

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.36336 of 2012

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1. Shashank Shankar Ojha S/O Deenanath Ojha Resident Of Vill.- Deokuli,
P.S.- Brahmpur, Distt.- Baxur

.... Petitioner/s

Versus

1. The State Of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Dr. Leelawati Kumari

For the Opposite Party/s : Mr. Jharkhandi Upadhyay (App)

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

4 24-12-2014 Dr. Leelawati Kumari, learned Advocate for the petitioner,

files an affidavit stating that the charges in this case have not yet

been framed.

Let the affidavit be kept on the record.

Heard Counsels for the parties.

The petitioner has challenged the order dated 21.2.2002,

passed by the learned Chief Judicial Magistrate, Aurangabad,

whereby cognizance has been taken under Sections 279 and 304A of

the Indian Penal Code.

The informant claims to have learnt that a person, who met

with an accident, is being taken for hospital for post mortem. On such

information, he went to the hospital and found that the dead body was

that of one Munna @ Karim, son of Shamsuddin. He further states in

the FIR that since the deceased worked as a Khalasi in a local bus,

the informant identified him. He has further stated in the FIR that on

seeing the wound on the person of the deceased, he assessed that

the death was because of road accident. This report led to the institution of Barun PS Case No. 96 of 2001 for the offences under Sections 279 and 304A of the Penal Code. The informant had not seen the occurrence and, therefore, he has not named anybody.

Later, during course of investigation, it came to light that a bus, which operated in the name and style of Kumar Bus Service, had trampled down some person. That person was eventually found to be the person named Md. Karim alias Munna, the deceased of the present case.

The driver and other employees of Kumar Bus Service disclosed that the petitioner was driving the vehicle on the fateful day. However, for such statement, there is no eye witness to the occurrence, namely the petitioner driving the vehicle, which trampled down the deceased.

During the course of investigation, out of the blue, and at a much belated stage, the petitioner went to the police Station and disclosed that he is guilty of the offence.

Learned Counsel for the petitioner submits that since the petitioner has alleged his own infamy, he ought not to be heard.

Learned Counsel for the State, however states that since the prosecution is solely based on the confession of the petitioner, the material as against him to justify his being put on trial is sufficient. Nonetheless, he further submits that such statement by which the petitioner inculpated himself, came at a much later stage in the investigation. What were the circumstances which goaded the petitioner in raising a plea of guilt is not known. Apart from such self

inculcating statement before the Police, there is no material to connect the petitioner with the offence.

In such circumstances, it would not be proper to put the petitioner on trial.

Considering this circumstance, the order taking cognizance dated 21.2.2002, as against the petitioner, is set aside.

This application is allowed.

(Ashutosh Kumar, J)

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