

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.52856 of 2008

Arising Out of PS.Case No. -0 Year- null Thana -null District- GAYA

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1. Dr.A.K.Jha Suman @ Abhir Kumar Jha Suman, Senior Resident, Department of Surgery, Magadh Medical College, Gaya, son of late Devi Jha, resident of Mohalla C/12, Doctor Colony, P.S. Magadh Medical, District Gaya
 2. Dr. Mahesh Choudhary, Assistant Professor, Department of Surgery, Magadh Medical College, Gaya, sonof late Charitar Choudhary, resident of Mohalla A/3, M.O. P.S. Magadh Medical College, District Gaya
 3. Dr. A Barkat @ Abul Barkat, Professor, Department of Surgery, Magadh Medical College, Gaya, son of late Abul Khair, resident of Mohalla White House Compound, Gaya, P.S. Rampur, District Gaya
 4. Dr. K.K. Singh @ Kishan Kr. Singh, Senior Resident, Department of Surgery, Magadh Medical College, Gaya son of R.P.P. Sinha, resident of Rang Bahadur road, P.S. Kotwali, District Gaya

.... Petitioner/s

Versus

1. The State of Bihar
2. Ramashray Sao @ Ramashray Das, son of late Damdi Saw, resident of village Serpur, Police Station Alipur, District Gaya

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Arbind Kr. Singh, Advocate

For the State : Mr. R.B. Roy Raman, APP

For Opposite Party No.2 : Mr. Sharda Nand Mishra, Advocate

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 07-07-2015

The Petitioners seek quashing of the order of cognizance dated 23.10.2008 passed by the Judicial Magistrate, 1st class, Gaya in Complaint case No.583 of 2008 (Trial No.1534 of 2008).

The case of the Complainant is that he had got his brother admitted in the Surgery Ward of Magadh Medical College Hospital, Gaya for some physical ailment. The Petitioner No.2 told him that there was a requirement of blood and advised the

Complainant to donate his blood. On 20.2.2008, he donated blood to his brother but the doctor did not operate and instead referred him to P.M.C.H. On 1.3.2008 once again his brother was admitted there but no treatment was provided to him, on account of which his condition deteriorated and even though he was admitted in the Hospital for two months he died on account of negligence.

The submission of the Petitioners is that even conceding the allegations in the Complaint Petition no criminal offence is made out. It is the Complainant's case that his brother was referred to P.M.C.H. for better treatment so they cannot be liable for negligence and subsequent death of his brother. A doctor under no circumstances would ever neglect a patient under his care and hence there is no justification for the present proceeding and the same should be dismissed.

On the other hand, the Counsel for the Complainant submits that since the Petitioners, who are medical practitioners and enjoined to look after their patient within their control and they did do so, they should be put on trial.

Having considered the nature of allegations in the Complaint Petition, I am inclined to agree with the submissions so raised on behalf of the Petitioners. Hence, the application is allowed and the order of cognizance dated 23.10.2008 passed by the Judicial

Magistrate, 1st class, Gaya in Complaint case No.583 of 2008 (Trial No.1534 of 2008) is hereby set aside.

However, this order shall not prejudice any party in any manner.

(Anjana Prakash, J)

Narendra/-

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