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Neutral Citation No. - 2024:AHC:147856

Reserved on : 03.09.2024

Delivered on : 11.09.2024

Court No. - 74

Case :- APPLICATION U/S 482 No. - 13307 of 2020

Applicant :- Mritunjay Tiwari And 6 Others

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Anand Pal Singh,Rajiv Lochan Shukla

Counsel for Opposite Party :- Bishram Tiwari,G.A.,Vimal Kumar Pandey

Hon'ble Saurabh Shyam Shamshery,J.

1. Heard Sri Rajiv Lochan Shukla, learned counsel for applicants, Sri Vimal Kumar Pandey, learned counsel for opposite party No.2 and Sri Rakesh Kumar Mishra, learned A.G.A. for State.

2. Applicant No.1 got married with Manju Tiwari (daughter of the complainant) in 2014, whereas other applicants are relatives of applicant No.1. It is the case of applicants that on 23.09.2016 at about 9.00 p.m., Smt. Manju Tiwari ran away from their house and despite searched for days, she was not located. Applicants have lodged missing report as well as publications were made in newspaper also.

3. The complainant side was also making efforts along with applicants side to search her but all attempts were failed. In the aforesaid circumstances, complainant after about six weeks

filed an application under Section 156 (3) Cr.P.C. on 11.01.2017, alleging that his daughter (wife of applicant No.1) died under otherwise than normal circumstances and her dead body was concealed by applicants. On order of learned Magistrate, an FIR was lodged on 25.11.2016 against applicants (Case Crime No.1203 of 2017) under Sections 498-A, 304-B, 201 I.P.C. and ¾ of D.P. Act, Police Station- Kotwali Padrauna, District- Kushinagar.

4. The Investigating Officer recorded statements of witnesses and made attempts to locate victim either alive or dead but she was not found alive nor her dead body was recovered. Investigation was not proper, therefore, a writ petition was filed before this Court by the complainant for referring investigation to CBI. The writ petition was remained pending and orders were passed against Police Officers.

5. Initially, a charge-sheet No.31 of 2017 was filed only under Section 498-A I.P.C. and ¾ of D.P. Act. The learned Chief Judicial Magistrate, Kushinagar at Padrauna, by order dated 02.11.2017, returned the charge-sheet with direction to conduct investigation properly. Relevant part of order is mentioned hereinafter :-

> *"सुना तथा पत्रावली का सम्यक परिशीलन किया।*
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> *पुलिस द्वारा प्रस्तुत प्रपत्रों के अवलोकन से प्रथम दृष्टया स्पष्ट है, कि विवेचक द्वारा सभी तथ्यों की विस्तृत जाँच किये बिना मात्र खानापूर्ति करते हुये आरोप पत्र न्यायालय में प्रेषित कर दिया गया है। यहाँ यह उल्लेखनीय है, कि आवेदक द्वारा धारा- **498A, 304B, 201** भा०दं०सं० व धारा- **3/4** डी०पी० एक्ट के तहत मुकदमा पंजीकृत कराया गया था। आवेदक द्वारा अपने प्रार्थना पत्र अन्तर्गत धारा- **156(3)** दं०प्र०सं० में आधार लिया गया था, कि दहेज के लिये उसकी लड़की*

*की हत्या कर उसकी लाश गायब कर दी गयी है। इस सम्बन्ध में विवेचक द्वारा उसके तथा अन्य निकटतम सम्बन्धियों के **C.D.R** निकलवायी गयी, परन्तु विवेचक द्वारा उससे क्या निष्कर्ष निकला यह अपने केस डायरी में उल्लेखित नहीं किया है, तथा उसकी गुमसुदगी के सम्बन्ध में पेपरों में तथा सभी सम्बन्धित लोगों व गुमशुदगी के सम्बन्ध में जरिये रेडियो व दूरदर्शन आस-पास के जिलों से कराया गया था। परन्तु बिना किसी समुचित निष्कर्ष पर आये विवेचक द्वारा यह आरोप पत्र न्यायालय के समक्ष प्रस्तुत कर दिया गया है। प्रथम दृष्टया स्वयं विवेचना अपूर्ण की जानी प्रतीत होती है। अतः इस निर्देश के साथ विवेचक को केस डायरी वापस प्रेषित की जाती है, कि वह सभी तथ्यों को दृष्टिगत रखते हुये निष्पक्षतापूर्वक विवेचना सम्पादित कर आख्या प्रेषित करें।"*

