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HARISHCHANDRA PRASAD MANI AND ORS.

v

STATE OF JHARKHAND AND ANR.

JANUARY 31, 2007

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[S.B. SINHA AND MARKANDEY KATJU, JJ.]

Code of Criminal Procedure, 1973:

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S.482—Cognizance of offence—No material indicating guilt of accused—Cognizance taken merely on suspicion—Held, order taking cognizance of offence liable to be quashed.

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Prosecution case was that informant's son was murdered by the accused persons by hatching conspiracy. His dead body was brought with a false death certificate and cremated. After investigation, police submitted a final report. Thereafter CJM after recording statement of witnesses, passed order of taking cognizance of the offence.

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Against the aforesaid order taking cognizance by the Magistrate, a petition was filed under Section 482 Cr.P.C which was dismissed by the impugned order. Hence this appeal.

Allowing the appeal, the Court

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HELD: 1.1. The death certificate in respect of the deceased was issued by the Medical Officer which states that the cause of death is Cardio Respiratory Arrest. The complainant submitted that the deceased had no history of cardiac problems. It is well known even persons with no history of heart problem can suffer a heart attack and can die. Moreover in the present case the appellant has shown the medical reports of the cardiologist of Patna which show that the deceased was a patient of severe hypertension (blood pressure) for a very long period. Hence, it cannot be said that the deceased had no medical problems which could lead to his heart attack. [Para 10& 11]

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[29-D-F]

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1.2. The complainant has alleged that the deceased was killed by poisoning, but there is no iota of material that any poison was administered to him. There is nothing in the medical evidence showing that the dead body

of the deceased had any poisoning in it. It appears that the deceased had vomited in the hospital when he was admitted, but the Police did not take any sample of the vomit for sending it to some laboratory for chemical analysis where it could have been established whether he had been given any poison. The cognizance has been taken on pure conjectures and surmises. [Para 12] [29-F-G]

2. Cognizance cannot be taken unless there is at least some material indicating the guilt of the accused. There is not even an iota of material indicating the guilt of the accused persons. It is true that at the stage of taking cognizance adequacy of evidence will not be seen by the Court, but there has to be at least some material implicating the accused, and cognizance cannot be taken merely on the basis of suspicion as it appears to have been done in the present case. To take a contrary view would only lead to harassment of people. [Paras 13, 14] [30-A-C]

3. It has been alleged in the complaint that the wife of the deceased was having an affair with accused No. 2, but this itself is only a suspicion and cannot be the basis of a conviction. Similarly, the fact that the in-laws of the deceased did not take part in his cremation is not evidence to show their guilt. [Para 15] [30-D]

R.P. Kapur v. State of Punjab, [1960] 3 SCR 388; *State of Haryana v. Bhajan Lal*, [1992] Suppl 1 SCC 335; *Janta Dal v. H.S. Chowdhary*, [1992] 4 SCC 305; *Raghubir Saran (Dr) v. State of Bihar*, [1964] 2 SCR 336; *State of Karnataka v. M. Devendrappa*, [2002] 3 SCC 89 and *Zandu Pharmaceutical Works Ltd. v. Mohd. Saraful Haque*, (2005) 1 SCC 122, relied on.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 124 of 2007.

From the Final Judgment and Order dated 6/5.5.2006 of the High Court of Jharkhand at Ranchi in W.P. (Crl) No. 234/2005.

P.S. Mishra, Upendra Mishra, Tathagat H. Vardhan, Dhruv Kumar Jha, Ravi C. Prakash, Hema Sharma and Bijan Kumar Ghosh for the Appellants.

Aman Lekhi, Samdarshi Sanjay, Rakesh Gauni and Venkateswara Rao Anumolu for the Respondents.

B.B. Singh and Kumar Rajesh Singh for the State of Jharkhand.

The Judgment of the Court was delivered by

A **MARKANDEY KATJU, J.** 1. Leave granted.

2. This appeal has been filed against the impugned judgment of the Jharkhand High Court dated 6/5.5.2006 passed in Writ Petition (Cr) No. 234 of 2005.

B 3. Heard learned counsel for the parties and perused the record.

4. It appears that one Suresh Chandra Sinha, respondent No. 2 in this appeal, filed Criminal Complaint being Complaint Case No. 946/2001 before the Chief Judicial Magistrate, Hazaribagh, which was sent by the CJM under Section 156(3) Cr.P.C. to the Police directing it to register a case and investigate it. Accordingly, the Police instituted an FIR being Ramgarh P.S. Case No. 311/2001 under Sections 302, 201, 328 and 120-B IPC against the appellants.

