

(2012) 04 PAT CK 0111

Patna High Court

Case No: Criminal Miscellaneous No. 40536 of 2011

Chandra Prakash Jaiswal and
Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision: April 24, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 304(A), 465

Citation: (2013) 3 PLJR 530

Hon'ble Judges: Rakesh Kumar, J

Bench: Single Bench

Advocate: Surendra Kishore Thakur, for the Appellant; Jharkhandi Upadhyay, learned Additional Public Prosecutor and learned counsel appearing on behalf of the complainant/opposite party No. 2, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Rakesh Kumar, J.

Heard Shri Surendra Kishore Thakur, learned counsel for the petitioners, Shri Jharkhandi Upadhyay, learned Additional Public Prosecutor and learned counsel appearing on behalf of the complainant/opposite party No. 2. Three petitioners, while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, have prayed for quashing of an order dated 3.10.2007 passed by Chief Judicial Magistrate, Vaishali in Complaint Case No. C-1/578 of 2006. By the said order, the learned Magistrate has taken cognizance of offence under Sections 304(A) and 465 of the Indian Penal Code and directed for summoning the accused persons including the aforesaid petitioners.

2. Learned counsel for the petitioners, at the very outset, has argued that in the complaint petition, it was alleged that two doctor i.e. Smt. Kamni Choudhary, who was made accused No. 1 and Dr. Ravi Prakash (accused No. 2) had conducted operation of wife of elder brother of the complainant and after few months, the patient died. It was alleged in the complaint petition that the doctor, knowing the fact that the deceased was a cancer patient, conducted operation and this was the reason for death at subsequent stage. Allegation of negligence was made against two doctors. In the complaint, one Mamta Devi was also made accused on the ground that she being a nurse employed in the Nursing Home of accused Nos. 1 and 2 had persuaded the complainant for admitting patient in the said Nursing Home. Second part of the allegation is that while complainant filed a case before the District Consumer Forum, Vaishali claiming compensation on the ground that accused Nos. 1 and 2 had operated without obtaining any pathological report, the accused doctors (accused Nos. 1 and 2) appeared before the Consumer Forum and took stand that he had conducted operation after obtaining all the reports including pathological report, which was indicative of the fact that at the time of operation, the deceased patient was having no complain in respect of cancer and the report prepared by the present petitioners were brought on record before the Consumer Court. The petitioners also supported the stand of accused Nos. 1 and 2 before the Consumer Court and on the plea of fabricating and preparing pathological report, the petitioners were made accused in the present complaint. It is not in dispute that present complaint was filed during the pendency of the case before the Consumer Court.

3. Learned counsel for the petitioners submits that two doctors, against whom there was allegation of commission of offence u/s 304(A) as well as for the offence u/s 465 of the Indian Penal Code, approached this Court vide Cr. Misc. No. 52434 of 2007 Reported in 2010 (4) PLJR 672 for quashing of the order of cognizance, which is under challenge i.e. order dated 3.10.2007 in Complaint Case No. C-1/578 of 2006 and a Bench of this Court, by its order dated 2.4.2010 after considering all the facts, has allowed the petition and quashed the order of cognizance. He submits that the complainant, after the Cr. Misc. No. 52434 of 2007 was allowed, approached the Apex Court challenging the order of this Court and the Hon"ble Apex Court approved the order of this Court, whereby cognizance order was set aside vide SLP No. 7703 of 2010. It was submitted that once the order of cognizance, which is impugned in the present petition, has been quashed, particularly in respect of the accused persons against whom mere was serious allegation than the petitioners, no point could be served in allowing the prosecution of the petitioners on the strength of said order of cognizance and has prayed for setting aside the same.

4. Learned counsel appearing on behalf of opposite party No. 2 has vehemently opposed the prayer of the petitioners. It was submitted that the petitioners, with a motive to favour main accused, had prepared a forged pathological report and as such the case of petitioners is distinguishable from the case of other accused

persons.

5. After hearing learned counsel for the parties and considering the materials available on record, the court is of the opinion that since the order of cognizance i.e. order dated 3.10.2007 and process issued against two main accused persons has already been set aside and approved by the Apex Court, there is no reason to deny the same relief to the petitioners. The main accused, as per the complaint petition, have already been exonerated and as such petitioners cannot be denied relief sought for in the present petition.

6. Accordingly, in terms of order dated 2.4.2010 passed in Cr. Misc. No. 52434 of 2007 Reported in 2010 (4) PLJR 672 in respect of Dr. Kamani Chaudhary and Dr. Ravi Prakash, issuance of process against the petitioners on the basis of order of cognizance dated 3.10.2007 is hereby set aside and entire proceeding so far as petitioners are conceme is also set aside. The petition stands allowed.