6. It appears that Investigating Officer has submitted other charge-sheet also. Learned Magistrate has decided another protest petition by order dated **17.07.2018**, whereby said charge-sheet was also returned for further investigation. Relevant part of it is reproduced hereinafter :-

"सुना तथा पत्रावली का सम्यक परिशीलन किया।

*पुलिस द्वारा प्रस्तुत प्रपत्रों के अवलोकन से प्रथम दृष्टया स्पष्ट है, कि विवेचक द्वारा सभी तथ्यों की विस्तृत जाँच किये बिना मात्र खानापूर्ति करते हुये आरोप पत्र न्यायालय में प्रेषित कर दिया गया है। यहाँ यह उल्लेखनीय है, कि आवेदक द्वारा धारा- **498A, 304B, 201** भा०दं०सं० व धारा-**3/4** डी०पी० एक्ट के तहत मुकदमा पंजीकृत कराया गया था। आवेदक द्वारा अपने प्रार्थना पत्र अन्तर्गत धारा **156 (3)** दं०प्र०सं० में आधार लिया गया था, कि दहेज के लिये उसकी लड़की की हत्या कर उसकी लाश गायब कर दी गयी है। इस सम्बन्ध में विवेचक द्वारा उसके तथा अन्य निकटतन सम्बन्धियों के फोनों की **C.D.R.** निकलवायी गयी, परन्तु विवेचक द्वारा उससे क्या निष्कर्ष निकला यह अपने केस डायरी में लिखित नहीं किया है, तथा उसकी गुमसुदगी के सम्बन्ध में पेपरों में तथा सभी सम्बन्धित लोगों व गुमशुदगी के सम्बन्ध में जरिये रेडियो व दुरर्शन आस-पास के जिलों से कराया गया था। परन्तु बिना किसी समुचित निष्कर्ष पर आये विवेचक द्वारा यह आरोप पत्र न्यायालय के समक्ष प्रस्तुत कर किया गया है। प्रथम दृष्टया स्वयं विवेचना अपूर्ण की जानी प्रतीत होती है। अतः इस निर्देश के साथ विवेचक को केस डायरी वापस प्रेषित की जाती है, कि वह सभी तथ्यों को दृष्टिगत रखते हुये निष्पक्षतापूर्वक अग्रिम विवेचना सम्पादित कर रिपोर्ट प्रेषित करें।"*

7. Meanwhile, applicants' attempt to quash FIR was failed, whereas attempts of complainants for fair and further investigation remained successful.

8. The writ petition filed by the complainant got disposed of by order dated 24.02.2020. Relevant part of it is reproduced hereinafter :-

> *" 6. Today, an affidavit has been filed by Investigating Officer (hereinafter referred to as 'I.O.') stating therein that charge-sheet has been submitted by I.O before Chief Judicial Magistrate, Kushi Nagar whereupon, Magistrate has taken cogniaznce and issued summons on 18.2.2020 to accused.*
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> *7. Learned counsel for accused respondent-5 submits that superficial investigation has been conducted and without collecting any credible evidence, charge-sheet has been submitted. If petitioner has any grievance regarding submission of charge-sheet, same can be raised before the Magistrate concerned at the time of framing of charge or by challenging order taking cognizance before Revisional Court.*
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> *8. Since charge-sheet has already been submitted and Magistrate has taken cognizance in the matter, no further cause of action survives in present writ petition. Writ petition is, accordingly, dismissed as infructuous. Personal appearance of Mr. Vinod Kumar Mishra, Superintendent of Police, Kushi Nagar and Mr. Netesh Pratap Singh Deputy Superintendent of Police (Circle Officer, Tamkuhiraj), District Kushi Nagar is dispensed with. "*

9. In the aforesaid circumstances, finally a charge-sheet was filed on 12.02.2020 i.e. after about 3 years on which cognizance was taken and applicants were summoned by order dated 05.03.2020.

