

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 24713 of 2016

Arising Out of P.S. Case No.-137 Year-2015 Thana- MAIRWA District- Siwan

Dr. S.K. Rai @ Pappu Jee, Son of Late Ganesh Rai, resident of Village-
Mahuwaria, Police Station- Mairwa, District- Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sri Nivash Gupta Son of Jawhar Prasad, Village - Ropwaha Kabirpur, P.S.
Mairwa, District- Siwan.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ramakant Sharma, Sr. Advocates Mr. Rajesh Kumar Sharma, Advocates
For the State	:	Mr. Md. Arif, A.P.P.
For the Opposite Party No. 2	:	Mr. A. M. P. Mehta, Advocatte

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 15-03-2019

Heard Mr. Ramakant Sharma, learned senior counsel
assisted by Mr. Rajesh Kumar, learned counsel for the petitioner;
learned A.P.P. for the State and learned counsel for the opposite
party no. 2.

2. Supplementary affidavit has been filed on behalf of
the petitioner.

3. The petitioner has moved the Court under Section 482
of the Code of Criminal Procedure, 1973 for the following relief:

*“That this is an application for quashing
the order dated 20.11.2015 passed by learned
A.C.J.M.-III, Siwan in Mairwa P.S. Case No.
137/15, Trial No. 508/15, whereby and whereunder*



cognizance for the offences under Sections 304, 420, 467 and 468 of the Indian Penal Code has been taken against the petitioner.”

4. The informant is the S.H.O. of the local police station who has alleged that on information given by the local Chowkidar, which revealed that a lady who was pregnant was operated by the petitioner in his private Nursing Home and due to his negligence, she had died. It was further alleged that the body was also burnt before the police could reach.

5. Learned counsel for the petitioner submitted that he is a qualified doctor and, thus, the allegation of not being entitled to operate, is completely frivolous. In support of his contention he drew the attention of the Court to copy of the degree issued to the petitioner and his enrollment with the State Council Ayurvedic and Yunani Medicine, Bihar. Learned counsel submitted that without going into the merits, the husband and his elder brother has filed affidavit before the Court, where the present case is pending, stating that there was no fault of the petitioner and rather when the lady was taken to him he advised that the condition was serious and she should be taken to a bigger Hospital, but before that, unfortunately, she passed away. Copy of the same has been brought on record in the supplementary affidavit filed today.



6. Learned A.P.P. as well as learned counsel for the opposite party no. 2, fairly submitted that in view of the husband of the victim as also elder brother, having filed affidavit in the Court below, giving clean chit to the petitioner, coupled with the fact that there is no evidence now as the body was cremated before the police took action, the Court may pass appropriate orders.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the application is allowed. Once the husband of the victim and his elder brother were not the informant, meaning thereby that at the relevant point of time they had made no complaint before any authority, coupled with the fact that in the present case, which has been lodged *suo motu* by the local S.H.O. on the so called information provided by the local Chowkidar, in which the husband of the lady and his elder brother have stated that there was absolutely no truth in the allegation and rather it was the petitioner who had advised them to take the lady to a bigger Hospital as her condition was serious, the Court finds that the present criminal prosecution is an abuse of the process of law and should not be permitted to continue.

8. Accordingly, the application is allowed. The entire criminal proceeding arising out of Mairwa P.S. Case No. 137 of



2015 (Trial No. 508 of 2015), pending before the Court below at Siwan, including the order dated 20.11.2015, by which cognizance has taken, as far as it relates to the petitioner, stands quashed.

(Ahsanuddin Amanullah, J.)

Anand Kr.

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