

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.30417 of 2014

Arising Out of Complaint Case No. -1110 Year- 2011 District- GAYA

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Dr. Nilu Sinha, Wife of Dr. Shailesh Prasad, Resident of Road No.-1, North of Nala, North Patel Nagar, P.O.- Keshrinagar, P.S.- Patliputra, Patna-24

.... Petitioner/s

Versus

1. The State of Bihar
2. Subansh Kumar Singh, Son of Late Ram Janam Singh, Resident of village-Chiraila Tetaria, P.S.- Mufassil, District- Gaya

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Pranav Kumar, Adv.
For the State : Mr. M.K. Khare, A.P.P.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 24-09-2015

Heard learned counsel for the Petitioner and the State.

The Petitioner seeks quashing of the order of cognizance dated 8.1.2014 passed by the Judicial Magistrate, 1st Class, Gaya, in Complaint Case No. 1176 of 2007 arising out of Kotwali P.S. Case No. 229 of 2007.

The case of the Complainant/Informant is that his wife was under the medical treatment of the Petitioners who advised her certain operation. When she underwent the same, extra anaesthesia was given to her on account of which, she died. Then the accused persons tried to hide the matter, but he instituted the First Information Report.

It has been submitted that after due investigation, Final Report was submitted in the matter which was accepted but the case proceeded on the protest-cum-complaint petition. In the meanwhile, the

Informant also filed a Complaint before the Consumer Forum which was decided against him. In such circumstances, when no medical negligence has been proved, there is no question of any intent. Moreover, it is a well established principle of law, only when criminal intent is evident from the facts of the case, a criminal offence would be made out. The same is absent in the present circumstances.

On the other hand, the counsel for the Complainant submits that the Police in collusion with the Petitioner had submitted a Final Report and it was a clear case of medical negligence with a criminal intent and, therefore, the Petitioner should be put on Trial.

Having considered the facts of the case and clear rulings of the Apex Court in this regard reported in 2005(6) SCC, Page-1, the application is allowed and the Proceeding including the order of cognizance dated 8.1.2014 passed by the Judicial Magistrate, 1st Class, Gaya, in Complaint Case No. 1176 of 2007 arising out of Kotwali P.S. Case No. 229 of 2007, is hereby, set aside.

(Anjana Prakash, J)

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