10. The said charge-sheet, cognizance and summoning order were challenged by way of present application. Initially, this Court has granted an interim order on 21.09.2020, which was extended on subsequent dates also, however, on 28.03.2022 it was discharged. In the aforesaid circumstances, applicants have filed respective discharge applications before learned Trial Court, which are still pending.

11. Sri Rajiv Lochan Shukla, learned counsel for applicants has submitted that offence under Section 304-B I.P.C. could not be made out, since there is no material or evidence that wife of the applicant No.1 has died under otherwise than normal circumstances since there is no evidence that she has died as well as if she already died, still there is no evidence about manner of her death. Her dead body was not recovered. Learned counsel also submitted that complainant's side along with applicants side was taking various efforts to locate wife of applicant No.1 and they have not raised any suspicion for about more than one and a half month.

12. Learned counsel also referred litigation filed before this Court that charge-sheet was filed only under threat of contempt proceedings initiated by complainant against police officers. The complainant himself has raised a suspicion that his daughter may have eloped with other person though on investigation there was no break through in that direction. The charge-sheet was filed only on assumption without any evidence to support allegation of dowry death.

13. The aforesaid submissions are opposed by Sri Rakesh Kumar Mishra, learned A.G.A. for State and Sri Vimal Kumar Pandey, learned counsel for complainant side that in such cases, it is not necessary to establish *corpus delicti*. It is the case of complainant side that deceased has died under otherwise than normal circumstances within seven years of marriage and that she has suffered with cruelty for demand of dowry soon before her death and her dead body was concealed by applicants side.

14. Learned counsel for complainant submitted that applicants were initially successful in misdirecting the complainant that it was a case of missing and kept him busy in order to delay in lodging FIR and from prompt commencement of investigation. Applicants have already filed respective discharge application which will be considered in accordance with law. No circumstance exists to interfere with charge-sheet. Learned counsel for complainant has placed reliance on judgments of Supreme Court passed in **Sevaka Perumal Vs. State of Tamil Nadu, (1991) 3 SCC 471 and Mani Kumar Thapa Vs. State of Sikkim, (2002) 7 SCC 157.**

15. Heard counsel for parties and perused the record.

16. It is well settled that at the stage of challenge to charge-sheet, no mini trial could be conducted by this Court. The only consideration before this Court is that in given circumstances, when dead body of wife of applicant No.1 was not recovered, whether it could be deemed that she died under otherwise than normal circumstances or in given set of circumstances, the

argument that there is no requirement to establish *corpus delicti* has merit.

17. In order to consider above submissions, a judgment passed by Supreme Court in the case of **Sanjay Rajak Vs. State of Bihar, (2019) 12 SCC 552** would be relevant and its few paragraphs are reproduced hereinafter :-

> *"**9.** It is not an invariable rule of criminal jurisprudence that the failure of the police to recover the corpus delicti will render the prosecution case doubtful entitling the accused to acquittal on benefit of doubt. It is only one of the relevant factors to be considered along with all other attendant facts and circumstances to arrive at a finding based on reasonability and probability based on normal human prudence and behaviour. In the facts and circumstances of the present case, the failure of the police to recover the dead body is not much of consequence in the absence of any explanation by the appellant both with regard to the victim last being seen with him coupled with the recovery from his house of the belongings of the deceased. Rama Nand v. State of H.P. [Rama Nand v. State of H.P., (1981) 1 SCC 511 : 1981 SCC (Cri) 197] , was a case of circumstantial evidence where the corpus delicti was not found. This Court upholding the conviction observed: (SCC pp. 522-23, para 28)*
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> *"28. … But in those times when execution was the only punishment for murder, the need for adhering to this cautionary rule was greater. Discovery of the dead body of the victim bearing physical evidence of violence, has never been considered as the only mode of proving the corpus delicti in murder. Indeed, very many cases are of such a nature where the discovery of the dead body is impossible. A blind adherence to this old "body" doctrine would open the door wide open for many a heinous murderer to escape with impunity simply because they were cunning and clever enough to destroy the body of their victim. In the context of our law, Sir Hale's enunciation has to be interpreted no more than emphasising that where the dead body of the victim in a murder case is not found, other cogent and satisfactory proof of the homicidal death of the victim must be adduced by the prosecution. Such proof may be by the direct ocular account of an eyewitness, or by circumstantial evidence, or by both. But where the fact of corpus delicti i.e. "homicidal*

