

(2008) 07 PAT CK 0149

In the Patna High Court

Smt. Pushpa Pandey and Others

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 24-07-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 304B, 34

Citation : (2008) 07 PAT CK 0149

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Abhijit Sinha, J.—Three of the F.I.R. named accused of Sasaram (Town) P.S. Case No. 113 of 2005 through this application u/s 482 Cr.P.C. have prayed for the quashing of the entire prosecution case against them including the order dated 10.8.2005 passed therein by the learned Chief Judicial Magistrate, Rohtas at Sasaram whereby he has taken cognizance u/s 304(B)/34 I.P.C. against the petitioners as also the charge sheet dated 9.8.2005 and supplementary charge sheet dated 31.10.2006 on the ground that they are contradictory to the finding of facts in the case diary and supervision note and as such propagating abuse of the process of the courts.

2. According to the prosecution case based on the written report submitted by informant Anil Kumar Mishra, impleaded herein as O.P. No. 2, the marriage of his sister, Sangita Devi, was solemnized with Umesh Chandra Tripathi on 30.4.2002 whereat cash and costly items of gifts were given to her in-laws. It is alleged that Sangita was being tortured in her sasural by her in-laws for non fulfillment of the demand for a motorcycle. It is further alleged that on 5.4.2005 he received information over telephone regarding the death of his sister whereupon having informed the Superintendent of Police, Rohtas, he proceeded to the sasural of his sister and found marks of injuries on the dead body of his sister. He was sanguine that his sister was done to death by the F.I.R. named accused for non

fulfillment of dowry demands.

3. The main contention of the petitioners is that they do not belong to the family of the deceased and have no concern with them. It was also submitted that the Deputy S.P. who had supervised the case had differed with the findings of the Investigating Officer.

4. On the other hand, the informant having appeared to contest the application has filed a counter affidavit pleading that there are sufficient materials in the case diary for taking cognizance and there was no illegality in the impugned order dated 10.8.2005.

5. It will not be out of place to mention here that the opinion of a superior officer is his opinion and not binding on the courts. The courts are not bound by such opinions as they are mere communication between the supervising authority and the Investigating Officer. The court is required to take cognizance on the basis of the F.I.R., case diary and charge sheet and cannot be guided by the opinion of the Supervising authority.

6. A photocopy of the case diary has been produced in Court in course of hearing. On perusal of the same as also the charge sheet, a prima facie offence is made out against petitioner Nos. 1 and 2.

7. So far as petitioner No. 3 is concerned, a prayer has been made to quash the supplementary charge sheet.

8. In law there is no provision for quashing charge sheet or supplementary charge sheet unless no offence is made out. The supplementary charge sheet is on record and from perusal thereof a prima facie offence appears to have been made out.

9. So far as the contention of the petitioners that they do not belong to the family of the husband of the deceased and have no concern with them is concerned, the same is their defence which cannot be looked into at this stage and can be examined only in course of the trial.

10. In view of the discussions made above, I find no merit in this application which is dismissed.