

Bantesh Singh and Others Vs. State of U.P. and Another

Bantesh Singh and Others Vs. State of U.P. and Another

SooperKanoon Citation : sooperkanoon.com/918342

Court : Allahabad

Decided On : Oct-26-2010

Judge : Shri Kant Tripathi, J.

Appeal No. : APPLICATION U/S 482 No. - 25639 of 2010

Appellant : Bantesh Singh and Others

Respondent : State of U.P. and Another

Advocate for Def. : Govt. Advocate

Advocate for Pet/Ap. : Brijesh Sahai; Sanjai Kumar Pandey, Advs

Judgement :

1. eard Mr. Brijesh Sahai for the applicants, Mr. Devesh Vikram for the respondent no.2 and the learned AGA for the respondent no.1 and perused the record.
2. This is a petition under section 482 Cr PC for quashing the summoning order dated 19.6.2010 and the proceedings of the criminal case no. 3767 of 2009, State vs. Arvind, under sections 304-B, 498-A IPC and section 3/4 of the Dowry Prohibition Act, pending in the court of Judicial Magistrate-Ist, Jaunpur.
3. Mr. Brijesh Sahai submitted that the investigating agency submitted a final report in the court of Chief Judicial Magistrate, Jaunpur, against which the respondent no.2 filed a protest petition. The learned Chief Judicial Magistrate

partly rejected the final report and summoned the applicants with regard to the offences under section 498-A IPC and section 3/4 Dowry Prohibition Act, vide his order dated 3.1.2008, but approved the final report with regard to the offence under section 304-B IPC. The respondent no.2 preferred criminal revision no. 131 of 2008 in the court of Sessions Judge, Jaunpur, which was heard and disposed of by the Additional Sessions Judge, Court No.1, Jaunpur vide his judgment and order dated 24.4.2009. The learned Additional Sessions Judge allowed the revision and quashed the order dated 3.1.2008 passed by the Chief Judicial Magistrate with regard to the offence under section 304-B IPC and remanded the matter to reconsider the final report. After the remand, the Judicial Magistrate-Ist, Jaunpur perused the entire materials and found that a prima facie case for summoning the applicants under section 304-B IPC was also made out. Accordingly the learned Magistrate passed the summoning order dated 19.6.2010 issuing processes to the applicants under sections 304-B and 498-A IPC and section 3/4 Dowry Prohibition Act. The summoning order dated 19.6.2010 has been impugned in this petition. It was further submitted that there is no evidence that the death of the deceased was unnatural because the Doctor, who conducted the postmortem examination on the dead body of the deceased, opined that there was no ante mortem injury and cause of death was not ascertainable. He, however, preserved the viscera for chemical analysis. No poison was found in the viscera on chemical analysis. Mr. Sahai further submitted that death of the deceased occurred due to snake bite. The materials on record do not make out any case of unnatural death, therefore, the offence under section 304-B IPC is not made out.

4. Mr. Sahai placed reliance on Smt. Vimla Devi and another vs. State of U.P. and another, 2007 (1) JIC 83 (Alld). In that case a Single Judge of this Court held that the offence under section 304-B IPC was not made out in view of the fact that no mark of injury was found on the dead body of the deceased.

5. The learned counsel for the respondent no.2, on the other hand, submitted that there is adequate evidence to show that the deceased had been subjected to cruelty during her life time for the dowry. A coloured television and motor cycle was being demanded by the applicants. The deceased was being subjected to

maltreatment for procuring these things from her parents. It was further submitted that even one day prior to her death, the deceased had a telephonic conversation with the respondent no.2 and required him to come to her rescue otherwise she would be killed. When in the next morning the respondent no.2 and his family members visited the house of the applicants, they found that the deceased had already died. There was a bleeding from her right nostril and froth from other nostril. These facts have been mentioned in the inquest report. Therefore, according to the learned counsel for the respondent no.2, death of the deceased was otherwise than under the normal circumstance, within four months of her marriage, and as such the offence under section 304-B IPC is made out. It was further submitted that if the cause of death was not ascertainable on postmortem examination on the dead body of the deceased or no poison was found on chemical analysis of the viscera, the same can not be made as a basis to discard the story of dowry death, which has been supported from other evidence on record. It was also submitted that the learned Magistrate has referred to the statements of the witnesses Ashok Kumar, Manoj Singh, Sunil Singh, Premsheela, Abhai Narain Singh, Tribhuwan Mishra and Shiv Nath Sharma, in his order dated 19.6.2010 and on the basis of their statements, held that there was a demand of dowry at the time of Vidai. The learned counsel for the respondent no.2 further submitted that even according to the applicants, the death of the deceased was unnatural because they had set up the case that the deceased died due to snake bite but there is no evidence to support this plea. It is nobody's case that the death of the deceased was, in any way, natural.

6. At the stage of passing a summoning order, the Magistrate is not required to consider the pros and cons of the case and make appreciation of the evidence. He is merely required to see as to whether or not there are sufficient materials to proceed with the case against the accused. If the materials collected during the investigation has made out a prima facie case against the applicants, the summoning order can not be quashed only on the basis of the chemical analyst's report or the autopsy report. These two reports are nothing except an opinion evidence, therefore, they had no material relevance at the stage of passing the summoning order. In the present case, adequate evidence regarding the demand of dowry and harassment to the deceased during her life time has been collected.

Her death occurred within only four months of her marriage. Blood was noticed in the one nostril and froth was also noticed in the other nostril and these facts have been recorded in the inquest report. The deceased had informed the respondent no.2 one day prior to the incident in question that she would be killed. In view of these factual aspects of the matter, the case needs to be tried to find out truth, therefore, it is not a case, where the prosecution case should be outrightly rejected at the initial stage of taking cognizance.

7. In my opinion, the impugned order seems to be perfectly correct and requires no interference. The petition is, therefore, dismissed.

8. However, the bail plea of the applicants Bantesh Singh, Arvind Singh and Smt. Shalu Devi in the aforesaid criminal case may be considered and disposed of expeditiously in accordance with law.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com