

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.46316 of 2013

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Dr. Manju Jaiswal, W/O Dr. Sanjay Jaiswal, Present Resident of M.J.K. Hospital Campus, P.O. & P.S. Bettiah Town, District- West Champaran.

.... Petitioner/s

Versus

1. The State of Bihar
2. Nabibul Haque, Son of Late Sheikh Sanaullah, Resident of Mohalla- Ganj No. 1, P.O. & P.S.- Bettiah Town, District- West Champaran.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Amarendra Nath Verma, Advocate

For the State : Mr. Arun Kumar (App)

For Opposite Party No.2 : Md. Abu Haider, Advocate

Mr. Abu Shajar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR
UPADHYAY
ORAL ORDER

6 19-08-2017

Heard learned counsel for the petitioner, State and

opposite party no.2.

2. The petitioner has filed this application for quashing the order dated 10.07.2012, passed by the learned Judicial Magistrate, 1st Class, Bettiah in Complaint Case No. 2599-C of 2010, whereby the learned Magistrate took cognizance for the offence under Section 304A of the Indian Penal Code.

3. From perusal of the complaint petition, it appears that the allegation of specific instance of gross negligence was leveled against the two doctors, but without any justifiable reason in the impugned order, cognizance was taken against the petitioner.



4. Counsel for the petitioner submits that the petitioner is a doctor in the Government Hospital and being a civil servant, order taking cognizance without obtaining sanction is bad. He also submitted with reference to the pleading that no departmental proceeding for any kind of lapse was initiated against this petitioner and there is no material to indicate that there is a criminal negligence.

5. Counsel for opposite party no.2 submits that considering the totality of the facts and situation that there is no requirement of any sanction, before taking cognizance. However, he submits that there is allegation in the complaint petition against both the doctors and not only against this petitioner and the court below in exercise of judicial discretion has passed the order of taking cognizance only against this petitioner. He submits that it shall be open to the petitioner that if he files appropriate petition and raise all the issues before the court below, the court below has advantage to peruse all the documents and pass a reasoned order meeting all the submissions advanced by the petitioner.

6. Prima facie, this Court is of the view that on the basis of complaint order taking cognizance only against this petitioner appears to be contrary to the settled norms of judicial exercise of discretion, if the materials are identical about the lapse



in discharge of duty, then the court below was not expected to take two different yardstick, one for taking cognizance against the petitioner and the other yardstick for not proceeding against the other doctor, against whom similar charge of negligence was leveled. However in the totality of the facts and situation, this Court is of the view that it would be appropriate that if all these materials are brought to the notice of the court below by filing exhaustive petition stating therein all the facts and circumstances including the issue of lack of sanction, similar facts and circumstances of the case of the petitioner and other doctor and the fact that in the totality of the facts and situation, the lapse of the petitioner cannot be treated as a criminal negligence justifiable for order taking cognizance under Section 304A of the Indian Penal Code.

7. Accordingly, the order taking cognizance dated 10.07.2012, passed in Complaint Case No. 2599 C of 2010, is hereby quashed with liberty to the court below to apply its judicious mind in accordance with settled principle of law and considering the fact that two different yardstick cannot be adopted for taking cognizance, if the allegations and materials are identical against both the doctors in the complaint petition. The court below is directed to take fresh decision in accordance with law and after



considering the entire facts and circumstances as would be agitated in such petition filed by the petitioner.

8. The Court hopes and trusts that the court below shall pass appropriate order afresh in accordance with law within a period of three months from the date of receipt/production of a copy of this order.

9. With the aforesaid observation, this application stands disposed of.

(Anil Kumar Upadhyay, J)

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