

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.2303 of 2017

Arising Out of PS. Case No.-55 Year-2007 Thana- KUTUMBA District- Aurangabad

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1. Mahendra Singh, S/O Keshav Singh
2. Upendra Singh S/O Keshav Singh
3. Shalendra Singh @ Guddu Singh S/O Keshav Singh
4. Savitri Devi W/O Keshav Singh All resident of Village- Simari Khurd
P.S.- Kutumba, District- Aurangabad.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Premshila Musmat, W/o- Late Surendra Singh @ Bablu Singh, Vill.-
Simri Khurd, P.S.- Kutumba, District- Aurangabad

... .. Opposite Party/s

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Code of Criminal Procedure, 1973---section 482---Indian Penal Code---section 304, 498A, 34---petition to quash order taking cognizance of the offences under Sections 304 and 498A, 34 of IPC---allegation against Petitioners is of committing culpable homicide not amounting to murder of the husband of O.P. no- 2---the petitioners who are in-laws of O.P.no- 2, allegedly tortured her for the demand of dowry which was being objected by her husband and the accused used to assault her and her husband on account of the non-fulfilment of the demand---Findings: though in the present matter, the complaint was filed by the O.P. No.2 after an inordinate delay of four months from the commission of the main occurrence but in the complaint itself the O.P. No.2 disclosed the reason of delay---in a case which is based on complaint filed by a rustic man or woman, the Judicial Magistrate should remain alert while entertaining such type of complaint if the same is not supported with an affidavit then the complainant must be asked to furnish an affidavit in support of his or her allegations mentioned in the complaint---procedural lapses may stop

an offence from to be unearthed if a complaint giving the details of the commission of serious offences is dismissed at the initial stage on account of non-filing of the affidavit without giving an opportunity to a rustic complainant to remove such procedural lapses---purpose of filing of an affidavit with the complaint is to stop one from filing frivolous complaint who files such complaint with a prayer to send the same to police for investigation---petitioners are not entitled to be exonerated from the alleged offences of which cognizance has been taken by the learned Magistrate at the initial stage of their case without facing the trial for the alleged offences---petition dismissed. (Para 5)

(2015) 6 SCC 287

.....Referred To.

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Appearance :

For the Petitioner/s	:	Ms. Leelawati Kumari, Advocate Mr. Aman Vishal, Advocate
For the State	:	Mr. Arun Kumar Singh -5, APP

**CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
CAV JUDGMENT**

Date : 05 -02-2025

Heard Ms. Leelawati Kumari, learned counsel for the petitioners and Mr. Arun Kumar Singh -5, learned APP for the State.

2. The instant petition has been filed for quashing the order dated 25.03.2015 passed by the Court of learned Judicial Magistrate- 1st Class, Aurangabad whereby the learned Magistrate has taken cognizance of the offences under Sections 304 and 498A read with Section 34 of the Indian Penal Code (in short ‘IPC’) against the petitioners and others on the basis of



chargesheet filed against the petitioners after the investigation of Kutumba P.S. Case No. 55 of 2007.

3. The main grounds taken by the petitioner's counsel to assail the order impugned are that except suspicion raised by the O.P. No.2 in her complaint which was sent to police for investigation, there is nothing in support of the allegations and from the bare perusal of the complaint filed by the O.P. No.2, it is clearly evident that the first alleged occurrence took place on 10.05.2007 but the complaint was filed on 13.09.2007 after the delay of more than four months, in fact, the O.P. No.2, wife of late Surendra Singh @ Bablu Singh had illicit relationship with one namely, Mritunjay, due to this reason, the deceased (husband of the O.P. No.2), himself consumed poison and in this regard, statements of some material witnesses mentioned in the paragraph nos. 10, 11, 12, 13 and 15 of the case diary are relevant and all the witnesses of said statements, did not support the allegations, in fact, co-accused, Savitri Devi, who is now no more, filed an FIR by filing a complaint against the O.P. No.2 and other persons with the allegations of committing murder of the deceased and in the said case, investigation is still pending. It is further submitted that petitioner nos.1, 2 and 3 are full brothers of the deceased and brother-in-law of the O.P. No.2. He further submits that on account of demise of petitioner no.4, her prayer



has already been withdrawn on account of her prayer being infructuous. Petitioner's counsel has further argued that the case of prosecution is an example of misuse of the process of law and the same has been initiated with a malafide intention to harass the petitioners, so, the instant matter falls under one of the categories described in the case of **State of Haryana and Others vs. Bhajan Lal and Others** reported in **1992 Supp (1) SCC 335**.

