

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.10591 of 2018

Arising Out of PS. Case No.-143 Year-2005 Thana- BRAHMPURA District- Muzaffarpur

1. Dr. Rangila Sinha Wife of Dr. Jnanendra Prasad Singh Resident of Kishori Shankar Niwas, Jaitpur Compund, Maripur, P.S.- Brahampura, District- Muzaffarpur.
2. Dr. Ranjana Mishra Wife of Dr. Krishna Kumar Mishra Resident of Juran Chapra Road No. 3, P.S. - Brahampura, District- Muzaffarpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Saket Tiwary, Adv.

For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 22-11-2018

The two petitioners are the practicing doctors at Muzaffarpur, they are seeking quashing of the order dated 24.07.2017 passed by learned Chief Judicial Magistrate, Muzaffarpur in connection with Brahampura P.S. Case No.143 of 2005. By the impugned order, the learned C.J.M., Muzaffarpur by differing with the police report submitted under Section 173 Cr.P.C., took cognizance of the offence under Section 312 of the Indian Penal Code and issued summons to the petitioners.

As per the prosecution story, the Brahampura police station received a telephonic message saying that an unknown and undeveloped female foetus has been killed and thrown near the clinic of the petitioner no.1 and at the side of the road. The A.S.I. registered the case raising a suspicion against these present



petitioners and lodged an FIR under Sections 315, 316 and 318 of the Indian Penal Code.

An investigation was conducted by the investigating agency, but no reliable proof showing complicity of these petitioners could be found. The investigating agency therefore submitted a final form saying that no material could be collected against these petitioners and therefore the investigation is being closed and final form is being submitted holding the 'occurrence true but no clue'. The final form was submitted in the court of learned Chief Judicial Magistrate, Muzaffarpur on 12.07.2008. The final form remained pending for consideration but finally on 24.07.2017 i.e. almost after nine years from the date of submission of the final form the learned Magistrate took a view that from perusal of the case diary and the postmortem report there appears sufficient ground to proceed against these petitioners for the offence alleged under Section 312 of the Indian Penal Code. It is this order dated 24.07.2017 which has been challenged before this Court.

Learned counsel for the petitioners has submitted that the learned Chief Judicial Magistrate, Muzaffarpur has differed with the police report without there being any iota of material to take a different view. Learned counsel submits that taking



cognizance of an offence is one thing, but issuance of summons to a person is quite different and distinct things. It is submitted that under Section 204 Cr.P.C. the magistrate taking cognizance has to find out as to whether there is sufficient ground for proceeding against an accused. In the present case, the learned C.J.M. has decided to issue summons to these petitioners without there being any material at all to even prima-facie connect them with an offence under Section 312 of the Indian Penal Code. It is thus submitted that the order taking cognizance is bad in law and is liable to be set aside.

This Court had earlier called for the case diary which has been received. Mr. Jharkhandi Upadhyay, learned APP has assisted this Court. After going through the case diary, learned APP submits that in course of investigation the independent witnesses have categorically stated that they had not seen anybody throwing the foetus. The Investigating Officer had visited the clinic of the petitioners and had examined the patient registers, but nothing relevant could be found in course of such inspection. The postmortem report also says that there was no any ante-mortem injury. The Investigating Officer has recorded in paragraph 23 of the case diary that on perusal of the postmortem report it appears that a dead child was born and the postmortem report does not talk



of causing death after birth. The learned APP has also pointed out from paragraph 55 and 59 of the case diary that senior police officers had also recorded and stated that in course of investigation no reliable material could be collected against these petitioners.

After hearing learned counsel for the petitioners as also learned APP for the State and on perusal of the records, this Court finds that case in question was registered in the year 2005, after about three years of investigation the police could not collect any material to connect these petitioners with the allegations mentioned in the FIR which itself says that it is based on suspicion. The postmortem report of the foetus has also been taken into consideration by the investigating agency which has been taken note of by this Court hereinabove. After a prolonged investigation of three years when the police could not collect any material against these petitioners, a final form was submitted in the court of learned C.J.M., Muzaffarpur which remained pending for about nine years. After nine years, the learned C.J.M. took cognizance of an offence under Section 312 of the Indian Penal Code. Section 312 of the Indian Penal Code reads as under:-

“312. Causing miscarriage. - whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for



a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to a fine.”

This Court has taken note of the submissions of the learned APP which in turn are based on the observations of the investigating agency in the case diary. This Court has also perused the case diary and after going through the various paragraphs thereof it is found that it is a case of no evidence at all and nothing has come in course of investigation to connect these petitioners even prima-facie for purpose of issuance of summons against them.

In the opinion of this Court, the order taking cognizance and issuance of summons against these petitioners if allowed to exist it will be only an abuse of the process of the Court. Thus, in order to prevent the abuse of the process of the Court, the impugned order is liable to be quashed and is, accordingly, quashed.

This application is allowed.

arvind/-

AFR/NAFR	
CAV DATE	
Uploading Date	26.11.2018
Transmission Date	

(Rajeev Ranjan Prasad, J)

