

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.34369 of 2014

Arising Out of P.S.Case No. -214 Year- 2006 Thana -SIKANDARA District- JAMUI

- =====
1. Pramod Kumar, Son of Shri Jadish Yadav , resident of village - Mahuaddi , P.O. -Ghongsa, P.S.Halsi , District - Lakhisarai .
 2. Suman Yadav @ Suma Yadav, @ Suman Kumar @ Suma Son of Late Mishri Prasad , resident of Sikandara , P.O. & P.S - Sikandara , District - Jamui
 3. Imtiyaz Bharti @ Md. Imtiaz, Son of Late Md. Mumtaj Alam , resident of village & P.O. -Pratappur . P.S.- Halsi , District - Lakhisarai , presently residing at Guljar Mohalla , P.O. & P.S - Sikandara , District - Jamui .

.... Petitioners

Versus

1. The State of Bihar.
2. Shyam Kishore Sao , Son of Late Mangal Sao Village & P.O .- Lachuara , P.S. - Sikandara , District - Jamui .

.... Opposite Parties

=====

Appearance :

For the Petitioners : Mr. Dhruva Mukherjee, Sr. Advocate

For the Opposite Parties : Mr. Akhileshwar Dayal, APP

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 28-07-2017

This application under section 482 of the Cr.P.C. has been filed to quash the order dated 05.07.2014 passed by learned Adhoc Additional Sessions Judge-IV, Jamui in Sessions Trial No.15 of 2014 whereunder the learned Judge refused to discharge the petitioners for the offence under Sections 304/34 of the IPC and ordered for framing of charge against them.

2. It has been submitted that the case was initially registered against three persons for the alleged negligence on their part in the treatment of one of the sister's son of the informant. It has



been specifically was specially alleged that the main accused Prakash Chandra Verma had conducted operation in drunken condition without giving anesthesia as a result of which his patient lost life. The said accused Dr. Prakash Chandra Verma filed Cr.Misc.No.26229 of 2007 for quashing the order dated 10.03.2007/12.03.2007 whereunder cognizance for the offence under Section 304/34 of the IPC was taken. The matter was heard and cognizance taken against main accused Prakash Chandra Verma was quashed on 07.11.2008. It has been submitted that the cognizance was quashed as there was no material against the main accused Dr. Prakash Chandra Verma. The learned Additional Sessions Judge without considering all these facts has refused to discharge this petitioner. The case is still pending before Additional Sessions Judge without any progress and so the impugned order is fit to be quashed. The learned APP on the other hand opposed the submission.

3. On perusal of impugned order, I find that these petitioners were compounder/employees of main accused of Dr. Prakash Chandra Verma. They had limited role in the operation of the patient. The cognizance order with respect to main accused has been quashed. This aspect has not been considered by the court below. These petitioners no doubt have been named in the FIR but no specific act of negligence has been attributed against any of the



petitioners. The learned APP could not able to differentiate this case of these petitioners from the case of doctor who conducted surgery on the patient. The court below is therefore required to assess the materials on record.

4. In the facts and circumstances as discussed above, the impugned order dated 05.07.2014 refusing to discharge the petitioners is hereby quashed and this criminal miscellaneous application is allowed. The court below is directed to pass appropriate order afresh in view of order passed in Cr.Misc.No.26229 of 2007.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	02.08.2017
Transmission Date	02.08.2017

