

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.972 of 2014

Arising Out of PS.Case No. -null Year- null Thana -null District- PATNA

Jagdish Memorial Hospital, Kankarbagh, Patna through its Director, Dr. Alok Kumar, S/o Late Janardan Prasad Singh, R/o 402 Nutan Vihar Apartment, Near Kankarbagh Police Station, P.S.-Kankarbagh, District-Patna.

.... Petitioner

Versus

1. The State of Bihar through D.M. Patna, the Superintendent of Police, Patna
2. Rama Singh, S/o Naulakh Singh, R/o village-Vaman Kanpa, P.S.-Banitalab (Bikram), District-Patna.

.... Respondents

Appearance :

For the Petitioner/s : Mr. Patanjali Rishi, Advocate

For the Respondent/s : Ms. Manisha Singh, AC to GP-18

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 14-09-2015

By way of the present writ petition filed under Articles 226 and 227 of the Constitution of India, the petitioner, Jagdish Memorial Hospital (For short 'the Hospital'), a private limited company, incorporated under the Companies Act, 1956, seeks quashing of the first information report (For short 'IPC') of Kankarbagh P.S. Case No. 290 of 2013 dated 07.07.2013 registered under Section 304 of the Indian Penal Code.

2. The prosecution case arises out of a written report addressed by the opposite party no. 2 to the Police Inspector-cum-Station House Officer, Kankarbagh Police Station, Patna dated 07.07.2013

alleging therein that his brother Arun Kumar Singh met with a road accident at Sonapur on 19.06.2013 in which he suffered injuries and was taken to the Referral Hospital, Sonapur where he was administered the first aid and was referred to P.M.C.H., Patna. On the same day, for better treatment, they brought to the said Arun Kumar Singh to Jagdish Memorial Hospital, Lohia Nagar, Kankarbagh, Patna and got him admitted there where he was kept in ICU-6 on 19.06.2013. It is further alleged that the informant was informed that the blood group of the said Arun Kumar Singh was 'B' positive and the same was required to be transfused immediately. The said blood was made available and it was transfused to the injured Arun Kumar Singh. As per further allegation the Hospital asked for second time to bring 'B' positive blood. On the next day, it was informed by the Hospital authorities that the kidney of the said Arun Kumar Singh was damaged due to the accident. Then on the basis of suspicion the informant again got the blood of the patient Arun Kumar Singh tested and then it was found that the same was 'O' positive which was his correct blood group. When this fact was informed to the Hospital management allegedly the informant was informed that the blood group was 'O' positive and the patient could receive any blood which fact the informant allegedly did not understand as he was not sufficiently educated. However, allegedly, later on he came to know that 'O'



positive blood could be donated to anybody but cannot accept all the other blood groups. After that the condition of the patient allegedly deteriorated severely and ultimately he died on the morning on 07.07.2013. After this allegedly as the informant was thinking of lodging a complaint before the police, the employees of the Hospital allegedly broke the main gate of the Hospital and started to beat the informant and the other persons with him and allegedly said that they will get all of that photographed and will show it to the media and get the informant and the other persons sent to jail as the foundation of the Hospital was laid down by the Governor and they have contracts with the Ministers of Bihar, the Chief Minister and high officials of the Police. It is further alleged that they asked them to pay the bill of the Hospital immediately and then take away the body. In the meantime, the evidence of wrong blood transfusion was allegedly being attempted to be tampered with by the Hospital staff.

3. On the basis of this written report, a formal FIR bearing Kankarbagh P.S. Case No. 290 of 2013 dated 07.07.2013 was registered for the offence under Section 304 of the Indian Penal Code against the doctors and employees of the Hospital.

4. Mr. Patanjali Rishi, learned counsel for the petitioner has submitted that the prosecution case, on the face of it, does not disclose any offence. According to him, the correct facts are that on



19th July, 2013 three persons including the said Arun Kumar Singh were admitted in the Hospital in injured condition after they met an accident and of them one Arun Kumar Singh was critically injured. Since the case was one of the emergency, treatment was immediately commenced in the Hospital by a team of qualified doctors and attendants. The Hospital is one of the most reputed Hospitals in Patna providing quality medical services by a team of highly qualified doctors and personnel supported by world class medical equipments.

