

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.46675 of 2013

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

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Dr. J.L. Sharma @ Janak Lal Sharma S/O Late Rampreet Vishwakarma The Then In Charge Of Kuchaikote Primary Health Center, P.S.- Kuchaikote, District- Gopalganj ; Presently Residing At - In Front Of Hero Honda Agency, N.H. 28, Gopalganj, P.S.- Gopalganj, District- Gopalganj

.... Petitioner

Versus

1. The State Of Bihar
2. Ram Dhyan Rai S/O Late Saudgar Rai Resident Of Village- Karnpura, P.S.- Kuchaikot, District- Gopalganj

.... Opposite Party

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Appearance :

For the Petitioner : Mr. Sanjay Kumar Pandey no.5, Advocate
For the Opposite Party : Mr. Ansural Haque Sahara, APP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date: 03-08-2017

Heard learned counsel for the petitioner.

No one appears on behalf of the State.

The petitioner, in the present case, is seeking quashing of the order dated 13.01.2010 passed in Trial No. 771/2013, G.R. No. 133/2010 (arising out of Kuchaikote P.S. Case No. 14/2000) passed by learned Chief Judicial Magistrate, Gopalganj, by which the learned Chief Judicial Magistrate has taken cognizance of the offences under Sections 418 & 201 of the Indian Penal Code and called upon the petitioner to appear before the court.



Learned counsel for the petitioner refers the allegations made in the First Information Report, according to which, the present petitioner, who was posted at the Primary Health Centre, during the relevant time, had examined the informant on 07.10.1999, his X-ray done but did not make available the injury report to the informant. The allegation is that this petitioner kept on delaying the submission of injury report on the one ground or another, and thereafter, he submitted a wrong injury report by change in the number and nature of injuries.

Learned counsel for the petitioner submits that he has three grounds to assail the impugned order. He takes a plea of *mala fide* prosecution and submits that the documents available on the record would show that the present petitioner is being prosecuted with *mala fide* intention to harass. In order to substantiate his argument, he would submit that the medical board, which was constituted on 07.12.1999, had found the same injury, and, therefore, the allegations against the petitioner that he had submitted a wrong injury report is not bona



fide.

Perusal of the F.I.R. itself indicates that the informant has categorically stated that the medical board was constituted after a period of two months and during this period some of the injuries has yield up. Therefore, he alleged that with an intention to make the re-examination of the informant unsuccessful, the injury report was not submitted on one pretext or another.

This court is, therefore, of the opinion that the first ground of attack is not well taken and this court would not enter into the merit of this case at this stage.

Second ground taken by learned counsel for the petitioner is that the materials available on record, suggest that no *prima facie* case is made out against the petitioner. In the opinion of this Court, this ground is implicit in the first ground, and the same has been considered hereinabove.

Third ground of attack is that the order taking cognizance is time barred. This Court is of the opinion that the same is totally misconceived. It is an admitted position that a charge-sheet in this case was



submitted as back as in the year 2001. This petitioner had challenged the F.I.R. by filing a Criminal Miscellaneous Case before this Court in the year 2001, got stay, and then, the said application came to be dismissed in the year 2010. The delay in order taking cognizance cannot be attributed to the investigating agency, otherwise, also when a question will arise, as to the plea of limitation in the matter order taking cognizance, the relevant question would be the date of submission of the charge-sheet in the court, because delay in taking cognizance despite submission of the charge-sheet cannot be taken as a ground to the advantage of the accused.

In the facts and circumstances of the case, even the third plea taken by the petitioner has no merit. In the result, the application stands dismissed.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	07.08.2017
Transmission Date	07.08.2017

