

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.41223 of 2013

Arising Out of PS.Case No. -129 Year- 2008 Thana -MUZAFFARPUR SADAR District-
MUZAFFARPUR

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Dinesh Kumar, Son of Sri Ram Pukar Sharma, resident of Village + P.O.
Bhagwanpur, Rewa Road near Bank of Baroda, P.S. Sadar, District -
Muzaffarpur

.... Petitioner

Versus

1. The State of Bihar
2. Dr. Dayanand, Son of Late Ram Avtar Prasad
3. Dr. Nayan Tara W/O Dr. Dayanand
Opp.Party no.2 and 3 are resident of village - Khabra, P.S. Sadar,
District - Muzaffarpur

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Yugal Kishore

For the Opposite Party/s : Mr. Lallan Kumar (App)

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

3 17-05-2016 Heard Sri Yugal Kishore, learned counsel for the

petitioner, Learned Addl. Public Prosecutor as well as Mr.Jawed

Gaffar Khan, learned counsel appearing on behalf of Opp.Party

nos. 2 and 3.

The present petition has been filed on behalf of the
informant in T.R.No.376/12, arising out of Sadar P.S.Case
no.129/08, against an order dated 02.07.2013 . By the said order,
the learned Judicial Magistrate, 1st Class, Muzaffarpur has rejected
the petition filed under Section 216 of the Code of Criminal
Procedure on behalf of the informant for adding Sections 406,
420, 379 and 504 of the Indian Penal Code.



Learned counsel for the petitioner submits that during trial sufficient materials were brought on record suggesting commission of aforesaid offence. Thereafter, a petition was filed for adding aforesaid Sections for prosecuting Opp.Party nos. 2 and 3. Learned counsel for the petitioner admits that though F.I.R. was lodged for offence under Sections 420/379/34 of the Indian Penal Code on the basis of written complaint filed by the petitioner before the Superintendent of Police, Muzaffarpur, the police after investigation submitted chargesheet under Section 504 of the Indian Penal Code. He also accepts that the order of cognizance was passed under Section 504 of the Indian Penal Code and charge was also framed under the same Section. He submits that during the evidence, material was collected, then a petition was filed under Section 216 of the Code of Criminal Procedure for adding the offence and, as such, a prayer is being made to set aside the impugned order and direct the learned court below to pass order afresh.

Mr. Jawed Gaffar Khan, learned counsel for Opp.Party nos. 2 and 3 opposing the prayer of the petitioner submits that Opp.Party nos. 2 and 3 are by profession doctor. He submits that maliciously the case was filed for offence under Sections 420/ 379/34 of the Indian Penal Code. However during

investigation, none of accusations made in the F.I.R. was found true. However, the police submitted chargesheet under Section 504 of the Indian Penal Code. He submits that F.I.R. was lodged in the year 2008 itself and with a view to further delay the conclusion of the trial, the present petition was filed by the informant before the court below, which has rightly been rejected by the learned Judicial Magistrate.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. Fact remains that F.I.R. was lodged in the year 2008 itself and chargesheet was submitted under Section 504 of the Indian Penal Code. There is nothing on record to suggest that the petitioner had filed any petition or protest to the police report. Moreover, since the case is at the fag end and number of witnesses have already been examined, the Court is of the opinion that the learned Magistrate has rightly not entertained the petition filed by the petitioner.

I do not find any error in the order. The petition stands dismissed.

(Rakesh Kumar, J)

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