

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.463 of 2016

Arising Out of PS.Case No. -null Year- null Thana -null District- MADHUBANI

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1. Narendra Bhushan son of Late Deo Nandan Prasad, Resident of village-
Bajarangpuram, Rewa Road, Bhagawanpur, P.S.- Sadar, District- Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar
2. District Magistrate, Madhubani-cum-Ex-officio Chairman of the Red Cross
Sadar Hospital, Madhubani
3. In-charge Medical Officer Blood Bank, Sadar Hospital, Madhubani-cum-
Secretary of the Red Cross Society, Madhubani

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Baidya Nath Thakur, Advocate
Mr. Shankar Kumar Thakur, Advocate
For the Respondent/s : Mr. Manindra Kishore Singh, SC-16
Mr. Pramod Kumar Singh, AC to SC-16
For Respondent No.3 : Mr. Navendu Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 27-07-2017

Heard learned counsel for the parties.

2. The petitioner, who was the then Civil Surgeon, Madhubani, has invoked the writ jurisdiction of this Court, under Articles 226 and 227 of the Constitution of India, to quash the F.I.R. of Madhubani Town P.S. Case No.98 of 2016 on two grounds, firstly that a bare perusal of the F.I.R. would reveals that no ingredient of alleged offences under Sections 166 & 308 of the Indian Penal Code is made out; rather the F.I.R. discloses no cognizable offence against the petitioner and, secondly on the



ground that the same has been lodged due to private grudge of the informant with mala fide and malicious intention.

3. Respondent No.3, Dr. Girish Pandey, lodged Madhubani Town P.S. Case No.98 of 2016 against the petitioner with the statement/allegation that the informant is secretary of the Red Cross Society-cum-In-Charge of the Blood Bank, Madhubani. The Blood Bank is running in the campus of Sadar Hospital, Madhubani, since last twenty years. The electric supply to the Blood Bank was being provided by the Sadar Hospital.

4. By order dated 02.03.2016, the petitioner ordered to stop electric supply to the Blood Bank. The informant had come to know on 01.03.2016 itself that the petitioner had given specific direction that the electric supply through generator of the Sadar Hospital would be stopped to the blood bank. Allegation is that act of the petitioner discloses commission of the alleged cognizable offence as bloods are stored for saving the life of human beings in emergency and the petitioner deliberately by his act aforesaid committed the offence of culpable homicide and dereliction of duty of a public servant.

5. Section 166 of the Indian Penal Code provides for punishment to the public servant disobeying the law with intent to cause injury to any person. The provisions is being reproduced



below:

“166. Public servant disobeying law, with intent to cause injury to any person.- Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.”

There is no material on the record to substantiate that there was any direction of law to the petitioner to work in any particular manner, which he did not perform intending or knowing to cause injury to any person. Therefore, apparently the offence is not attracted.

Section 308 of the Indian Penal Code provides for punishment to attempt to commit culpable homicide, the same is being reproduced below:

“308. Attempt to commit culpable homicide.- Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of



culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”

The ingredient of culpable homicide is not made out on perusal of the allegation in the complaint petition. Hence, the aforesaid offence of attempt is also not made out.

6. Learned counsel for the petitioner has drawn attention of this Court to Annexure-1, whereby work for running generator in the Sadar Hospital, Madhubani, was assigned to service provider “Gyan Bharti Shiksha and Prashikshan Sasthan” and tender for running generator in the Blood Bank was accepted of “Lichchavi Welfare Foundation”.

7. By Annexure-2, which is letter No.789, dated 27.02.2016, the petitioner addressed to the informant of this case drawing his attention towards the fact that generator for Blood Bank is to be run and maintain by Lichhavi Welfare Foundation. Further conveyed that the petitioner has come to know through reliable sources that generator of Sadar Hospital, Madhubani was



being surreptitiously used for supplying electricity to the blood bank. Again by Letter No.632 dated 01.03.2016 vide Annexure-3, the petitioner called for records of the expenses from the informant in the heading of maintenance of generator for the year 2015-16. Simultaneously, by Annexure D-3 to the counter affidavit the petitioner asked the service provider to explain as to how he is providing generator supply to the Blood Bank from the generator of the Sadar Hospital without permission or authority. The aforesaid apparently discloses that the petitioner was acting with bona fide belief that he is competent to stop the misuse of generator of the Sadar Hospital.

8. Learned counsel for the State-respondent as well as respondent No.3 submits that the investigation is at the fag end and there is chances that the allegation against the petitioner might have been found true under Section 336 of the Indian Penal Code. Under the circumstances, this writ Court should not entertain the prayer for quashing of the F.I.R.

9. Since the F.I.R. apparently discloses no cognizable offence, there is no reason to allow the investigation to go on the basis of that F.I.R. Moreover, the letters addressed by the petitioner, prior to the lodging of the F.I.R., to the informant would disclose the bona fides of the petitioner and mala fide criminal



prosecution of the petitioner which is just abuse of the process of the Court. In the circumstances, the F.I.R. of Madhubani Town P.S. Case No.98 of 2016 stands quashed and this writ application is allowed without order of any cost.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.07.2017
Transmission Date	31.07.2017