The second important ground taken by the petitioners' counsel is the non-compliance of the Hon'ble Apex Court's observation made in the case of **Priyanka Srivastava and Anr. vs. State of U.P. and Ors.** reported in **(2015) 6 SCC 287** and in this regard, he has referred the paragraph no. 23 and onwards paragraphs and has also placed reliance upon two judgments of this Court passed in Cr. Misc. No. 17247/2017 and Cr. W.J.C. No. 214 of 2017 in which the principle of requirement of affidavit of the complainant with complaint laid down in **Priyanka Srivastava (supra)** case was followed.

4. On the other hand, Mr. Arun Kumar Singh-5, learned APP appearing for the State has vehemently opposed this petition and submitted that the deceased, Surendra Singh @ Bablu Singh, husband of the O.P. No.2, was assaulted by the petitioners, that incident was witnessed by the O.P. No.2 and she



fully supported the allegations levelled by her in her complaint during the course of investigation and the police finding the allegations to be true, chargesheeted the petitioners and there is sufficient materials in the case diary to proceed with the alleged offences against the petitioners and the cognizance of the alleged offences has rightly been taken by the learned Magistrate and there is no illegality in the order impugned.

5. Heard both the sides and perused the order impugned as well as other relevant materials. O.P. No.2 is the wife of the deceased, Surendra Singh @ Bablu Singh and the complaint was filed by her against the petitioners and others which was sent for investigation. As per the allegations levelled by the O.P. No.2 in her complaint, her marriage took place ten years ago and one daughter namely, Priti Kumari took birth from the conjugal relationship of Surendra Singh @ Bablu Singh (the deceased) and her and after marriage, the petitioners who are her in-laws, started torturing her for the demand of Rs. 1,00,000/- in dowry which was being objected by her husband and the accused used to assault her and her husband on account of the non-fulfillment of the demand. The O.P. No.2 further alleged that on 10.05.2007, when she insisted her husband to take her to her parental home so that she could attend the marriage ceremony of her brother then her husband informed her brother through phone



and asked him to come at her *Sasural*, at his home, to take the O.P. No.2 with him to his home. As per the O.P. No. 2, on 13.05.2007, she became ready to go with her husband to her *Naihar* then suddenly, the accused persons (petitioners) started assaulting her badly and during that course, the mother-in-law of O.P. No.2 who is now no more, inflicted a knife blow in the stomach of the husband of O.P. No.2 and she was also assaulted by them thereafter, she and her daughter were locked inside a room by the accused. According to the O.P. No.2, her husband died of the injuries on the same day of the alleged occurrence of assault and she and her daughter were threatened by the accused with dire consequences if they would reveal the commission of the alleged occurrence to anyone, owing to which, both became terrified and the accused asked her to reveal the cause of death of her husband to the villagers as due to consuming of liquor. The O.P. No.2 further alleged that the dead body of her husband was cremated by the accused with the help of villagers and on the next day of the cremation, her brother, Ashok Singh and cousin brother, Krishna Singh came to take her and at that time, the father-in-law and mother-in-law of the O.P. No.2 disclosed them about the death of her husband on account of consuming liquor and also revealed them about the cremation of dead body and she was shown as unconscious by the accused due to shock after the



