

(2019) 09 PAT CK 0060

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 1201 Of 2019

Sikandar Prasad @ Sikandar Yadav

APPELLANT

Vs

State Of Bihar Through And Ors

RESPONDENT

Date of Decision : 09-09-2019

Acts Referred:

Indian Penal Code, 1860 — Section 302, 376D
Code Of Criminal Procedure, 1973 — Section 173(2)
Constitution Of India, 1950 — Article 226

Citation : (2019) 09 PAT CK 0060

Hon'ble Judges : Ashwani Kumar Singh, J

Bench : Single Bench

Advocate : Prince Kumar Mishra, Prabhat Kumar Verma

Final Decision : Disposed Off

Judgement

1. This application under Article 226 of the Constitution of India has been filed by the petitioner for directing the respondents to conclude the investigation of Masaurhi P.S. Case No.234 of 2019 registered inter alia under Sections 376D and 302 of the Indian Penal Code.

2. Learned counsel appearing for the petitioner submitted that the petitioner is the informant of Masaurhi P.S. Case No.234 of 2019 registered on 23.03.2019. In the first information report, he had alleged that when he had gone to Masaurhi to see off his nephew, his brother Ranjan Prasad informed him on mobile that the accused Yadu Prasad, Lalan Prasad, Raju Prasad, Sanjay Prasad Chhatanki Prasad and Sujit Prasad having common intention entered into his house, beating the inmates as well as plundering valuables. Upon receiving information when he reached at his home, he found that everything in the house was scattered and his daughter aged about 15 years was lying dead. His wife told him that all the accused persons forcefully entered into the house, raped her daughter and made videography of the same. They also threatened her to death. They looted away valuables worth Rs.5-6 lakhs from the house of the petitioner. He contended that

in a serious allegation like this, the investigating officer of the case is not showing any interest in carrying out the investigation. The accused persons are still at large. On the basis of aforesaid submissions, learned counsel for the petitioner contended that the slow pace of the investigation has eroded the confidence of the petitioner in fair investigation.

3. A counter affidavit has been filed on behalf of the Senior Superintendent of Police, Patna (respondent no.2). It is stated in the counter affidavit that after registration of the case, the investigation started. The police visited at the place of occurrence and after completing the legal formalities sent the body of the deceased for postmortem. After postmortem examination, the doctor reserved his opinion regarding the cause of death till receipt of chemical analysis report of the viscera from the Forensic Science Laboratory and micro section of vaginal swab report from Microbiology Department, PMCH, Patna. It is further stated that in course of investigation it revealed that on 23.03.2019 at about 2:30-3:00 hours the petitioner and his family members raised alarm shouting that the door of the victim's room is closed. Thereafter, the villagers arrived at the house of Sikandar. They saw that the door was closed from inside. After breaking the door, they saw that the victim was hanging with ceiling rod with aid of plastic rope. A co-villager Ram Bachchan cut the rope and brought the body on surface, but she was found dead.

4. In para 9 of the counter affidavit, it is stated that after examination of the vaginal swab the opinion has been given as "spermatozoa not found". After receiving viscera report, the cause of death opined by the doctor was "asphyxia due to hanging". It has also been stated in the counter affidavit that from the materials collected in course of investigation, it transpired that the victim had committed suicide.

5. Learned counsel appearing for the State submitted that since the case is still under investigation, at this stage, it would not be proper to issue any direction to the police. He contended that the investigation is being done with full sensitivity and promptness and, immediately, on conclusion of the investigation, a report under Section 173(2) of the CrPC based on the outcome of the investigation would be filed before the court.

6. Having heard learned counsel for the parties and perused the material on record, since investigation of the case is still going on, it must be left to the discretion of the investigating agency to decide the course of probe. Normally, so long as the investigation is being made and the matter is not before the court, it is not open to this Court to interfere with the investigation.

7. In *Janta Dal v. H.S. Chaudhary & Ors.* [1993 SCC (Cri) 36] in para 154, the Supreme Court observed: "The sum and substance of the above deliberation results to a conclusion that the investigation of an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offence is legitimately exercised

in strict compliance with the provisions falling under Chapter XII of the Code and the Court are not justified in obliterating the track of investigation when the investigating agencies are well within their legal bounds as aforementioned. Indeed, a noticeable feature of the scheme under Chapter XIV of the Code is a Magistrate is kept in the picture at all stages of the police investigation but he is not authorised to interfere with the actual investigation or to direct the police how that investigation is to be conducted. But if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serious prejudice to the personal liberty and also property of a citizen, then Court on being approached by the person aggrieved for the redress of any grievance, has to consider the nature and extent of the breach and pass appropriate orders as may be called for without leaving the citizens to the mercy of police echelons since human dignity is a dear value of our Constitution".

8. As the investigation is being done in the case in hand and there is no material before the Court that the same is tainted, there would be no justification for issuing any direction to the police.

9. Accordingly, the application is disposed of.