death" is sought to be established by circumstantial evidence alone, the circumstances must be of a clinching and definitive character unerringly leading to the inference that the victim concerned has met a homicidal death. Even so, this principle of caution cannot be pushed too far as requiring absolute proof. Perfect proof is seldom to be had in this imperfect world, and absolute certainty is a myth. That is why under Section 3 of the Evidence Act, a fact is said to be "proved", if the court considering the matters before it, considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. The corpus delicti or the fact of homicidal death, therefore, can be proved by telling and inculpating circumstances which definitely lead to the conclusion that within all human probability, the victim has been murdered by the accused concerned."

***10.** Sevaka Perumal v. State of T.N. [Sevaka Perumal v. State of T.N., (1991) 3 SCC 471 : 1991 SCC (Cri) 724] , was also a case where the corpus delicti was not found yet conviction was upheld observing: (SCC pp. 476-77, para 5)*

"5. ... In a trial for murder it is not an absolute necessity or an essential ingredient to establish corpus delicti. The fact of death of the deceased must be established like any other fact. Corpus delicti in some cases may not be possible to be traced or recovered. Take for instance that a murder was committed and the dead body was thrown into flowing tidal river or stream or burnt out. It is unlikely that the dead body may be recovered. If recovery of the dead body, therefore, is an absolute necessity to convict an accused, in many a case the accused would manage to see that the dead body is destroyed, etc. and would afford a complete immunity to the guilty from being punished and would escape even when the offence of murder is proved. What, therefore, is required to base a conviction for an offence of murder is that there should be reliable and acceptable evidence that the offence of murder, like any other factum of death was committed and it must be proved by direct or circumstantial evidence, although the dead body may not be traced.""

(Emphasis Supplied)

18. It is case of complainant that under a bonafide impression, believing that applicant No.1 i.e. (husband of his daughter) was undertaking bonafide steps to search his wife, no

prompt FIR was lodged but later on when it was clear that attempts of applicants side were nothing but to distract the complainant from real issue, an FIR was lodged after about six weeks. The police was not conducting fair investigation, therefore, the complainant has filed a writ petition wherein various orders were passed and after two charge-sheet were returned with direction of further investigation by concerned Magistrate, finally impugned charge-sheet was filed.

19. In order to consider rival submissions, above referred circumstances are very relevant as well as no circumstance exist to support the story put forward by the applicants that his wife ran away on 23.09.2016 and remained missing except a vague story that she has an illicit relationship with some other person and she may elope with him, which was later on, after an inquiry was found false. In above background claim of complainant side that applicants side has misdirected them during initial period for about six weeks that his wife was missing but later on their intention were exposed, has substance.

20. No reason even remote was brought on record which could be ground for applicant No.1's wife to run away from her matrimonial house. Only on a ground that her dead body was not recovered, it could not be said that she is still alive. There are evidence on record that applicant No.1 has illicit relationship with co-accused and it was repeatedly objected by his wife and her family members as well as that there are allegations of committing cruelty for or in regard to demand of dowry also, therefore, the Court is of considered opinion that

argument of learned counsel for complainant and the State has more force at this stage that in given circumstances to establish *corpus delicti* is not necessary and applicants have a liberty to raise all such arguments during consideration of their discharge application pending before learned Trial Court or during trial, as the case may be. The **Sanjay Rajak (supra)** is applicable in full force in present case in support of prosecution case.