death of her husband, so, her brothers returned back as there was marriage ceremony in the house of her brothers, the O.P. No.2 further alleged that after the murder of her husband, the accused started torturing her by calling her a *Dayan* and ousted her and her daughter on 10.09.2007 after snatching her ornaments and cloths, thereafter, she informed her brother and father about the entire occurrence. During the course of investigation, the police recorded the restatement of the O.P. No.2 in which she fully supported the allegations levelled by her in her complaint. Some other witnesses revealed the unnatural death of the husband of O.P. No.2 and one witness namely, Anant Singh, stated that on 10.05.2007, the date of incident, he saw abusing with the deceased by his mother and during that course, she started assaulting her son by means of a *danda* and then the accused, Mahendra Singh and Guddu Singh came rushing and started assaulting the husband of O.P. No.2 by using fist and slap. The witness further stated that he tried to intervene to save the deceased but he was threatened by the accused and according to him, he heard the cry of the deceased coming from inside the house of the accused. Though in the present matter, the complaint was filed by the O.P. No.2 after an inordinate delay of four months from the commission of the main occurrence but in the complaint itself the O.P. No.2 disclosed the reason of delay,



however, the same is to be examined by the trial court after taking evidences. However, three things are completely evident, firstly, the husband of the O.P. No.2 died an unnatural death, secondly, the dead body of the deceased was cremated without giving information to the police and thirdly, there was no good relation in between the O.P. No.2 and the petitioners during the relevant period of the alleged occurrence. The petitioners have taken the defence that the mother of the deceased had filed Kutumba P.S. Case No. 50 of 2007 on 08.09.2007 with the allegation of murder of her son against the O.P. No.2 and others and the copy of the said FIR, has also been filed with the petition as Annexure-2. Though, the O.P. No.2 filed her complaint case after the registration of the Kutumba P.S. Case No. 50 of 2007 but one thing is also evident that if something wrong had been committed by the O.P. No. 2 and others with the son of late Savitri Devi then why had a legal action to register the FIR in connection with the alleged murder not been taken by the petitioners who are relatives of the deceased immediately and further, as per the petitioners' counsel, the investigation in Kutumba P.S. Case No. 50 of 2007 is still pending, so, merely by the registration of the Kutumba P.S. Case No. 50 of 2007 prior to the filing of the complaint of O.P. No.2, the case of O.P. No.2 cannot be thrown away entirely at the initial stage, particularly,



when the police have found substance in the allegations levelled by the O.P. No.2 and chargesheeted the petitioners for the alleged offences. So far as, the non-compliance of the principle laid down by the Hon'ble Apex Court in the case of **Priyanka Srivastava (*supra*)** as to non-filing of affidavit by the O.P. No.2 with her complaint is concerned, though the compliance of the said principle was not made by the O.P. No.2 but the concerned Magistrate, while entertaining the complaint of O.P. No. 2 and directing the same to be investigated by the police also remained some negligent as in a case which is based on complaint filed by a rustic man or woman, the Judicial Magistrate should remain alert while entertaining such type of complaint if the same is not supported with an affidavit then the complainant must be asked to furnish an affidavit in support of his or her allegations mentioned in the complaint. As, such procedural lapses may stop an offence from to be unearthed if a complaint giving the details of the commission of serious offences is dismissed at the initial stage on account of non-filing of the affidavit without giving an opportunity to a rustic complainant to remove such procedural lapses. Furthermore, the purpose of filing of an affidavit with the complaint is to stop one from filing frivolous complaint who files such complaint with a prayer to send the same to police for investigation. And in the present matter, in view of the presence



of above discussed circumstances going in favour of prosecution’s allegation, it will not be proper to reject the prosecution case, which relates to heinous offences, at the beginning. Accordingly, the petitioners are not entitled to be exonerated from the alleged offences of which cognizance has been taken by the learned Magistrate at the initial stage of their case without facing the trial for the alleged offences and the facts and circumstances of the cases relating to Cr.W.J.C No. 214 of 2017 and Cr. Misc. No. 34406 of 2017 in which the above discussed principle laid down by the Hon’ble Apex Court in the case of **Priyanka Srivastava** (*supra*) was followed by the learned coordinate Benches of this Court while giving a relief to the accused/petitioners are completely different from the facts and circumstances of the present matter. Accordingly, this Court finds no merit in the present matter, so, it stands dismissed.

(Shailendra Singh, J)

maynaz/-

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