

Maya BhaktA.

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Court : Kolkata

Decided On : Jul-28-2011

Judge : Kanchan Chakraborty, J.

Acts : Indian Penal Code (IPC) - Section 302, 34, 304A; Code of Criminal Procedure (CrPC) . - Section 401, 173

Appeal No. : C.R.R.2229 of 2010.

Appellant : Maya BhaktA.

Advocate for Def. : Mr. Swapan Kr. Mallick. Adv

Advocate for Pet/Ap. : Mr. Sukdeb Chatterjee. Adv

Judgement :

1. This application under Section 401 of the Code of Criminal Procedure is pertaining to an order dated 26.5.2010 passed by the learned Additional Chief Judicial Magistrate, Uluberia, Howrah whereby the prayer of the petitioner, who happens to be the defacto complainant of the Bagnan Police Station Case No.125 of 2009 dated 20.5.2009 under Sections 302/34 of the I.P.C. for further investigation into the case was rejected.

2. The petitioner herein filed one F.I.R. with Bagnan Police Station alleging therein that his son viz., Suprabhat Bhakta was murdered by the three accused persons named in the F.I.R. In the F.I.R., names of witnesses were mentioned

categorically. The I.O. of the case on completion of investigation filed one charge sheet under Section 302/34 of the I. P. C. against the persons named as accused in the F.I.R. The defacto complainant had taken out one application in the Court of the learned Additional Chief Judicial Magistrate, Uluberia, Howrah alleging therein that the investigation into the case was done perfunctorily and the persons named as witnesses in the petition of complaint/F.I.R. and in particular, the defacto complainant, i.e., the lodger of the F.I.R. were not at all examined by the I.O. The motor cycle which allegedly had hit a tree was not also seized by the I.O. The witnesses examined have not supported the case of the prosecution although charge sheet has been filed under Section 302/34 of the I.P.C. against the persons named as accused with a clear intention to end up the trial in acquittal. The learned Trial Court upon consideration of the submissions of both the sides passed the order impugned dated 26.5.2009 thereby rejecting the prayer on the ground that the I.O. discharged his duty properly and in course of trial, if it is found that a particular evidence is required to be collected, Court can collect it in accordance with law. Heard Mr. Sukdeb Chatterjee, learned Counsel appearing on behalf of the petitioner. Heard Mr. Swapan Kr. Mallick, learned Counsel appearing on behalf of the opposite party/State.

3. Perused the C.D. in original produced by Mr. Mallick, learned Counsel for the State.

4. It appears therefrom that out of seven witnesses named in the F.I.R., only three witnesses were examined by the I.O. in course of investigation. The lodger of the F.I.R., Maya Bhakta was not examined at all. Doctor was not examined. The Autopsy Surgeon was not also examined. The motor cycle was not also seized and examined by any mechanical expert. Some witnesses have been examined who are not named in the F.I.R. as witnesses.

5. On careful perusal of the statement recorded by the I.O. of the witnesses available to him in course of investigation, in fact and in substance, does not disclose any offence under Section 302 of the I.P.C. But, astonishingly the I.O. filed charge sheet under Section 302/34 of the I.P.C. against the three accused persons named in the F.I.R. --- intention does not appear to be clear. There is lack

of transparency in the investigation conducted by the I.O. It is not understood as to why the defacto complainant was not interrogated and why her statement was not recorded besides other three witnesses named in the F.I.R. as witnesses. The motor cycle ought to have been seized and ought to have been examined by a mechanical expert.

6. In the circumstances above, I find that the learned Court ought to have directed the I.O. to investigate further into the matter and file a fresh report under Section 173 of the Code of Criminal Procedure.

7. Mr. Mallick, learned Counsel appearing on behalf of the opposite party/State contends that the investigation so far done does not disclose commission of any offence under Section 302 of the I.P.C. It appears that it is a clear case of 304A of the I.P.C. However, Mr. Mallick contends that in that case also, the I.O. ought to have seized the motor cycle and got it examined by a mechanical expert. That has not been done and that is how the investigation is lacking sincerity and diligency. Even in that case, Mr. Mallick, learned Counsel appearing for the State contends that it would not be possible for the prosecution to make out a case under Section 304A of the I.P.C.

8. No doubt there is force in the contention of both Mr. Chatterjee and Mr. Mallick. The I.O. ought to have examined of the witnesses named in the F.I.R. including the lodger of the F.I.R./defacto complainant, the Autopsy Surgeon and ought to have recorded their statements under Section 161 of the Cr. P.C. The I.O. ought to have seized the motor cycle in question and got it examined by a mechanical expert. The witnesses examined by the I.O. in course of investigation do not support the prosecution case under Section 302 of the I.P.C. and not the case under Section 304A of the I.P.C.

9. Therefore, the matter is required to be investigated again.

10. The order impugned is interfered with and is set aside. The I.O. of the case is directed to further investigate into the case and file fresh report under Section 173 of the Cr. P. C. after recording statement of the lodger of the F.I.R./defacto complainant, witnesses such as, Jaharlal Bhakta, Tule Bhakta, Arup Bhakta and

Dr. Rabi Roy, Uluberia S. D. Hospital and to seize the motor cycle and get it examined by mechanical expert.

11. The revisional application is, thus, disposed of.

12. C.D. be returned to Mr. Mallick.

13. Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates of the parties upon compliance of necessary formalities.

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