

(2010) 04 JH CK 0027

Jharkhand High Court

Case No: None

Abdul Salam @ Md. Anwar,
Sultan Ahmad and Fudan
Khatoon

APPELLANT

Vs

The State of Jharkhand and Md.
Serajul Haque

RESPONDENT

Date of Decision: April 12, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 154, 155, 156, 157, 162
- Penal Code, 1860 (IPC) - Section 304B, 34

Citation: (2010) 2 DMC 41 : (2011) 8 RCR(Criminal) 3099

Hon'ble Judges: D.K. Sinha, J

Bench: Single Bench

Judgement

D.K. Sinha, J.

Instant criminal revision is directed against the order impugned dated 15.6.2007, passed in S.T. No. 289 of 2003, arising out of Lower Bazar(Ranchi) P.S. Case No. 58 of 2001, corresponding to G.R. No. 1639 of 2001, by which the petition filed on behalf of the petitioners for their discharge u/s 227 of the Code of Criminal Procedure was rejected by the Additional Judicial Commissioner, XVIII, Ranchi.

2. Notice was served upon the opposite party No. 2 Md. Serajul Haque after his impleadment, but he did not prefer to enter appearance in this criminal revision to contest.

3. Prosecution story in short as stands narrated in the written report presented by the informant-opposite party No. 2 herein was that he had married his daughter Baby Farida (since deceased) on 4.7.1996 with the petitioner No. 1 Abdul Salam @ Md. Anwar and on the eve of marriage, he presented gifts according to his capacity including Vespa LML scooter. After the marriage, his daughter went to her

matrimonial home and whenever she used to come to her parental home, she (Baby Farida) had been complaining against her husband and in-laws that they had been demanding Rs. 50,000/- to be brought from her parental home so that her husband could expand his business and only then she could be allowed to remain there peacefully. Pursuant to such complaint, the informant-opposite party No. 2 visited her matrimonial home and tried to resolve by requesting them not to extend torture to his daughter and that he was unable to meet out their demand by explaining that he had already spent on the eve of marriage of his daughter according to his capacity. Thereafter, she remained at her matrimonial home peacefully for few months but returned back all of a sudden to her parental home with her children and apprised that she was apprehensive to be assassinated by the petitioners and others for non-fulfilling their demand of Rs. 50,000/-. After some time the informant received message from the husband-petitioner No. 1 by requesting to send back his wife Baby Farida however, by extending assurance that she would be kept with all dignity and honour. Relying upon such assurance, he sent his daughter with her three children. On 11.6.2001, informant was informed by the cousin of the petitioner No. 1 that Baby Farida had sustained extensive burn injuries and for her treatment, she was removed to R.M.C.H., Ranchi. He immediately went to R.M.C.H. and found his daughter unconscious and fully burnt, however, her husband-petitioner No. 1 explained that on the same day at 2:00 p.m. while she was cooking food on kerosene oil stove, her salwar-jumper caught fire as the stove fell on her body as a result of which she sustained burn injuries. On 13.6.2001, she was referred to Tata Main Hospital, Jamshedpur for better management but in course of treatment she succumbed her burn injuries on 15.6.2001. The informant-opposite party No. 2 admitted in his written statement that he had put his signature on a written report, which was prepared and presented by the police officer of Bistupur Police Station at T.M.H. Police Camp, without going through the contents of the written report and that on account of his mental imbalance on the death of his daughter. Post mortem was held at Jamshedpur and thereafter, he received the dead body of his daughter on 15.6.2001 and buried at the burial ground, Ranchi. Written report was presented on 17.6.2001 by explaining the delay and also by alleging the conduct of the accused persons, who did not come to see the deceased either at T.M.H., Jamshedpur or at R.M.C.H., Ranchi and that she was subjected to dowry death for nonfulfillment of demand of Rs. 50,000/-. On the written report, a case was registered under Sections 304B/34 of the Indian Penal Code against the petitioners and two others. However the case of two other accused who being found to be juveniles in conflict with law was separated and sent to the Juvenile Justice Board, Ranchi for enquiry.

4. Advancing his argument, the learned Sr. Counsel Mr. P.P.N. Roy submitted that the instant written report on the basis of which the F.I.R. was lodged was not the statement of the informant accepted by the police at the first point of time. The informant admitted in clear words that he had already signed a written statement at the Tata Main Hospital (in short T.M.H.), Jamshedpur said to be prepared by the

police officer of the T.M.H. Police Camp. In that view of the matter, subsequent statement recorded may be treated as statement of the informant u/s 162 of the Code of Criminal Procedure and therefore such statement cannot be the basis for lodging F.I.R.

