

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.30137 of 2013

Arising Out of PS.Case No. -168 Year- 2008 Thana -MAHUA District- VAISHALI(HAJIPUR)

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1. Dr. Suman Kumar, son of Surendra Kumar, resident of Sandalpur, P.O-
Mahendru, P.S- Bhadurpur, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar,
2. Nagdeo Rai, s/o late Subelal Rai, resident of Mohammadpur Pojha, P.S-
Goroul, District- Vaishali.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Saket Tiwary, Advocate
Mr. Sajeev K. Dubey, Advocate
Mr. Saket Gupta, Advocate

For the Opposite Party/s : Mr. Anant Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 18-01-2018

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 26.08.2011 passed by the Chief Judicial Magistrate, Vaishali at Hajipur, in Mahua P.S. Case No.168 of 2008, by which he has taken cognizance against the petitioner and others for the offence under Section(s) 304-A, 420/34 Indian Penal Code.

2. Counsel for the petitioner has submitted that there is no any specific allegation in the Complaint Petition as to what disease the wife of the complainant-informant was suffering from and what type of negligence was done by this petitioner. Counsel for the



petitioner has further submitted that petitioner is a qualified doctor having MS degree from Lalit Narain Mithila University (Annexure-3). Counsel for the petitioner has further submitted that as per the complaint, date of occurrence is 13.12.2007 and the Death Certificate has been enclosed by the Complainant with the complaint petition as Annexure-4, wherein, date of death has been shown as 06.01.2008, in village Mohammadpur Pojha. Petitioner is having his Clinic at Vaishali at Hajipur. Counsel for the petitioner has further submitted that in the complaint petition it is alleged that one Jimdar Rai stated to the complainant about the Nursing Home of this petitioner, but it is nowhere stated in the complaint petition nor it has come during investigation that Jimdar Rai was known to this petitioner. Counsel for the petitioner has further submitted that there is no such allegation in the written report or in the investigation that this petitioner misled the complainant-informant and induced him to get operated in his clinic.

3. Counsel for the petitioner has relied on the decision of the Supreme Court in the case of ***Jacob Mathew vs. State of Punjab*** reported in ***(2005) 6 SCC 1***, wherein, Hon'ble Supreme Court has held that it will be for the complainant to clearly make out a case of negligence before a medical practitioner is charged with or proceeded against criminally. It must be shown that the accused



doctor did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do.

4. Counsel for the petitioner has further relied on the judgment of the Supreme Court in the case of *Martin F. D'souza vs. Mohd. Ishfaq* reported in (2009) 3 SCC 1, wherein, the Hon'ble Supreme Court has held that Police Officers are warned against arresting or harassing doctors unless the facts clearly come within the parameters laid down in *Jacob Mathew Case* (supra). Medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent doctor.

5. Notice was issued to the Opposite Party No.2 and Opposite Party No.2 has appeared by filing Vakalatnama but none appears on behalf of the Opposite Party No.2 at the time of hearing of the case.

6. This Court after looking into the allegation in the Complaint Petition finds that allegations are omnibus. There is no mention about the nature of disease with which wife of the complainant-informant was suffering from and the quality of negligence, which was done by the petitioner. A vague statement has been made in the complaint that one Jimdar Rai induced the complainant-informant to bring his wife to the Clinic of this



petitioner where she got operated and, ultimately, she died. Accused persons took rupees twenty thousand from the complainant-informant.

7. Petitioner has annexed the certificate (Annexure-3), which shows that the petitioner is a qualified Surgeon having MS Degree from the Lalit Narain Mithila University.

8. The complaint filed by the complainant-informant was sent by the learned Magistrate to the Police under Section 156(3) Cr.P.C. without proper application of mind. Hon'ble Supreme Court in the case of *Priyanka Srivastava vs. State of Uttar Pradesh* reported in (2015) 6 SCC 287 has held that any Magistrate exercising power under Section 156 (3) Cr. P. C. may order such an investigation after proper application of mind and he cannot in mechanical manner send a petition under Section 156(3) Cr. P.C.

9. The police after investigation has submitted charge-sheet in the case against the petitioner and other accused persons. Thereafter, on the basis of the charge-sheet submitted by the police cognizance has been taken against the petitioner along with other accused persons by the impugned order. In this manner, order of cognizance against this petitioner has been passed by the learned Magistrate in mechanical manner on the basis of the charge-sheet submitted by the police.



10. Therefore, this Court is of the view that the impugned order passed by the learned court below taking cognizance against the petitioner is not in accordance with law.

11. Accordingly, impugned order dated 26.08.2011 passed by the Chief Judicial Magistrate, Vaishali at Hajipur, in Mahua P.S. Case No.168 of 2008 along with entire criminal proceeding with regard to the petitioner is hereby quashed.

12. This application is, accordingly, **allowed**.

(Sanjay Priya, J)

J.Alam/-

AFR/	AFR
CAV DATE	N/A
Uploading Date	31-01-2018
Transmission Date	31-01-2018

