

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 48271 of 2015

Arising Out of PS. Case No.- Year-1111 Thana- District-

Dr. Umesh Sharma, Son of Late Dharmendra Sharma, Resident of Mohalla -
Chhatradhari Bazar, PO and PS - Bhagwan Bazar, District - Saran.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr. Jitendra Kumar, Advocate

For the Opposite Party/s : Mr. Ajay Kumar 1, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 13-09-2023 Heard learned counsel for the petitioner and learned
APP for the State.

2. The petitioner in the present case has challenged the order dated 26.06.2015 passed by learned 3rd Additional Sessions and District Judge, Gaya in Sessions Trial No. 68 of 2011 which arose out of Paraiya P.S. Non-FIR Case No. 53/06 dated 27.10.2006, registered for the offence alleged under Section 197 of the Indian Penal Code whereby and whereunder the learned 3rd Additional District and Sessions Judge, Gaya rejected the application of the petitioner filed under Section 227 Cr.P.C. to discharge him.

3. As per the prosecution story, on 27.10.2006, the Investigating Officer of Paraiya P.S. Case No. 22 of 2004 filed an application before the Chief Judicial Magistrate, Gaya alleging therein that this petitioner had issued false medical



certificate to one Baban Singh who was arrested on 18.08.2006 with regard to the aforesaid police station case.

4. Learned counsel for the petitioner submits that it is a case of malafide exercise of power by the Investigating Officer of the case. The petitioner at the relevant time was posted as Medical Officer in Sadar Hospital, Chapra. He never issued any medical certificate in favour of the accused, namely, Baban Singh who was being prosecuted in Paraiya P.S. Case No. 22 of 2004 under Section 396 of the Indian Penal Code along with six other unknown persons.

5. Learned counsel submits that neither any medical certificate issued by this petitioner was produced in course of trial by the defence nor this petitioner was called upon to testify in course of trial of the said case. On mere surmises and conjectures, the Investigating Officer lodged the present FIR.

6. Learned counsel submits that being a Government Doctor, the petitioner has been unnecessarily harassed even as no case under Section 197 IPC would be made out.

7. Learned counsel for the petitioner has relied upon a Full Bench Judgment of the Hon'ble Calcutta High Court in the case of **Prafulla Kumar Khara and Another Vs. Emperor** reported in (1943) AIR (Calcutta) 40.



8. Learned APP for the State has opposed this application. According to him, this petitioner had issued a certificate saying that the accused Baban Singh was under his treatment during the period 14.03.2004 and 20.03.2004. It is stated that the Investigating Officer of Paraiya P.S. Case No. 22 of 2004 recorded in the case diary that the petitioner had issued a certificate to the said accused with a motive to save the accused. On the instruction of the then Dy.S.P., Gaya, the Investigating Officer had taken steps to lodge the Non-FIR case under Section 197 IPC.

9. Learned APP, however, does not dispute that in the Sessions Trial of Paraiya P.S. Case No. 22 of 2004, the accused Baban Singh has already been acquitted as the prosecution witnesses in their evidence stated that they could not identify any of the *dacoits* and they were declared hostile.

10. Having heard learned counsel for the petitioner and learned APP for the State as also on perusal of the records, this Court finds that the petitioner in the present case is being prosecuted for the offence under Section 197 IPC. Allegation against him is that he had issued a forge certificate in favour of accused Baban Singh showing him under treatment between the given period.



11. Section 197 of the Indian Penal Code reads as under:-

“197. Issuing or signing false certificate.—
Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.”

12. A bare reading of Section 197 IPC would show that to bring home a case under Section 197, it is necessary to show that a person has issued or signed a certificate required by law to be given or signed, so far as the first ingredient of Section 197 is concerned, it is not available in the present case because the certificate in question is not said to be a certificate required by law to be given. The second condition to attract Section 197 is that if a person issues or signs any certificate relating to any facts of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, he would be covered under Section 197 IPC.

13. In the instant case, the certificate allegedly issued by the petitioner as a Doctor has not been issued by way of any evidence to a fact stated therein and the said certificate has not been produced in course of evidence during the trial of Paraiya



P.S. Case No. 22 of 2004.

14. In fact, on a bare reading of the Non-FIR report of the Investigating Officer, it appears that he proceeded to lodge the case under Section 197 IPC on mere assumption that the petitioner had issued the certificate to save the accused, namely, Baban Singh. The fact is that said Baban Singh had never sought any plea of alibi and the alleged certificate of the petitioner was never a part of the evidence produced before the learned trial court.

15. In the aforementioned background, when this Court goes through the judgment of the Hon'ble Calcutta High Court, it is noticed that this judgment has, in fact, followed the law laid down by our own High Court in the case of **Kumar Choudhuri Vs. King-Emperor** reported in **AIR 1937 Pat 467** wherein it has been held that “ what Section 197 contemplates is that the certificate should by some provision of law be admissible in evidence as such certificate without further proof. We are accordingly of opinion that both on a correct construction of Section 197 itself and in view of the available authorities a medical certificate is not a certificate relating to any fact of which such certificate is by law admissible in evidence. This rule must accordingly be made absolute. The



convictions of the petitioners and the sentences passed upon them must be set aside....”

16. In the opinion of this Court, the prosecution of the petitioner in the present case is uncalled for and is nothing but an abuse of the process of the Court. The learned A.D.J. 3rd, Gaya while considering the application under Section 227 Cr.P.C. could not appreciate the aforesaid aspect of the matter.

17. The impugned order dated 26.06.2015 passed by learned 3rd Additional Sessions and District Judge, Gaya in Sessions Trial No. 68 of 2011 arising out of Paraiya P.S. Non-FIR Case No. 53/06 is, therefore, set aside. The prosecution against the petitioner is quashed.

18. This application is allowed.

(Rajeev Ranjan Prasad, J)

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