5. Mr. P.P.N. Roy, the learned Sr. Counsel asserted that the informant-opposite party No. 2 had admitted in his subsequent written report presented before the Lower Bazar Police, Ranchi that a statement was earlier recorded by the Bistupur Police at T.M.H. Police Camp on 15.6.2001 at 9:30 hours and in that statement, the informant had clearly stated that his daughter sustained accidental fire in her clothes while she was cooking food as the kerosene stove, which was being in such cooking suddenly inflamed which resulted into burns on the frontal part of her body and it was nowhere alleged in that written statement about the alleged demand of Rs. 50,000/- or any kind of torture being extended to his daughter Baby Farida. It was further stated in the said report that on the alarm raised by his daughter, petitioner-husband immediately rushed there and extinguished the fire by putting bed-sheet on her body and also by pouring water. She was immediately removed to R.M.C.H., Ranchi and finding her condition being deteriorated gradually, she was taken to T.M.H., Jamshedpur by them on 13.6.2001 where she was admitted to B.C.U. ward but she succumbed her burn injuries on 15.6.2001 during treatment.

6. Mr. Roy, the learned Sr. Counsel pointed out that in the statement recorded at first point in time, the informant-opposite party No. 2 nowhere alleged against the petitioners or the others that any of them or all set the body of his daughter Baby Farida on fire by using inflammatory substance or otherwise. Similarly no allegation of demand of dowry was levelled at all against any of the petitioners much less the demand of Rs. 50,000/- in the near proximity of the death of Baby Farida. In the subsequent statement, the informant after due deliberation and consultation and with mala fide intention implicated the petitioners and two others maliciously by introducing new fact that they had been demanding Rs. 50,000/- from Baby Farida to be brought from her parental home and he suspected that she was burnt by them and consequently she died during her treatment. The informant further alleged the demeanour and conduct of the petitioners that they did not get the injured seriously treated and that they did not attend to his daughter while she was undergoing treatment at T.M.H., Jamshedpur and also did not attend her burial.

7. From perusal of the earlier statement, recorded first point of time indicated that the statement of the informant-opposite party No. 2 was read over and explained to him by the police officer and after having been satisfied with the contents, he put his signature in Hindi in presence of two witnesses, who also had put their signatures in Hindi. Such statement has got bearing the endorsement of the police officer in whose presence statement was recorded and it bears the signature of the said police officer also. As the place of occurrence fell within the jurisdiction of Lower Bazar Police Station, Ranchi, it was forwarded with the other relevant documents,

such as inquest report and post mortem report, which were received in the Lower Bazar Police Station on 18.6.2001 at 12:00 hours, whereas F.I.R. was registered much earlier at the Lower Bazar Police Station as P.S. Case No. 58 of 2001 on 17.6.2001 at 17:30 hours. It would be further evident from the written statement of the instant case, arising out of Lower Bazar(Ranchi) P.S. Case No. 58 of 2001, that the said written report which was drawn at much later stage on 17.6.2001 was first presented before the Daily Market Police Station and from there, it was sent to the Lower Bazar Police Station. In that written statement, the informant had also put his signature in Hindi and it shall be presumed that he was well acquainted with the contents of the written report. Informant was conscious who mentioned in the subsequent written report that his statement was earlier recorded by the Bistupur police at T.M.H. Police Camp, but in spite of such revelation, without demanding or calling for the said report along with the inquest report and post mortem report, Lower Bazar police registered a case on the subsequent statement of the informant, which was not maintainable. Mr. P.P.N. Roy, the Sr. Counsel added and that such statement only should have been treated as the statement of the informant recorded u/s 162 of the Code of Criminal Procedure and his earlier statement should have been made the basis for lodging the F.I.R.

8. Mr. Roy relied upon the decision of the Supreme Court in [T.T. Antony Vs. State of Kerala and Others](#), wherein Supreme Court has observed:

19. The scheme of CrPC is that an officer in charge of a police station has to commence investigation as provided in Section 156 or 157 CrPC on the basis of entry of the first information report, on coming to know of the commission of a cognizable offence. On completion of investigation and on the basis of the evidence collected, he has to form an opinion u/s 169 or 170 CrPC, as the case may be, and forward his report to the Magistrate concerned u/s 173(2) CrPC. However, even after filing such a report, if he comes into possession of further information or material, he need not register a fresh FIR; he is empowered to make further investigation, normally with the leave of the court, and where during further investigation he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports; this is the import of Sub-section (8) of Section 173 CrPC.