21. The Court also takes note of ;brief facts of the case; mentioned in the impugned charge-sheet and for reference relevant part of it is reproduced hereinafter :-

> *"मुकदमा उपरोक्त की अब तक की कार्यवाही विवेचना से यह स्पष्ट हो चुका है कि मृतका गायब नही हुई थी बल्कि गुमशुदगी के पूर्व वादी द्वारा प्रस्तुत विवरण के अनुसार ससुराल पक्ष द्वारा दहेज के लिये उसको प्रताडना करते हुये मन्जू तिवारी की मृत्यु करित कर साक्ष्य का लोप करने हेतु शव को गायब कर दिया गया। वादी द्वारा इस सम्बन्ध में मुख्य न्यायिक मजिस्ट्रेट कुशीनगर के न्यायालय में सशपथ शपथ पत्र प्रस्तुत करते हुये उपरोक्त तथ्यों की पुष्टि की गयी है। जिसकी छायाप्रति संलग्न की जा रही है।... प्रथम सूचना रिपोर्ट के अनुसार वादी की पुत्री मंजू तिवारी की शादी दिनांक **17-02-2014** को मृत्युन्जय तिवारी निवासी ग्राम भिसवा सरकारी थाना कोतवाली पडरौना जिला कुशीनगर के साथ सम्पन्न हुई। इस तथ्य की पुष्टि में शादी के फोटो ग्राफ व शादी की कार्ड साक्ष्य रूप में उपलब्ध है। शादी के पश्चात मृत्युन्जय तिवरी, राधेश्याम तिवारी, राजेन्द्र तिवारी, देवेन्द्र तिवारी पुत्रगण धुपही तिवारी, कुमारी डिम्पल तिवारी पुत्र घनश्याम तिवारी, गायत्री देवी पत्नी घनश्याम तिवारी, द्रोपदी देवी पत्नी देवेन्द्र तिवारी सा० निसवा सरकारी थाना कोतवाली पडरौना कुशीनगर द्वारा मंजू तिवारी की प्रताड़ना सम्बन्धी साक्ष्य वादी के शपथ पत्र व धारा **161** सीआर०पी०सी० के बयान वादी व वादी की पत्नी श्रीमती निर्मला दीक्षित व लड़का मानवेन्द्र दीक्षित गवाहान श्री जटाशंकर मिश्रा पुत्र छेदी मिश्रा व अनिल कुमार मिश्रा पुत्र जटाशंकर मिश्रा सा० बेलवा मिश्र पकडी थाना कोतवाली पडरौना कुशीनगर व श्री बलीराम यादव पुत्र राधे किशुन सा० परसौना थाना कसया जनपद कुशीनगर के बयान से सिद्ध होता है। इन्ही गवाहों द्वारा प्रथम सूचना रिपोर्ट के तथ्यों की पुष्टि की गयी है। विवाहित मंजू तिवारी के मोबाईल नं० **9120442** के सी०डी०आर० के अवलोकन करने पर इस तथ्य की पुष्टि हुई है कि उसकी बात अपने माता पिता से दिनांक **23-09-16** को **20-07-46** बजे **1177***

