

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.19158 of 2014

Arising Out of PS.Case No. -51 Year- 2013 Thana -BISHUNPUR District- DARBHANGA

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1. Dr. (Mrs.) Rashi W/o Dr. Mayank Kumar C/o R.K. Ortho Ashram, Madarpur, P.O. Lalbagh, P.S. Laheriasarai, District Darbhanga.
 2. Dr. R.K. Prasad S/o Late Baijnath Prasad R.K. Ortho Ashram, Madarpur, P.O. Lalbagh, P.S. Laheriasarai, District Darbhanga.
 3. Santosh Kumar S/o Dr. K.D. Yadav New Shanti Ashram, West Ganga Sagar, Madarpur, P.O. Lalbagh, P.S. Laheriasarai, District Darbhanga.

.... Petitioners

Versus

1. The State of Bihar.
2. Jyotsana Kharga (Goldi) W/o Sri Santosh Kharga R/o Village Narsara, P.O.+P.S. Bishanpur, District Darbhanga.

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. N.K. Malhotra, Senior Advocate
Mr. Prakash Kumar, Advocate
For the State : Mr. Ajay Kumar-I, APP

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 14-07-2017

Heard learned counsel for the parties.

2. This quashing petition is preferred against order dated 19.08.2013/24.08.2013, passed by learned Chief Judicial Magistrate, Darbhanga in Bishanpur P.S. Case No.51 of 2013 whereby cognizance of the offence has been taken under Sections 341/323/504/417/418/120(b) of the IPC.

3. An FIR bearing Bishanpur P.S. Case No.51 of 2013 dated 21.05.2013 under Sections 341/323/504/417/418/120(b) IPC was lodged by Jyotsana Kharga, the informant against the petitioners.

4. Allegation in brief is that on 24.12.2012, Dr. Rashi, petitioner no.1 operated upon the informant. Few days after operation,



the informant started feeling pain in her abdomen. She again contacted Dr. Rashmi but despite some medication her condition did not improve. On 29.01.2013, she came to the clinic of Dr. Akhileshwar Prasad Sinha in Patna and again she was operated by him and it was disclosed to her that as gauze was left after operation done by the doctor earlier as a result her organs in the abdomen got infected and infection reached up to Gall Bladder and the Gall Bladder of the informant was removed. When she came back to Darbhanga and enquired from Dr. Rashmi then all three petitioners misbehaved, abused and assaulted her.

5. Learned counsel for the petitioners submits that petitioner no.1 is a professionally qualified doctor and she conducted gynecological operation to the informant thereafter she was operated by Dr. Akhileshwar Prasad Sinha for removing stones in the Gall Bladder. Further submission is that even assuming that gauze was left inadvertently by the doctor, it may not come under the purview of criminal offence. There is complete absence of mens rea in such type of cases and at the most, it may be a case of medical negligence. In fact this present case was lodged after lapse of four months of being operated for Gall Bladder. The informant wanted to extract money from petitioner no.1 and when she declined, this false case was lodged.

6. The learned Additional Public Prosecutor appearing on behalf of the State submits that gauze was left by petitioner no.1 while doing operation on the informant and that caused infection in her



abdomen.

7. Having considered the rival submissions and on perusal of the records, this Court finds that cognizance has been taken primarily under Sections 417 and 418 of IPC besides other sections. Even assuming the entire facts alleged in the FIR as true, no ingredient of offence of cheating is made out in this case. At most leaving of a gauze by a professionally qualified doctor may be a case of medical negligence but there is no any cogent material available in the present case to gather any case of medical negligence and an unusual delay of four months was caused in lodging the FIR that too without any explanation, therefore, for the said reason the continuation of the criminal proceeding in the matter would be an abuse of the process of the Court.

8. In the result, the entire criminal proceeding including the order of cognizance dated 19.08.2013/24.08.2013, passed in Bishanpur P.S. Case No.51 of 2013 by learned Chief Judicial Magistrate, Darbhanga is set aside.

9. The quashing petition stands allowed.

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
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