

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-34790 of 2015

.....

Date of decision:1.3.2016

Mir Singh

...Petitioner

v.

Rajender and another

...Respondents

.....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Aditya Sanghi, Advocate for the petitioner.

Mr. Vinod K. Kanwal, Advocate for Mr. Ashit Malik, Advocate
for respondent No.1.

Mr. D.R. Singla, Deputy Advocate General, Haryana for
respondent No.2-State.

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Inderjit Singh, J.

This criminal miscellaneous petition has been filed by petitioner under Section 482 Cr.P.C. for quashing/setting aside the order dated 14.7.2015 (Annexure-P.2) passed by learned Judicial Magistrate Ist Class, Bhiwani, as well as the revisional order dated 17.9.2015 (Annexure-P.1) passed by learned Additional Sessions Judge, Bhiwani, whereby the application (Annexure-P.3) filed by the petitioner/complainant under Section 216 Cr.P.C. for alteration of charge has been dismissed in case arising out of FIR No.125 dated 25.3.2008 registered for the offence under

Section 304-A IPC at Police Station Sadar Bhiwani, District Bhiwani.

Notice of motion has been issued in this case.

Mr. Vinod K. Kanwal, learned Advocate appearing for Mr. Ashit Malik, Advocate has put in appearance on behalf of respondent No.1 and Mr. D.R. Singla, learned Deputy Advocate General, Haryana has appeared on behalf for respondent No.2-State and contested this petition.

I have heard learned counsel for the parties as well as learned Deputy Advocate General, Haryana for the respondent-State and have gone through the record.

As per the facts of the prosecution case, the Police has registered FIR on the basis of complaint made by the applicant/complainant (present petitioner) on account of death of his young son Surrender. It has been alleged in the application that the Police did not investigate the case properly and challan had not been presented by the Police under proper provisions of law. It has been further asserted that the applicant along with other witnesses had categorically asserted in the Court in detail about the act and conduct of the accused. The Medical Officer, who conducted the post-mortem examination of Surrender, had also deposed that timely medicine would have saved the patient. It has been alleged that the accused was not competent to deal with the patient and was not having any competent certificate for practicing in medicine. The applicant had prayed for alteration of charges to Sections 302 and 304 IPC from the current charge framed against the accused under Section 304-A IPC.

The accused/respondent challenged the commission of the

offence and stated that he is having Electro Homeopathy degree and it is wrong to say that he has no proper degree and knowledge about the treatment. The accused denied the commission of any offence under Sections 304-A, 302 and 304 IPC.

The learned Judicial Magistrate Ist Class, Bhiwani, while discussing the provisions under Sections 304 and 304-A IPC and after discussing the law held that no ground is made out for altering the charge and the application was dismissed. The learned Judicial Magistrate Ist Class, Bhiwani, held that the necessary ingredients under Section 304 IPC are that the death of a person must have been caused and such death must have been caused by the act of the accused by causing bodily injury and there must be an intention on the part of the accused to cause death or to cause such bodily injury which is likely to cause death or there must be knowledge on the part of the accused that the bodily injury is such that it is likely to cause death. The Court below held that the case does not fall under Section 304 IPC. Further the Court below held that the accused has already been charged for the offence under Section 304-A IPC and further under Section 15(2) and 15(3) of the Indian Medical Act. The order passed by the learned Judicial Magistrate Ist Class, Bhiwani, is correct as per evidence and law. In no way, it can be held as illegal. No illegality has been committed by the learned Judicial Magistrate Ist Class, Bhiwani, while dismissing the application filed under Section 216 Cr.P.C. A revision petition was also filed before the Sessions Court, which has also been dismissed by the learned Additional Sessions Judge, Bhiwani.

From the record, I find that as the order passed by the learned Judicial Magistrate Ist Class, Bhiwani, dismissing the application filed under Section 216 Cr.P.C. is correct as per law, therefore, in no way, this order requires any interference from this Court. In no way, this order can be held as amounts to miscarriage of justice.

Therefore, finding no merit in the present petition, the same is dismissed.

March 1, 2016.

(Inderjit Singh)
Judge

hsp