D 5. The allegation in the FIR in short was that the son of the informant Rajnish Kumar was married to accused Monika Mani (appellant No. 2 herein), and she had developed illicit relationship with the accused named in the FIR namely, Prabhat Kumar Srivastava. The accused Monika, daughter-in-law of the informant was in the habit of spending money unnecessarily and she used to put undue pressure on her husband for wasteful expenditure. The son of the informant was of a very docile nature and he could not object to such an act of his wife because his wife used to create scenes in a state of anger and she also used to insult her husband off and on.

F 6. It was further alleged in the FIR that the son of the informant also caught his wife and his paramour red-handed in some compromising position and, thereafter, it is alleged that the accused persons by hatching conspiracy committed murder of his son at Ramgarh and brought the dead body to Biharsharif with a false death certificate and, then, the dead body was cremated at Patna. The informant alleged in the FIR that he came to know subsequently that his son, in fact, did not die due to illness or disease rather he was murdered by the accused persons and then the informant lodged the case before the Police against the accused persons.

G 7. After investigation, the Police submitted a final report which was accepted by the learned Magistrate on 20.12.2002, and no Criminal Revision or petition under Section 482 Cr.P.C. was filed against the order of the learned Magistrate accepting the final report. Instead, it seems that an application was filed subsequently on 14.5.2003 on which the learned CJM recorded the statement of the applicant and his witnesses, and thereafter passed the

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impugned order on 12.4.2005 taking cognizance of the offence and issuing summons to the accused-appellants.

8. Against the aforesaid order taking cognizance by the learned Magistrate, a petition was filed under Section 482 Cr.P.C which was dismissed by the impugned order and hence this appeal.

9. We have carefully perused the entire record placed before us and find that there is not even an iota of evidence or any material on record against the appellants. It is true that at this stage it is not necessary that the complainant or prosecution must prove its case beyond reasonable doubt, but at least there must be some material on the basis of which cognizance is taken and summon is issued. Cognizance cannot be taken merely on suspicion as has evidently been done in this case.

10. The death certificate dated 12.10.2001 in respect of the deceased Rajnish Kumar was issued by the Medical Officer of Brindavan Hospital & Research Centre, Hazaribagh, which states that the cause of death is Cardio Respiratory Arrest.

11. Learned counsel for the complainant submitted that the deceased had no history of cardiac problems. It is well known even persons with no history of heart problem can suffer a heart attack and can die. Moreover in the present case the learned counsel for the appellant has shown us the medical reports of the cardiologist of Patna which show that the deceased Rajnish Kumar was a patient of severe hypertension (blood pressure) for a very long period. Hence, it cannot be said that Rajnish Kumar had no medical problems which could lead to his heart attack. It is well known that blood pressure, diabetes, is a silent killer.

12. The complainant has alleged that Rajnish Kumar was killed by poisoning, but there is no iota of material that any poison was administered to Rajnish Kumar. There is nothing in the medical evidence showing that the dead body of Rajnish Kumar had any poisoning in it. It appears that Rajnish Kumar had vomited in the hospital when he was admitted, but the Police did not take any sample of the vomit for sending it to some laboratory for chemical analysis where it could have been established whether he had been given any poison. It appears to us that cognizance has been taken on pure conjectures and surmises.

13. It is well-settled by a series of decisions of this Court that cognizance

A cannot be taken unless there is at least some material indicating the guilt of the accused vide *R.P. Kapur v. State of Punjab*, [1960] 3 SCR 388, *State of Haryana v. Bhajan Lal*, [1992] Suppl 1 SCC 335, *Janta Dal v. H.S. Chowdhary*, [1992] 4 SCC 305, *Raghubir Saran (Dr) v. State of Bihar*, [1964] 2 SCR 336, *State of Karnataka v. M. Devendrappa*, [2002] 3 SCC 89 and *Zandu Pharmaceutical Works Ltd. v. Mohd. Saraful Haque*, [2005] 1 SCC 122.

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C 14. In the present case, there is not even an iota of material indicating the guilt of the accused persons. It is true that at the stage of taking cognizance adequacy of evidence will not be seen by the Court, but there has to be at least some material implicating the accused, and cognizance cannot be taken merely on the basis of suspicion as it appears to have been done in the present case. To take a contrary view would only lead to harassment of people.

D 15. No doubt, it has been alleged in the complaint that the wife of the deceased was having an affair with accused No. 2, but this itself is only a suspicion and cannot be the basis of a conviction. Similarly, the fact that the in-laws of the deceased did not take part in his cremation is not evidence to show their guilt.

E 16. In our opinion, since there is no material on the basis of which cognizance was taken, we quash the order dated 12.4.2005 taking cognizance of the offence. Resultantly, the impugned judgment of the High Court is set aside and the appeal is allowed.

DG.

Appeal allowed.