

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.28170 of 2013

Arising Out of PS.Case No. -112 Year- 2011 Thana -BAKHTIYARPUR District- PATNA

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Ranjit Kumar son of Rajnandan Sharma Resident Of Mohalla Gudhipur, Police Station Bakhtiyarpur, District Patna.

.... Petitioner/s

Versus

The State Of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Syed Raizwanul Haque

For the Opposite Party/s : Mr. Nand Kumar , A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 18-07-2016

Heard Mr. Syed Rizwanul Haque, learned counsel for the petitioner , Sri Nand Kumar, learned A.P.P. as well as Sri Sanjeev Kumar, learned counsel for the informant.

The petitioner, who is a surgeon, has approached this court invoking its inherent jurisdiction under section 482 of the Code of Criminal Procedure for quashing of an order dated 1.5.2013 passed by learned Judicial Magistrate 1st Class, Barh in Bakhtiyarpur P.S. Case No. 112 of 2011 corresponding to G.R. No. 473 of 2011 registered for the offence under section 336 of the Indian Penal Code. By the said order the learned Magistrate while rejecting the petition filed under section 239 of the Cr.P.C. on behalf of the petitioner for discharge has considered and allowed the petition filed on behalf of

the prosecution under section 323 of the Cr.P.C. and directed for committing the case to the court of sessions since offence alleged is under Section 308 of the Indian Penal Code i.e. allegation of causing hurt amounting to culpable homicide.

Learned counsel for the petitioner at the very outset has argued that the petitioner while discharging his duty as surgeon had operated upon the informant. However, subsequently she developed some problems. Thereafter she was referred to a local doctor and local doctor referred her to P.M.C.H. In the P.M.C.H. finally she was cured. It has been emphatically argued that once the petitioner being a surgeon has operated upon the informant, it cannot be said that he had committed any act of culpable homicide rather he had done the surgery to his best of ability but operation was not successful. Referring to judgments of the Hon'ble Apex Court it has been argued that normally without any expert opinion the petitioner may not be prosecuted and it was a fit case for discharge. He has further argued that the learned Magistrate has further committed error in entertaining the petition filed on behalf of the prosecution under section 323 of the Cr.P.C. before commencement of trial. It has been argued that power under section 323 of Cr.P.C. was to be exercised only after examining certain witnesses, however at the stage of charge itself this power was exercised and as such a prayer has been

made to quash the entire order and discharge the petitioner.

Learned counsel for the informant as well as learned A.P.P. have vehemently opposed the prayer of the petitioner. Learned counsel for the informant by way of referring to the impugned order submits that it is specific case that the informant was operated and in the said operation due to gross negligence the intestine was connected with the urinal. He further submits that after operation the petitioner left green cloth in the intestine and the intestine was stitched. Due to the said negligence the informant developed serious infection. It has been argued that even though the petitioner had noticed such infection, instead of taking immediate care or instead of referring the patient to a specialized hospital, the petitioner referred to a different doctor and she was continued in the same condition for about more than two months and finally she was referred to the P.M.C.H. and in P.M.C.H. the surgeon who had conducted further operation opined that had it been late, the case would have become very difficult to cure. It has been highlighted that if a surgeon, after conducting surgery keeps cloth inside intestine, certainly it can be termed as commission of an offence under Second part of Section 308 of the Indian Penal Code. According to learned counsel for the informant in the case diary there are ample materials against the petitioner for prosecuting the

petitioner.

Besides hearing I have perused the materials available on record particularly the impugned order. It has discussed each and every thing in detail. After going through the same the court is of the opinion that the learned Magistrate has committed no error in passing the impugned order. Moreover, at the time of charge only material which is to be seen is as to whether there is prima facie case or not. The word “prima facie” has already been elaborated as: “if there is strong suspicion to draw an inference regarding commission of offence, it would be sufficient for framing of charge”

I do not find any ground for interference.

The petition stands dismissed.

(Rakesh Kumar, J)

Praful/-

AFR/NAFR	NAFR
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