

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.16286 of 2012

Arising Out of PS.Case No. -0 Year- null Thana -null District- EASTCHAMPARAN(MOTIHARI)

- =====
1. Raghav Pandey son of late Ramyash Pandey,
 2. Chunnu Pandey son of Jaleshwar Pandey,
 3. Sheo Kumar Pandey son of late Jamuna Pandey,

.... Petitioner/s

Versus

1. The State of Bihar,
2. Jitendra Singh son of late Akalu Singh,

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Shakti Shuman Kumar, Advocate

For the Opposite Party/s : Mr. Nawal Kishore Prasad, APP

Mr. Madhurendra Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 12-09-2017

The petitioners are accused in Complaint Case No.932 of 2008 corresponding to Trial No.4869 of 2011, pending in the Court of Shri R.K. Bharti, Judicial Magistrate, Sadar, Motihari.

2. By the impugned order dated 30.11.2011, the Court- below has found prima facie case against the petitioners for the offences under Sections 304A, 323 and 504 of the Indian Penal Code and has ordered for issuance of summons against the petitioner to face trial.

3. Heard learned counsel for the petitioners, Opposite Party No.2 as well as learned Additional Public Prosecutor for the State.

4. Learned counsel for the petitioner submits that a bare



perusal of the complaint petition would reveal that no offence under Section 304A of the Indian Penal Code is made out against the petitioners. Further allegation under Sections 323 and 504 of the Indian Penal Code has not been supported by the witnesses examined under Section 202 of the Code of Criminal Procedure and the background of allegation would reveal that the same is a concocted allegation as such criminal prosecution of the petitioner amounts to an abuse of the process of the Court.

5. Learned counsel for the Opposite Party No.2, who is complainant of the case, submits that once the Magistrate has taken cognizance after inquiry under Section 202 of the Code of Criminal Procedure, this Court should not lightly interfere with the criminal prosecution of the petitioners. Moreover, the petitioners have opportunity to file petition for discharge at the appropriate stage. He further submits that complaint clearly discloses the alleged criminal act committed by the petitioners.

6. According to complaint case, petitioner No.1 Raghav Pandey is Manager of the R.P. Public School, Mohammadpur, and other petitioners Chunnu Pandey and Sheo Kumar Pandey are teachers in the same school. The son of the complainant was studying in the same school. As usual on the alleged date of occurrence the son of the complainant along with other students and



the petitioners were going to school on the school vehicle. On the way the vehicle collided with a truck and two students including son of the complainant died. According to the complainant, if the petitioner would have taken immediate step for treatment of the victims of the accident they might have been saved but the petitioners were so negligent that they fled away from the place of occurrence. Further allegation is that after few days, the complainant went to the house of petitioner Nos.1 and 2 to enquire about the occurrence then the petitioners become infuriated and abused as well as assaulted to the complainant.

7. For the accident aforesaid petitioner Sheo Kumar Pandey had lodged Mohammadpur P.S. Case No.32 of 2008, on 30.04.2008 itself, i.e., the date of occurrence, against the driver of the Truck bearing registration No.JH04B 5006 for the offences under Sections 279/337/338/304A/427 of the Indian Penal Code alleging that truck driver was rash and negligent, which caused the accident and death of two students of the school. F.I.R. further disclosed that Saundarya died on the way and Nidhi reached the hospital.

8. Section 304A provides for punishment for causing death by negligence, which reads as follows:

“304A. Causing death by negligence.-

Whoever causes the death of any person by doing any rash or negligent act not amounting to



culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

9. Apparently there is no allegation that the death was caused due to rash and negligent act of the petitioners. The driver of the jeep (not the petitioner) might have been negligent in getting the vehicle collided with the truck but the petitioners were not the drivers. The allegation that the petitioners were negligent in not carrying the injured to the hospital would not attract the provisions of Section 304A aforesaid. Moreover, the F.I.R. lodged by one of the petitioner, as referred above, discloses that the petitioners were not negligent in allowing injured students to remain at the place of occurrence and fleeing away from the place of occurrence.

10. Therefore, the criminal prosecution of the petitioners under Section 304A of the Indian Penal Code is apparently an abuse of the process of the Court and cannot be allowed to be tested at the stage of charge. Further no witness has supported the allegation under Section 323 or 504 of the Indian Penal Code against the petitioner. The whole purpose of the deferment of the issuance of the process and inquiry under Section 202 of the Code of Criminal Procedure is to ascertain the trustworthiness of the allegation in the complaint petition. If the allegation does not stand the test by



corroboration from the witnesses examined during inquiry. There is no reason not to conclude that the same is concoction and suffers from malice. Therefore, criminal prosecution of the petitioners under Sections 323 and 504 of the Indian Penal Code also cannot be sustained.

11. Accordingly, the impugned order is hereby quashed and this application stands allowed.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	AFR
CAV DATE	NA
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