

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.28291 of 2016

Arising Out of PS. Case No.-474 Year-2014 Thana- SIWAN CITY District- Siwan

1. Ramashankar Yadav and Ors S/o Late Surya Nath Pharmacist
2. Parashuram Yadav S/o Sarda Yadav (Health Servant)
3. Asha Bijendra W/o Brajesh Kumar Pandey (ANM)
4. Meena Kumari W/o Mahadeo Chaudhary (GNM) All are R/o Posted at Sadar Hospital Siwan, PS- Siwan Town, District- Siwan.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Chandra Kant, Advocate
	:	Mr. Navin Kumar, Advocate
For the Opposite Party/s	:	Mr. Shantanu Kumar, APP
For the Respondent/s	:	Mr. Ravi Bhushan Bharat, Advocate

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 15-04-2024

Heard learned counsel for the petitioners
and learned counsel for the respondents.

2. The present quashing petition has been preferred to quash the order dated 23.11.2015 passed in Siwan Town P.S. Case No. 474 of 2014 & G.R. No. 5627 of 2014, where learned Chief Judicial Magistrate, Siwan took cognizance for the offences punishable under Sections 304 and 34 of the Indian



Penal Code (in short IPC) against the petitioners.

3. Despite service of notice, O.P. No. 2 fails to join the present proceedings.

4. First Information Report (FIR) was registered on the basis of complaint given by informant. Alleging therein that informant came with his wife in the Siwan Town Hospital on 12.11.2014 from Nautan Referral Hospital at about 4:00 AM and thereafter informant's wife was admitted in hospital but there was no doctor, no ANM, no pharmacist in the emergency ward, all were absent from their duty, thereafter informant talked to the civil surgeon on phone, even then no treatment was provided to the wife of the informant, doctor came at about 8:00 AM but Dr. Priyanka did not performed her duty properly, hence wife of informant died at 10:00 AM.

5. It is submitted by learned counsel for the petitioners that in the same case two co-accused persons namely Dr. Priyanka and Dr. Mukesh Kumar, who



treated patient i.e., wife of the informant, their quashing application have already allowed by one of the learned Co-ordinate Bench of this Court through Cr. Misc. No. 24156 of 2016 vide order dated 25.10.2016. In view of said order, now nothing survived in this matter as to prosecute further against petitioners, where petitioner no. 1 is pharmacist, petitioner no. 2 is health servant, petitioner no. 3 is ANM (Auxiliary Nurse and Midwife) and petitioner no. 4 is GNM (General Nursing and Midwifery), working and posted with Sadar Hospital Siwan, as they were not under obligation to provide any medical treatment and their role was only as supporting medical staff. It is further submitted that no, *prima facie*, case is made out against above petitioners for the offence punishable under Section 304 of the IPC from the bare perusal of the FIR as maximum allegation against petitioners was to remain absent from their duty, which may be a ground for administrative/departmental action but certainly not attracting offence punishable



under Section 304 of the IPC.

6. While concluding the argument learned counsel relied upon the legal report of Hon'ble Supreme Court in the case of **State of Haryana and Others vs. Bhajan Lal and Others reported in 1992 Supp (1) Supreme Court Cases 335.**

7. Learned APP appearing on behalf of State, while opposing the quashing application submitted that it is a case of collective negligence but fairly conceded that allegation as per FIR against petitioners is to remain absent from their duty when informant approached Sadar Hospital with his ailing wife.

8. It would also be apposite to reproduce the paragraph no. 102 of the Apex Court decision in the case of **Bhajan Lal Case (supra)**, which reads as under:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law



enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first informant report and other materials, if any, accompanying the FIR



do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of nay offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent persons can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express



legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

9. In view of aforesaid factual and legal discussions, as allegation against petitioners as per face of FIR is only to remain absent from their duty when informant approached Sadar Hospital, which by any precedent imagination not appears, *prima facie*, convincing as to attract a case under Section 304 of the IPC. Proceeding regarding co-accused persons, who were



doctors has already quashed by one of the learned Co-ordinate Bench of this Court through Cr. Misc. No. 24156 of 2016 dated 25.10.2016. Accordingly, by taking note of guidelines as mentioned in para nos. 1, 5 and 7 of **Bhajan Lal Case (supra)**, impugned order of cognizance dated 23.11.2015 with all its consequential proceedings, *qua*, petitioners arising thereof as passed in Siwan Town P.S. Case No. 474 of 2014 & G.R. No. 5627 of 2014, pending before learned Chief Judicial Magistrate, Siwan is hereby quashed and set aside.

10. The application stands allowed.

11. Let a copy of this judgment be sent to learned Trial Court, immediately.

(Chandra Shekhar Jha, J.)

S.Tripathi/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	18.04.2024
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