

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.34526 of 2012

Arising Out of PS.Case No. -59 Year- 2005 Thana -null District- BEGUSARAI

1. Sheodeo Sahu @ Sheodeo Prasad Gupta S/O Late Lakshmi Sahu R/O Village -
Cheria Bariarpur, P.S. Cheria Bariarpur, District - Begusarai

.... Petitioner/s

Versus

1. The State Of Bihar

.... Opposite Party/s

Appearance :

For the Petitioner/s : Shri. Pramod Man Bansh, Advocate

For the Opposite Party/s : Shri. Md. Aslan Ansari, A.P.P.

CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

ORAL JUDGMENT

Date: 09-03-2015

Heard.

There was a simple F.I.R., virtually of one line, alleging that the persons named in the annexed list were practising in medicine and treating patients without possessing any appropriate degree in that behalf.

Cheria Bariarpur P.S.Case No.59 of 2005 was registered on the basis of the written report which was filed by the Medical Officer, Incharge, Cheria Bariarpur, Begusarai. The investigation ended in submission of final form. Cognizance of offence under section 15(2)(b) of the Indian Medical Council Act, 1956 and section 420 of the Indian Penal Code was taken and the petitioner was put on trial.

The petitioner filed a petition seeking his discharge from the case stating that there was no material justifying framing of charge against him.

The Judicial Magistrate, Ist Class-cum-Additional Munsif,

Begusarai, heard the petitioner and the State on the prayer of discharge and dismissed the petition by passing a detailed order dated 26.6.2012 holding that even a strong doubt was sufficient enough to frame charge.

The submission with reference to different paragraphs of the case diary was that there was absolutely no material indicating that the petitioner had indulged into any practice which could be meriting the filing of the written report and lastly, for putting him on trial for commission of the alleged offence.

The learned Magistrate made an observation that even strong suspicion could be sufficient for framing the charge. But that position of law could be stated only when a court was judging the facts of the case under the provisions of sections 227 and 228 of the Cr.P.C. where sufficiency or insufficiency of the materials are to be considered for framing of charge or discharging the accused. As regards the jurisdiction of a Magistrate in a warrant trial of a case instituted on police report, the accused has to be discharged under Sections 239 and 240 Cr.P.C.

On consideration of the provisions of Sections 239 and 240 Cr.P.C., one may find that in order to frame charge, the Magistrate has to record that (i) the accused appeared having committed an offence, (ii) which the Magistrate was competent to try and (iii) adequately punish.

If these three conditions are recorded by the Magistrate after perusing the police record of facts, upon which the accused has been put to trial, then only, the learned Magistrate could be competent to direct the framing of charges against the accused. One may refer to the case of Century Spinning and Manufacturing Co. Ltd. Vrs. State of Maharashtra reported in A.I.R. 1972-SC-545 in support of the

finding just recorded by me on the ambit and scope of Sections 239 and 240 Cr.P.C.

Here, in the present case, the position of law, which was stated by the learned Magistrate, does not appear to be supported by the provisions of Sections 239 and 240 Cr.P.C. but still, framing of charges may not require assigning any reason so as to justify the order. If the materials have been perused by the court to come to a conclusion in the most casual manner, then also, it could be said that he had complied with the provisions of sections 239 and 240 Cr.P.C. if he had recorded the finding on the constitution of an offence and his competence to try and adequately punish the accused. But always, the findings have to be based on the material facts of the case which should have been placed before the Magistrate through the police.

I had myself gone through different paragraphs of the case diary and what I find is that some of the witnesses have stated that the petitioner was engaged in providing alternative methods of treatment to his patients. No witness, who had stated the above facts, stated that the petitioner had ever indulged in a practice which was violative of the Indian Medical Council Act, 1956. The other group of witnesses has stated that the petitioner was a qualified Ayurvedic and Unani degree holder and he was treating the patients through his own mode. In support of the statement, the certificate of the petitioner which was granted to him in recognition of the petitioner being qualified to practice, as per the Unani and Bihar Development of Ayurvedic and Unani System and Medicine Act, 1951, was also copied in one of the paragraph of the case diary.

Thus, what appears on balancing facts of the case in the form of statements of witnesses examined by the police during investigation is that there was fact constituting the offence. I do not

find any material justifying framing of charge under section 15(2)(b) of the Indian Medical Council Act, 1956.

In the result, what I find is that the order dated 26.6.2012 passed by the Judicial Magistrate, Ist Class, Begusarai in G.R.Case No.1239 of 2005 (Trial no.3260 of 2012), was an abuse of the process of the court. The petition succeeds and the same is accordingly, allowed by quashing the above order dated 26.6.2012.

Let the copy of the case dairy be sent back to the Superintendent of Police, Begusarai.

(Dharnidhar Jha, J.)

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