20. From the above discussion it follows that under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 CrPC only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 CrPC. Thus there can be no second FIR and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the FIR in the station house diary, the officer in charge of a

police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 CrPC.

9. According to the learned Sr. Counsel, admittedly, no cognizable offence is made out against any of the petitioners on the basis of the statement of the informant-opposite party No. 2 recorded first point in time at the T.M.H. by the police officer which could be presumed to be delivered without due deliberation and consultation and in that statement, no criminal liability was fastened upon any of the petitioners of this criminal revision. Similarly, it was nowhere alleged that any demand of dowry was made in near proximity of the unnatural death of Baby Farida and no circumstantial evidence was appearing against the petitioners to presume that they had committed dowry death so as to attract an offence under Sections 304B/34 of the Indian Penal Code. But their petition for their discharge was dismissed mechanically without application of judicial mind which needed interference by revision of the impugned order.

10. Heard Mr. Md. Hatim, the learned A.P.P. appearing on behalf of the State.

11. Having regard to the facts and circumstances of the case, the point of law that has been raised on behalf of the petitioners is obvious that no F.I.R. can be instituted on subsequent statement of the informant in the given facts and circumstances of the case. Informant has admitted in his written report, presented before the Daily Market Police Station, which was referred to the Lower Bazar police station of Ranchi, giving rise to the instant case, that he had put his signature on the written statement presented by the Bistupur police at T.M.H. Police Camp on the death of his daughter out of burn injuries and that he had signed such statement without having gone into the contents of the said report and further explained that as he was very much mentally perturbed on the death of his daughter, he signed thereon whatever was put before him. However, I find there was endorsement in the said report/statement that the contents of the said statement was read over and explained to him and after finding it correct, he had put his signature. Admittedly, such statement did not disclose the cognizable offence as against the petitioners or others, but the Bistupur police took precaution by sending it to the Lower Bazar police station of Ranchi along with the inquest report and the post mortem report of Baby Farida assuming it to be an unnatural death caused by burn injuries at her matrimonial home. I further find that when a subsequent written statement/written report was produced by giving information of the cognizable offence alleged under Sections 304B/34 of the Indian Penal Code, Lower Bazar police registered a case and in the meantime, the said police station further received the first statement, but certainly after two days of the institution of the instant case. I find that the petitioners in the instant revision have prayed for setting aside the order impugned dated 15.6.2007 by which petition for their discharge u/s 227 of the Code of Criminal

Procedure was dismissed by the Additional Judicial Commissioner, XVIII, Ranchi in S.T. No. 289 of 2003 in view of their contention that the F.I.R. was not maintainable on the subsequent statement of the informant. I find that in the instant case only one F.I.R. was registered by the Lower Bazar police on the basis of the information received of a cognizable offence under Sections 304B/34 of the Indian Penal Code, whereas the earlier statement which has been admitted by the informant-opposite party No. 2 did not disclose any cognizable offence. The proposition of law that has been relied upon by the petitioners referred to hereinbefore is based on different facts where two F.I.R. were lodged and the subsequent statement was held to be statement u/s 162 of the Code of Criminal Procedure. In the given situation, when first statement did not disclose any cognizable offence, though there was unnatural death of Baby Farida on account of burning and the subsequent statement disclosed a prima facie offence under Sections 304B/34 of the Indian Penal Code, it would be expedient for the petitioners to face the trial of the alleged charge against whom the Investigating Officer submitted charge-sheet under Sections 304B/34 of the Indian Penal Code. Having been satisfied with the prima facie materials collected in course of investigation, petitioners cannot be discharged only on the submissions advanced on their behalf that certain development was made by the informant in his subsequent statement and I find that explanation that has been given by the informant with regard to earlier statement inspires confidence. The learned Sr. Counsel Mr. P.P.N. Roy failed to point out any cogent ground so as to call for interference in the order impugned by which the prayer for discharge of the petitioners for the alleged offence under Sections 304B/34 of the Indian Penal Code was dismissed.

12. There being no merit, without prejudice to the observation made hereinabove, this criminal revision is dismissed.

13. Accordingly, I.A. No. 1038 of 2009 also stands disposed of.