

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 14471 of 2016

Arising Out of PS.Case No. -56 Year- 2013 Thana -CHHATAUNI District-
EASTCHAMPARAN(MOTIHARI)

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Md. Tabrej Aziz S/o Late Dr. Rahman, Resident of Rahmaniya Medical Center
Motihari, P.S.- Chhatauni, District- East Champaran (Motihari).

.... Petitioner

Versus

1. The State of Bihar
2. Imteyaz Ahmad, S/o Late Idrish Khan, R/o Mohalla- Amlapatti, P.S.- Town
Thana (Nagar), District- East Champaran (Motihari).
3. Amarjeet Mahto, S/o Ramadhar Mahto, R/o Panchrukha, P.S. – Banjaria,
District – East Champaran.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Saket Tiwary
Mr. Sanjeev Kumar Dubey
For the Opposite Party/s : Mr. Nityanand, A.P.P.
Mr. Dhurendra Kumar

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL JUDGMENT
Date: 26-09-2016

Heard Sri Saket Tiwary, learned counsel for the petitioner,

Sri Nityanand, learned Addl. Public Prosecutor as well as Sri
Dhurendra Kumar, learned counsel, who has appeared on behalf of
informant/opposite party no. 2.

2. The sole petitioner, who is a doctor and was running a
clinic at the relevant time, has approached this Court invoking its
inherent jurisdiction under Section 482 of the Code of Criminal
Procedure, 1973 (in short “Cr.P.C.”), with a prayer to quash an order
dated 23-01-2015 passed by learned Chief Judicial Magistrate,
Motihari (hereinafter referred to as ‘Magistrate’) in Chhatauni P.S.

Case No. 56 of 2013 (T.R. No. 2717 of 2015). By the said order, the learned Magistrate has taken cognizance of offence under Sections 279, 304, 304(A) of the Indian Penal Code and directed for summoning the petitioner.

3. Short fact of the case is that brother of the informant was injured in an accident, which was done by rash and negligent driving by a tempo driver, thereafter, he was carried to the clinic of the petitioner. It has been alleged that negligently he was treated by the petitioner and subsequently, he died. In the F.I.R., the informant arrayed the tempo driver as well as the petitioner as accused i.e. in Chhatauni P.S. Case No. 56 of 2013. In the case, investigation was carried out and thereafter, first chargesheet i.e. Chargesheet No. 104/13 dated 22-03-2013 was submitted against the driver of the tempo namely Amarjeet Mahto and further, investigation was kept pending. However, in this case, no sufficient material was collected to forward the petitioner as accused and as such, Final Report No. 294/13 dated 31-12-2013 was submitted exonerating the petitioner. Meaning thereby that name of the petitioner was not incorporated in column no. 11 of the chargesheet. Surprisingly, though the petitioner was not forwarded as accused and he was exonerated, the learned Chief Judicial Magistrate passed order of cognizance on 23-01-2015 and summoned the petitioner.

4. It was submitted by learned counsel for the petitioner



that the learned Magistrate has committed serious error of record. By way of referring to **Annexure - 2** to the petition i.e. copy of Final Report No. 294/13, Sri Tiwary, learned counsel for the petitioner submits that once the petitioner was exonerated by the investigating officer, there was no occasion for the learned Magistrate to record that in this case, chargesheet against the petitioner was submitted. He submits that it was error of record and the learned Magistrate, it appears that without looking into the material on record or rather without application of mind, has passed order of cognizance. He has further argued that even the petitioner with his full ability had rendered medical aid to the brother of the informant. He further submits that there is no material on record to show as to whether any expert opinion was obtained. Since, there was nothing against the petitioner, the petitioner was exonerated by the police.

5. Learned counsel for the informant, opposing the prayer, submits that the present petition is fit to be rejected on the ground that petitioner has suppressed the fact that order impugned was challenged by the petitioner before the revisional court also and the learned Sessions Judge has rejected the revision. He has opposed the prayer on two folds. Firstly, the petition, according to learned counsel for the informant, is liable to be rejected on the ground that petitioner has not approached this Court with clean hands and secondly, he submits that once against the order of learned Magistrate, revision

was rejected, the present petition, which was filed in the garb of Section 482 of the Cr.P.C., amounts to second revision and same is barred under Section 397(3) of the Cr.P.C. On aforesaid grounds, he has made a prayer for rejection of the present petition.

6. Besides hearing, I have also perused the material on record. It is true that the present petition was required to be rejected on the ground that the petitioner has not come to this Court with clean hands, rather he suppressed the fact and also on the ground that second revision is not maintainable, but fact remains that if this Court, in peculiar facts and circumstances, is satisfied that allowing a proceeding will amount to allowing abuse of the process of the Court, certainly, even though it is second revision, in special circumstances, it can be entertained.

7. Learned counsel for the petitioner submits that he was not aware about the fact that petitioner had filed revision and it was rejected. However, after going through the record, which categorically suggests that police after investigation had not found any material against the petitioner and the petitioner was exonerated by the investigating officer and final report was submitted, the order of the learned Magistrate, indicating that chargesheet was submitted, is completely an example of non-application of mind by the learned Magistrate.

8. Accordingly, in view of facts and circumstances, the

Court is of the opinion that order impugned is liable to be interfered with, otherwise it will amount to allowing abuse of the process of the court.

9. Accordingly, the order impugned i.e. order dated 23-01-2015 passed by learned Chief Judicial Magistrate, Motihari in Chhatauni P.S. Case No. 56 of 2013 (T.R. No. 2717 of 2015) is hereby set aside.

10. The petition stands allowed.

(Rakesh Kumar, J.)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	30.09.2016
Transmission Date	30.09.2016