

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20502 of 2015

Arising Out of PS. Case No.-878 Year-2014 Thana- BHAGALPUR COMPLAINT CASE
District- Bhagalpur

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Dr. Ghulam Rabbani Johar, M.B.B.S. (Patna) M.S. Ortho son of Md. Kamaluddin Muztar Ex Registrar J.N.L.M.C. (Aligarh) Bone Joint and Nerve (Hadi Jor and Nash), Specialist, Address S.K. Clinic, Bhikhanpur Road Near Kachhari Chowk, P.S. Tilaka Manjhi, Bhagalpur, District - Bhagalpur

... .. Petitioner

Versus

1. The State Of Bihar.
2. Puja Devi aged 26 years wife of Late Ranjit Kumar Yadav, at present address Village- Kharik Nawgachia, District- Bhagalpur, permanent resident of Kaharpur, P.S.- Jhandapur, District- Bhagalpur

... .. Opposite Parties

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Appearance :

For the Petitioner	:	Mr. Vijoy Kumar Sinha, Advocate
For the State	:	Mr. Ram Sumiran Rai, APP
For Opposite Party No.2 :		Mr. Swapnil Kumar Singh, Decorate

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 22-11-2019

The learned Advocate for the petitioner has furnished a copy of the enquiry under Section 202 of the Code of Criminal Procedure during course of the hearing of this petition. The same is taken on record.

Heard Mr. Vijoy Kumar Singh, learned Advocate for the petitioner and Mr. Swapnil Kumar Singh, learned



Advocate for the opposite party no. 2.

This petition is directed against the order dated 17.06.2014 passed by learned Judicial Magistrate, Bhagalpur in Protest-cum-Complaint Case No. 878 of 2014 whereby cognizance has been taken under Sections 304A and 201 of the Indian Penal Code.

It appears from the complaint petition that the husband of the opposite party no. 2 was operated upon by the petitioner and a steel plate was inserted in his right arm. Again, another operation was performed, when the patient was brought out of the clinic on the pretext of sending him to a bigger hospital as the patient was in need of oxygen. No sooner the patient/husband of the complainant-opposite party no. 2 was taken to other hospital, he was declared dead. All the witnesses have supported the factum of negligence in as much as if the patient was taken to the operation theatre, it was incumbent upon the management of the Clinic or the petitioner in his capacity as the treating doctor to have made arrangements for oxygen. Apart from this, it appears rather strange that in the operation of an



arm, the deceased would require oxygen and would ultimately die. From the enquiry report, it appears that an attempt was made to have post mortem of the deceased done but no heed was paid to such request by the family members of the deceased.

Considering all these aspects of the matter, cognizance under Sections 304A and 2019 of the Indian Penal Code has been taken by the court below against the petitioner.

Learned Advocate for the petitioner submits that from the perusal of the complaint petition as also deposition of the witnesses, no case for medical negligence can at all be said to have been made out. He further submits that in accordance with the decisions of Supreme Court in **Jacob Mathew vs. State of Punjab in Appeal (Crl.) No. 144-145 of 2004** and **Bolam vs. Friern Hospital Management Committee, [1957] 1 W.L.R. 582** which have necessarily to be applied in such cases of alleged medical negligence, no offence at all can be said to have been made out.



The aforesaid contention of the petitioner does not appear to be correct as there is definite assertion that the patient was brought out of the operation theatre and was sent to another hospital as he was gasping for breath and was requiring oxygen. In the operation theatre, there should have been arrangement of oxygen for such an emergency situation. That not having been arranged for, it would be very difficult to accept the proposition advanced on behalf of the petitioner that no offence is made out.

However, at this stage, considering that the petitioner might be able to lay his hands upon some documents/medical papers to demonstrate that at best it could be a case of medical negligence, learned Advocate for the petitioner seeks permission to withdraw this petition in order to approach the court below, if so advised, at the stage of discharge.

Should the petitioner be so advised and if he so desires, he can approach the court below for discharge, if such a petition has not already been filed and disposed off. In the event of such an application being filed by the



petitioner, it shall be considered on its own merits, without being prejudiced by the fact that the present petition has not been entertained.

The petition stands dismissed as withdrawn with the liberty aforesaid.

(Ashutosh Kumar, J)

BT/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	28.11.2019
Transmission Date	28.11.2019

