

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.37708 of 2014

Arising Out of PS.Case No. -2206 Year- 2009 Thana -SARAN COMPLAINT CASE District-
SARAN

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Dr. Upendra Prasad Singh Son of Late Ram Bachan Singh Resident of
M/35, Professor Colony, Kankarbagh, P.S.- Patrakarnagar, District- Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. Kaushal Kumar Singh Son of Late Rampat Singh Resident of village-
Narayanpur, P.S.- Taraiya, District- Saran

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Alamdar Hussain, Advocate
: Mr. L.B. Singh, Advocate
For the Opposite Party No.2: Mr. Basant Kumar Singh, Advocate
For the State : Mr. Ajay Kumar-I, APP

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
ORAL ORDER

3 04-08-2017 Heard learned counsel for the petitioner, learned counsel
appearing on behalf of opposite party No. 2 as well as the State.

Petitioner by filing the application of quashing under
Section 482 of the Code of Criminal Procedure, 1973 has
challenged the order dated 15.07.2013 passed by Judicial
Magistrate, 1st class, Chapra in Protest-cum-complaint Case No.
2206/2009 thereby taking cognizance of offence under Sections
406 and 418 of the IPC and issued summons to the petitioner to
stand trial.

A brief fact giving rise to this case is that the opposite
party No. 2 filed a Complaint Case No. 2939 of 2006 under



Section 270, 304, 406/34 of the IPC against the petitioner in the Court of C.J.M., Chapra which was sent to police under Section 156(3) Cr.P.C. for lodging FIR and during investigation of the case, accordingly Taraiya P.S. Case No. 3 of 2007 dated 08.01.2007 was instituted under Sections 270, 308, 406 and 34 of I.P.C. On conclusion of the investigation the police reached to conclusion that the case is not true on basis of evidence collected during investigation so the Investigating Officer submitted final form. On protest petition, the Court proceeded further and has taken cognizance of the offence.

The allegation in brief is that the father of the complainant was admitted in the clinic of the petitioner for treatment and it is alleged that during operation his left kidney was removed.

Learned counsel appearing on behalf of the petitioner submits that the allegation is entirely unfounded, the police made thorough investigation in this case and considering the report of the doctors of Mahavir Cancer Sansthan as well as post mortem report of the father of the complainant submitted final form. The post-mortem report clearly indicates that both kidneys of the father of the complainant were found in the body and it was not a case of removal of left kidney rather left kidney was under pelvic, know



in medical term as ectopic kidney, which happens in 1/3rd of the population where the left kidney lies below the pelvic region. In this regard treatment of complainant's father was done in Mahavir Cancer Sansthan during post operation period and report of doctor of Mahavir Sansthan is annexed as Annexure-4 series, accordingly, the C.T. Scan of Pelvis with Enema and I.V. Contrast was done at Mahavir Cancer Sansthan and presence of ecotopic left kidney of complainant father was noted on 04.01.2005 after the operation was done by the petitioner. Moreover, the complainant was trying to extort money from the petitioner and hence the petitioner filed a complaint against the complainant, in which cognizance has been taken against him.

Learned counsel appearing on behalf of the opposite party no. 2 submits that earlier Surya ultra sound had given the report of availability of both the kidneys.

However, having considered the rival submission of both sides and on perusal of record, this Court comes to finding that present complaint is maliciously filed by the complainant. The record shows that police after investigation submitted final form in this case because the post mortem report of dead body of the complainant's father clearly shows presence of both kidneys but one of the kidneys was below the pelvic, known as a ecotopic



kidney, which is also reflected from the Annexure-4 series, reports of the Mahavir Cancer Sansthan i.e. CT scan of the complainant's father of post operation period showing presence of ectopic left kidney in the body. The said reports of post surgery period done by another Hospital as well as post-mortem report show presence of left kidney of the complainant's father, so in backdrop of these sterling and unimpeachable documents, no case of removal of kidney is made out.

So far aforesaid reason the criminal proceeding inclusive cognizance order dated 15.07.2013 passed in Protest-cum-Complaint Case No. 2206/2009 pending in the Court of Judicial Magistrate, 1st class, Chapra is hereby quashed.

(Arun Kumar, J.)

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