

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No. 300 of 2004

State of Bihar

.... Petitioner/s

Versus

1. Gurusharan Ram, S/O Sunder Ram
2. Mukesh Ram S/O Gurusharan Ram
3. Tinku Ram S/O Gurusharan Ram

All resident of Village- Kaishi, P.S. Khadagpur, District- Munger.

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr. Pranav Kumar, A.P.P.

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 23-07-2012

Ahsanuddin
Amanullah, J.

Heard Mr. Pranav Kumar, Learned A.P.P. for the

State. Nobody appears on behalf of the opposite parties.

Earlier on 20.07.2012 both learned A.P.P. for the State and learned counsel for the opposite parties was present and on the prayer of learned counsel for the opposite parties the matter was posted for today. However, nobody appears on behalf of the opposite parties when the case is heard.

The present case was instituted on the basis of the order dated 26.02.2004 passed in Cr. Revision No. 992 of 2002 by which this Court had exercised suo motu revisional power and issued notice to the opposite parties asking them to show cause as to why the order dated 06.06.2000 passed by the VIIth Additional Sessions Judge, Munger in Sessions Case No. 270/45 of 2001 be not set aside. On the basis of the said order the present case was instituted and notices issued to opposite parties

who have also entered appearance. It was further ordered on 26.02.2004 in Cr. Revision No. 992 of 2002 that the present case would be listed alongwith Cr. Revision No. 992 of 2002. The lower Court records of the case had been called for and the same have since been received.

Learned A.P.P. for the State has taken the Court through the order dated 06.06.2000 by which the opposite parties had been discharged. He submits that the order is erroneous both on facts as well as in law. The police has submitted chargesheet against the opposite parties on the basis of materials which came during investigation and thus to discharge the opposite parties prior to trial was not justified in the facts and circumstances of the case. Learned counsel submits that the Court has wrongly understood both the statement of the doctor as well as one Dhaneshwar Ram and given the benefit to the opposite parties. He submits that the informant, who is the mother of the deceased, in her reinstatement as well as brother-in-law (Bhainsur) of the informant have supported the prosecution story and during supervision also sufficient materials were found to exist for the opposite parties to be sent up for trial and accordingly chargesheet was submitted.

Learned A.P.P. for the State submits that the doctor in his statement at paragraph no. 89 of the case diary has stated that on 08.02.1999 he had treated the deceased who had complained of pain. He has further stated that on 09.02.1999



also somebody had come to take advice with regard to the deceased having pain and he had given some medicine and also asked him to bring the patient so that she could be properly treated. It is further stated that neither the boy returned nor the patient was brought to him. Learned A.P.P. for the State submits that if her in-laws found that the deceased was having problems and needed treatment then they ought to have brought the deceased to the doctor on the 10th which was not done and only 12/13-2-1999 she is supposed to have died. Thus, according to him, there is no explanation as to why for 3-4 days she was not taken to the doctor inspite of complaining of pain. Learned A.P.P. further submits that there is consistent allegation that the opposite parties had harassed the deceased since opposite parties no. 2 and 3 being the brother-in-law (Dewar) were trying to establish illicit relationship with the deceased which was resisted and opposite party no. 1 being the father-in-law has also taken the side of the sons, that is, opposite parties no. 2 and 3. It is thus submitted that there is sufficient material to put the opposite parties on trial.

Learned A.P.P. has also assailed the findings of the Court with regard to Dhaneshwar Ram whose statement is at paragraph no. 89 of the case diary. He submits that Dhaneshwar Ram has not stated that he had gone to the informant to inform about her death. He has only stated that opposite party no. 1 had asked him to inform the informant. Learned counsel, at this



stage pauses and submits that there is no explanation in the entire investigation which explains as to why the opposite parties no. 2 and 3, who were the Dewars, had not gone and informed about the death. He further submits that nothing has come during investigation to infer that the informant or her family members were aware of the death and has participated in the cremation. Thus, according to him it is sufficient to hold that the opposite parties were not keen to inform the informant about the death which raises bona fide and genuine suspicion with regard to the conduct and commission of the crime.

This Court has verified the statements and submissions of learned A.P.P. for the State from the case records and is in agreement with the stand taken by him.

Learned A.P.P. for the State has further contended that the decision of the Hon'ble Supreme Court as quoted and relied upon in the order dated 06.06.2000 [**1997 BBCJ 53 (SC)**] does not support the case of the opposite parties and rather the ratio goes in favour of the prosecution inasmuch as in the said case the Hon'ble Supreme Court has held that if the Court feels that trial would be an exercise in futility and sheer wastage of time, the proceedings should be terminated. He submits that in the present case due to adequate material and evidence being available, the Court at the stage of Section 227 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') was not justified to discharge the opposite parties in the manner



it has done by the order dated 06.06.2000. Learned A.P.P. for the State has further taken this Court through the evidence of Raghubir Ram which is at paragraph no. 27 of the supplementary case diary and who is the husband of one of the accused, namely Rama Devi @ Rambha Devi, who is the sister-in-law (Nanad) of the deceased. He has stated that the informant and the brother-in-law of the informant had come to the house of the opposite parties on 13.02.1999 and were asking the opposite parties as to why they were not informed about the death of the deceased. Thus, it is stated that the informant and her family was not informed of the death and the body disposed off, which clearly proves that there was something to hide and thus discharge of the opposite parties at the present stage is unjustified and will lead to miscarriage of justice. He has also stated that his mother-in-law namely, Kaushalya Devi was unwell and bedridden since last two and a half months and thus the story and stand of the opposite parties that she had also accompanied the deceased while she had gone to ease herself is also falsified. He submits that even the husband of the deceased was informed only belatedly, as per his own statement on 14.02.1999, which also goes to prove that the accused did not want anyone to see the body so as to enable them to know the real cause of death.

This Court appreciates the assistance rendered by the learned A.P.P. for the State in the case.

For the reasons aforesaid, this Court, exercising suo



motu power of revision under the Code quashes the order dated 06.06.2000 passed by the VIIth Additional Sessions Judge, Munger in Sessions Case No. 270/45 of 2001 corresponding to Sessions Case No. 838 of 1999/13 of 2000. The Court below shall forthwith take steps for framing charges against the opposite parties and thereafter conduct the trial in accordance with law.

The application stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

Patna High Court
Dated 23rd July, 2012
Anand Kr./NAFR