

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.43776 of 2013

Arising Out of PS.Case No. -25 Year- 2012 Thana -THAKRAHA District-
WESTCHAMPARAN (BETTIAH)

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Dr. M. Zahir, Son of Late Sheikh Md. Sayeed, resident of
Village - Purushottampur, P.S. - Chhauradano, District -
East Champaran, at present posted in Civil Surgeon Office,
Bettiah, District - West Champaran.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Manohar Ram, Son of late Yaduni Ram, resident of Village
- Belwari Patti, Harijan Basti, P.S. - Thakraha, District -
West Champaran.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Anil Kumar, Adv.

For the Opposite Party/s : Mr. J. Upadhyay (APP)

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH**

ORAL ORDER

4 23-06-2016 Despite service of notice on the
informant/opposite party No.2, he has not entered
appearance.

Heard learned counsel for the petitioner and
learned Additional Public Prosecutor for the State.

This application has been filed, under Section

482 Code of Criminal Procedure, seeking quashing of the First Information Report of Thakraha P.S. Case No.25 of 2012, registered for the offence punishable under Section 304 of the Indian Penal Code.

The petitioner, at the relevant point of time, was posted in a government hospital at Bettiah. He held *Master* degree in surgery after pursuing his course in Patna Medical College and Hospital, Patna.

From the First Information Report, it appears that a camp was organized for birth control operations. The wife of the informant/opposite party No.2 had undergone Tubectomy procedure in the said camp. The petitioner was also there among the team of doctors in the said camp and had performed surgeries along with other doctors. It appears that the informant's wife developed certain complications after the operation, whereafter, she was referred to Patna Medical College and Hospital, Patna, for treatment. In course of treatment in Patna Medical College and Hospital, Patna, the informant's wife died. The informant has alleged in the First Information Report that he learnt from the doctors at Patna Medical College and Hospital, Patna, that because of negligent act of a team of doctors at the said camp, his wife developed certain complications and,

consequently, died while undergoing treatment at Patna Medical College and Hospital, Patna.

Learned counsel, appearing on behalf of the petitioner, has relied on a decision of this Court, in case of **Dr. Ashok Kumar Singh & Anr. Vs. The State of Bihar and Anr.**, reported in **2015(3) PLJR 454**, to submit that there is no dispute about the fact that the petitioner is a qualified doctor, having requisite skills in the branch of surgery. He has submitted that before registering the First Information Report, mandatory directions, issued by the Supreme Court, in case of **Jacob Mathew Vs. State of Punjab and Anr.**, reported in **(2005) 6 SCC 1**, has not been followed. Relying on another Supreme Court decision, in case of **Kusum Sharma and Ors. Vs. Batra Hospital and Medical Research Centre and Ors.**, reported in **(2010) 3 SCC 480**, he has submitted that there is nothing to show that the petitioner did something or failed to do something which, in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do.

Upon perusal of the First Information Report, I find substance in the submissions made on behalf of the petitioner. There is a vague allegation of negligent act

against the members of a team, which had conducted birth control operations in the camp. There is nothing specific in the First Information Report to demonstrate that the petitioner was negligent while conducting surgical operations.

Considering the Supreme decision, in cases of **Jacob Mathew** (supra) and **Kusum Sharma** (supra) and this Court's decision, in case of **Dr. Ashok Kumar Singh**, I am of the view that continuance criminal prosecution of the petitioner, in the facts and circumstances of the case, will be an abuse of the process of Court

The First Information Report of Thakraha P.S. Case No.25 of 2012, is, accordingly, quashed.

This application is allowed.

(Chakradhari Sharan Singh, J)

Praveen-II/-

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