*सेकेण्ड **9120810387** हरिशंकर दीक्षित के मोबाईल नं० पर बात हुई है तथा इस बात की भी पुष्टि हो रही है कि रात में सवा दस बजे के आस पास मन्जू तिवारी के मोबाईल से उसके पति द्वारा मन्जू के माता पिता । वादी। को फोन करके उसके घर से गायब होने की सूचना दी गयी। ... . वादी द्वारा यह भी अवगत कराया गया है कि अभियुक्त पक्ष द्वारा विवाहिता के स्वयं गायब होने सम्बन्धी सूचनावादी पक्ष को और गुमशुदगी के माध्यम से पुलिस को भी देकर गुमराह करने का प्रयास किया गया है जबकि अभियुक्तगणों द्वारा विवाहिता मंजू के स्वयं गायब हो जाने का समुचित कारण न तो वादी को बताया गया और न तो पुलिस को विवेचना के दौरान बताया गया। विवाहिता मन्जू तिवारी स्वस्थ महिला थी जिसके पास एक छोटा दुधमुहां बच्चा भी था जो ऐसा कोई निर्णय नहीं ले सकती थी. जो उसके बच्चे के हित के विरूद्ध हो तथा उसके स्वयं के जीवन के लिये उचित न हो। दहेज सम्बन्धी प्रताडना की बात उसने अपने माता पिता मायके वालों को बताया था, जिसकी पुष्टि साक्ष्यों से हो चुकी है। अचानक स्वयं गायब हो जाना अपने बच्चे को अनाथ छोड़कर चले जाना, अपने माता पिता को कोई सूचना नहीं देना, यह सभी तथ्य अभियुक्तगणों द्वारा अपने बचाव में निर्मित किये गये है। विवाहिता की विवाह के सात वर्षों के भीतर अस्वभाविक रूप से दहेज के लिये उत्पीडित करते हुये अस्वभाविक मृत्यु । हत्या। कर अभियुक्त पक्ष द्वारा उसके शव को साक्ष्य का लोप करने के लिये गायब किया जाना, समस्त परिस्थितियों व साक्ष्यों के विश्लेषण से सिद्ध है। ..... श्रीमान् जी अब तक की तमामी तफ्तीश बयान वादी व बयानात गवाहान व अन्य सबूतों के आधार पर मुकदमा उपरोक्त से सम्बन्धित अभियुक्तगण **1**- मृत्युन्जय तिवारी पुत्र धुपई तिवारी **2**-राधेश्याम तिवारी पुत्र धुपई तिवारी, **3**-राजेन्द्र तिवारी पुत्र धुपई तिवारी **4** देवेन्द्र तिवरी पुत्र धुपई तिवारी **5**-डिम्पल तिवारी पुत्री घनश्याम तिवारी **6** गायत्री देवी पत्नी घनश्याम तिवारी **7** द्रोपदी देवी पत्नी देवेन्द्र तिवारी साकिनान भिसवा सरकारी थाना कोतवाली पडरौना कुशीनगर के विरूद्ध जुर्म धारा **498** ए, **304** बी, **201** आई०पी०सी० व **3/4** डी०पी०ऐक्ट का अपराध बखूबी साबित हो रहा है।"*

22. The above referred conclusion is supported by statements of various witnesses recorded during long investigation. In the charge-sheet **25** witnesses were proposed as prosecution witnesses. Statement of all proposed witnesses are not enclosed with present application as well as it has been recently reiterated by the Supreme Court that at this stage High Court cannot undertake to conduct a mini trial or enter into appreciation of evidence of a particular case, in the case of

Priyanka Jaiswal Vs. State of Jharkhand and others, 2024 SCC OnLine SC 685 and relevant part of it is mentioned hereinafter :-

> ***"13.*** *We say so for reasons more than one. This Court in catena of Judgments has consistently held that at the time of examining the prayer for quashing of the criminal proceedings, the court exercising extra-ordinary jurisdiction can neither undertake to conduct a mini trial nor enter into appreciation of evidence of a particular case. The correctness or otherwise of the allegations made in the complaint cannot be examined on the touchstone of the probable defence that the accused may raise to stave off the prosecution and any such misadventure by the Courts resulting in proceedings being quashed would be set aside. This Court in the case of Akhil Sharda, 2022 SCC OnLine SC 820 held to the following effect:*
>
> > *"**28.** Having gone through the impugned judgment and order passed by the High Court by which the High Court has set aside the criminal proceedings in exercise of powers under Section 482 Cr. P.C., it appears that the High Court has virtually conducted a mini trial, which as such is not permissible at this stage and while deciding the application under Section 482 Cr. P.C. As observed and held by this Court in a catena of decisions no mini trial can be conducted by the High Court in exercise of powers under Section 482 Cr. P.C. jurisdiction and at the stage of deciding the application under Section 482 Cr. P.C., the High Court cannot get into appreciation of evidence of the particular case being considered."***"**

23. In the aforesaid circumstances, I do not find that there is any ground to quash the charge-sheet as well as cognizance and summoning order. Accordingly, present application is **rejected.**

Order Date :- 11.09.2024

P. Pandey

[SAURABH SHYAM SHAMSHERY, J]