

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.26799 of 2012

Arising Out of C.A. Case No.365 Year- 2010 District- KATIHAR

Dr. Mangilal Mahesree @ Dr. M.L.Maheshwari, son of late Motilal Maheshwari,
resident of Kalibari, Binodpur, P.S. Katihar, Distt. Katihar.

.... Petitioner/s

Versus

1. The State of Bihar
2. Md. Sarfuddin, son of Abdul Hafiz, resident of Mohalla Amlatola, P.S. Katihar,
Distt. Katihar.

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. N.K. Agrawal, Sr. Adv.
For the State : Mr. Jharkhandi Upadhyaya, A.P.P.
For the Informant : Mr. Suresh Prasad Barnwal, Adv.

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 03-04-2015

Heard learned counsel for the Petitioner and the State.

The Petitioner seeks quashing of the order dated
25.6.2012 passed by the Chief Judicial Magistrate, Katihar, in CA
Case No. 365 of 2010.

The case of the Complainant is that his son had admitted
his mother in the clinic of the Petitioner who was suffering from
Malaria. On the prescription of the Petitioner, an injection was
administered to his wife who developed some heart trouble and later
on, her condition deteriorated. She was then rushed to the Petitioner
who stated that he would examine her only when his turn reached. In
the meanwhile, she died. Hence, the present Complaint.

It has been submitted on behalf of the Petitioner that

there are various decisions of the Hon'ble Supreme Court on its point that there is a difference between "criminal negligence" and "negligence" and in the nature of the types of allegations, no criminal negligence is made out. Hence, the Proceeding should be dropped.

On the other hand, the counsel for the Complainant submits that since his wife was not treated on priority by the Petitioner who was a Doctor, he should be put on trial.

Having considered the rival submissions, in view of the clear mandate of law in this regard, the application is allowed and the Proceeding including the order dated 25.6.2012 passed by the Chief Judicial Magistrate, Katihar, in CA Case No. 365 of 2010, is hereby set aside.

However, the quashment of the present Proceeding shall not deter the Complainant in taking other steps, in accordance with law.

(Anjana Prakash, J)

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