

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.39850 of 2013

Arising Out of PS.Case No. – 135 Year- 2007 Thana -Bounsi District- BANKA

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Dr. Mritunjay Prasad Singh S/O Sri Rudra Narain Singh Resident Of Village-
Bahurna, P.S.- Barahat, District- Banka

.... Petitioner/s

Versus

The State Of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Shiw Kumar Prabhakar, Adv.

For the Opposite Party/s : Mrs. Renuka Ratnakar, APP

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 04-04-2017

Heard learned counsel for the petitioner as well as
learned A.P.P.

2. The petitioner filed this petition under Section 482 of
the Cr. P.C. (hereinafter referred to as the 'Code') for quashing the
order dated 20.07.2012 passed by the learned Chief Judicial
Magistrate, Banka in Bounsi P.S. Case No. 135/2007/Trial No.
1326/2012 whereby the learned Chief Judicial Magistrate took
cognizance under Sections 323, 304 and 34 of the Indian Penal Code.

3. Dilip Yadav the informant alleged that Cholera broke
out in village- Navadih Kulharia. 7-8 years old son of Bablu
Hembram of the village died in the hospital. His cousin Triveni Yadav
took his sister-in-law to Bounsi referral hospital for treatment, but



Triveni Yadav also fell ill and he started vomiting. The informant took Triveni Yadav to Dr. Salauddin Incharge of Primary Health Centre Bounsi, but he did not treat the patient and asked the attendant to take the patient to hospital. Dr. Mritunjay Prasad Singh (petitioner) was on duty, but he was not present and consequently, on account of his absence the patient died. On the basis of fardbeyan of Dilip Yadav Bounsi P. S. Case No. 135/2007 was registered under Sections 323, 304 and 34 of the Indian Penal Code. The police after investigation submitted final form vide final form no. 87/2012 on 23.06.2012 finding the case false on account of insufficiency of evidence, but the learned Chief Judicial Magistrate, Banka vide order dated 20.07.2012 took cognizance against the petitioner and others.

4. Learned counsel for the petitioner submits that from perusal of the contents of the F.I.R. itself, it appears that no offence under Sections 323, 304 and 34 is made out. The police accordingly submitted final form finding the case false. The petitioner was not present on the duty. He was on leave. Even if he was not present on duty without leave, the petitioner cannot be held responsible for the death of the patient who was admitted in the hospital, as the petitioner did not admit any patient nor committed any negligence.

5. Learned A.P.P. could not be able to support the order impugned.



6. Having considered the submissions of the learned counsel for the parties and on perusal of the F.I.R. as well as material available on record and the order of learned Chief Judicial Magistrate, Banka, I find that even if the contents of the F.I.R. are taken at their face value, no offence against the petitioner under Sections 323, 304 and 34 of the Indian Penal Code is made out. The petitioner may be departmentally proceeded for his absence from the hospital, but he has not committed any negligence nor he treated the patient. Therefore, no offence under Sections 304, 34 or 323 of the Indian Penal Code is made out. The learned Chief Judicial Magistrate has committed illegality in taking cognizance against the petitioner without any material.

7. Therefore, this quashing petition, so far as the petitioner is concerned is allowed. The order dated 20.07.2012 passed in Bounsi P.S. Case No. 135/2007/Trial No. 1326/2012 with regard to the petitioner is quashed.

(Prabhat Kumar Jha, J.)

Vinita/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.04.2017
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