary that the witnesses had categorically stated that it was a case of mere accident and accordingly, the Court below found that there was no material on record to proceed u/s 304 of the Indian Penal Code against the accused, but there was material to proceed against him u/ss. 304A and 279 of the Indian Penal Code and accordingly, the case was transferred to the Court of the Chief Judicial Magistrate, Dhanbad for trial in accordance with law.

6. The petitioner, who is the father of the deceased Purnendu Shekhar, has challenged the order dated 07.07.2010 submitting that the impugned order passed by the Court below is absolutely illegal and in the facts of the case and on the basis of the material on record the offence is made out u/s 304 of the Indian Penal Code, which is triable by the Court of Session. It is submitted by learned counsel for the petitioner that the deceased had died due to head injuries caused by hard and blunt substance as would be evident from the post mortem report, and the C.T. Scan report of the head of the deceased also showed the grievous injuries in the head of the deceased. It has been submitted that the deceased was living at his farm house and he had given information petition making allegation against one Sanat Layak, who was a pujari in one Vankali Mandir, alleging that the said pujari indulged in illegal activities along with other unknown persons. The said informatory petition was registered as Misc. Case No. 1591 of 2006 before the Chief Judicial Magistrate, Dhanbad, copy of which has been brought on record as Annexure-3.

7. It is submitted by learned counsel for the petitioner that it cannot be ruled out that due to the said informatory petition the son of the petitioner was got murdered in the garb of accident. Learned counsel for the petitioner also submitted that against the application filed u/s 227 of the Cr.P.C. by the accused in the Court below, a rejoinder thereto was filed by the prosecution in which this fact had been brought on record and it was stated that in paragraph 147 of the case diary that the accused was not having a valid driving license on the date of accident and the statement of the father of the deceased was also recorded in which it was stated that the death was caused intentionally by the accused in connivance with someone. Learned counsel accordingly, submitted that on the basis of these materials, the offence is clearly made out against the accused u/s 304 of the Indian Penal Code and accordingly, the impugned order cannot be sustained in the eyes of law.

8. Learned counsel for the State as also learned counsel for the opposite party No. 2 on the other hand, have submitted that there is no illegality in the impugned order, worth interference in the revisional jurisdiction.

9. After having heard learned counsels for both the sides and upon going through the record, I find that admittedly the deceased had died in collusion of two motorcycles, one of which was allegedly being driven by accused opposite party No. 2, rashly and negligently. The head injury which was the cause of death of the deceased was quite possible in a motorcycle accident like the present one

and there is nothing on the record to show that any suspicion was raised by the deceased against this accused opposite party No. 2 also, in his informatory petition given before the Chief Judicial Magistrate, Dhanbad, copy of which has been brought on record as Annexure-3 to this application. The said informatory petition is only against one Sanat Layak and the opposite party No. 2 has not been named in the said informatory petition. In that view of the matter, it cannot be said that the accused opposite party No. 2 was having any intention to cause the death of the deceased. There is nothing on the record to show that the accused opposite party No. 2 even knew the deceased from before and the witnesses have clearly stated that this was a case of pure accident. The Court below has found that though the accused and the other injured persons were brought to the hospital by the police, but there was no medical evidence to show that they were in drunken state and accordingly, the statement of the police officials recorded in paragraphs 35 and 36 of the case diary were not legally acceptable. The Court below has also found that even the statement in paragraph 147 of the case diary was not acceptable and in view of the fact that it was a pure case of accident between the two motorcycles, there was no material on the record to proceed against the accused for the offence u/s 304 of the Indian Penal Code, rather the case was made out u/ss. 304A and 279 of the Indian Penal Code for which the case was transferred to the Court of Chief Judicial Magistrate, Dhanbad, for trial in accordance with law. In view of the discussions made in the Impugned order, I am of the considered view, that the Court below has arrived at the correct conclusion and the same needs no interference by this Court. For the foregoing reasons, I do not find any illegality and/or irregularity in the impugned order passed by the learned Court below worth interference in the revisional jurisdiction. There is no merit in this application, which is, accordingly dismissed.