5. He has further submitted that as a result of the accident, the deceased Arun Kumar Singh developed infections in his kidney and the same was damaged. Though the Hospital provided the best life support and despite the most sincere efforts on part of the Hospital, the injured patient could not be saved.

6. He has further submitted that upon his death, the relatives and the attendants who were with the said patient including the informant started rioting in the Hospital and damaged the furniture and apparatus in the Hospital. The relatives and attendants of the deceased patient also assaulted the staff of the Hospital and threw away the documents and important files of the Hospitals here and there including some of the files relating to patients. He submits that all this rioting was done only with the object of evading the bill which they were required to pay for the treatment of the patient.

7. It is further submitted that upon report of the rioting when the police came, the present FIR was lodged by the informant maliciously in order to extort money from the Hospital.

8. He further contends that in view of the law laid down by the Supreme Court in case of **Jacob Mathew Vs. State of Punjab [(2005) 6 SCC 1]**, the prosecution is fit to be quashed, as the minimum requirement of the law as regards evidence of a competent medical expert in order to prosecute a medical professional has not been satisfied in the present case

9. At this stage, it would be relevant to note that despite valid service of notice, opposite party no. 2 has chosen not to appear either in person or through his Counsel.

10. Ms. Manisha Singh, learned AC to GP-18 appearing for the State, submits that the instant application has become infructuous in view of the fact that the writ application has been filed seeking quashing of the FIR of Kankarbagh P.S. Case No. 290 of 2013, whereas the fact of the matter is that after completion of investigation, the investigating officer has already submitted charge-sheet before the court. She submits that the present application has been filed by the Hospital, a company, through its Director, Dr. Alok Kumar. However, neither the Hospital nor its Director, Dr. Alok Kumar has been sent up for trial in the present case. According to her, on completion of investigation, the



investigating agency found the allegation made in the FIR to be true as against one Dr. Amit Kumar Sinha, son of Dr. D. P. Sinha and Dr. Hemant Kumar, son of Late Rajnath Prasad and, accordingly, they have been sent up for trial by the investigating officer of the case vide charge-sheet No. 34/2015 dated 31st July, 2015. She submits that in case of any grievance against the FIR or an adverse police report or any order being passed by the court on the basis of the adverse police report, the aggrieved party may approach the court, but the petitioner of the present case cannot seek quashing of the FIR.

11. I have heard learned counsel for the parties and perused the record.

12. I find substance in the arguments advanced by learned counsel for the State. The petitioner has not been made an accused in the FIR. In the FIR, unknown doctors and employees of the Hospital associated with the treatment of the deceased Arun Kumar Singh were made accused. On completion of investigation, the investigating agency has submitted its report under Section 173(2) of the Code of Criminal Procedure before the Magistrate concerned.

13. During investigation of the case, the police found the accusation true as against Dr. Amit Kumar Sinha and Dr. Hemant Kumar and, thus, they have been sent up for trial vide charge-sheet No. 34/2015 dated 31st July, 2015 for the offence punishable under

Section 304-A/34 of the Indian Penal Code. Neither Dr. Amit Kumar Sinha nor Dr. Hemant Kumar has approached this Court in the present application for quashing of the FIR or the charge-sheet submitted against them.

14. In my view, the petitioner may have some apprehension in its mind regarding its prosecution in the present criminal case and, therefore, an application for quashing the FIR was filed on its behalf while the case was still under investigation. However, during pendency of the application the investigating agency has already completed investigation and submitted charge-sheet in which the petitioner has not been made accused. In that view of the matter, I am of the opinion that the petitioner has no *locus standi* in the matter.

15. In that view of the matter, the present writ petition is dismissed as not maintainable.

(Ashwani Kumar Singh, J.)

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