

Reserved

Court No. - 12

Case :- APPLICATION U/S 482 No. - 8571 of 2019

Applicant :- Dr. Nirmal Kumar Gupta

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home. Lko And Another

Counsel for Applicant :- R.B.S. Rathaur, Saur Krishna, Shivendra Shivam Singh, Tusar Kant Mishra

Counsel for Opposite Party :- Govt. Advocate, Avi Mukteshwar Nath Singh, Pradeep Kumar Rai, Prakarsh Pandey, Praveen Kumar Shukla

Hon'ble Rajeev Singh, J.

1. Heard Shri Satish Chandra Mishra, learned Senior Counsel assisted by Shri Shivendra Shivam Singh and Shri Sunil Kumar Chaudhary, learned counsel for the applicant, Shri Anshuman Verma, learned A.G.A. for the State and Shri P.K. Rai, learned counsel appearing for respondent no. 2.

2. This application has been filed for quashing the order dated 20.11.2019 passed by Additional District & Sessions Judge/Special Judge (Prevention of Corruption Act), Court No. 6, Lucknow in Criminal Misc. Case No. 704 of 2018 (Ajay Kumar Srivastava Vs. Dr. Nirmal Gupta).

3. Learned counsel for the applicant submitted that the applicant is presently posted as Head of Department, Department of Cardiac Surgery at Sanjay Gandhi Post Graduate Institute of Medical Science, Lucknow (hereinafter referred to as SGPGI) and has an unblemished career. It has further been submitted that the applicant, who has performed near about 17,000 surgeries till yet, has also rendered his services in United Kingdom for about a decade and he always tried to provide best treatment to his patients.

4. Learned Senior Counsel submitted that the private respondent, who at that time was working as Senior Prosecuting Officer at Lucknow, by misusing his position, on the basis of incorrect facts, lodged the F.I.R. No. 474 of 2015, under Sections 420, 406, 504 I.P.C. and Section 7/13 Prevention of Corruption Act, P.S. PGI, District Lucknow on 03.09.2015 at 17.00 hrs. with the allegations that his father was suffering from cardiac issues and, therefore, he went to SGPGI on 22nd June, 2015 in CVTS OPD. It is further alleged in the F.I.R. that though the doctor was not available in the OPD, one Technician,

namely, Tanveer Hussain was present and attending the patients, who also examined the father of the complainant and informed that bypass surgery of the patient is needed and told that the date for surgery is available after six months. On the request made by the informant that the patient is suffering from pain and the surgery is necessary, Tanveer Hussain asked to meet him after two hours. At about 4 p.m., Tanveer Hussain informed the complainant that if he is ready to pay Rs.50,000/- extra, but the receipt of the same will not be provided, then he will facilitate the surgery of the patient of the informant to be done by the applicant within one week. Tanveer Hussain also asked the informant to deposit Rs.1 lac-1.5 lac in the cash counter. It is also alleged in the F.I.R. that when the informant showed his inability to pay the said extra amount, Tanveer Hussain asked him to come on 23.06.2015 (the next day). Again on 23.06.2015, complainant along with patient went to the applicant in CVTS OPD, SGPGI, who after going through the test reports of the patient, informed the complainant that the condition of the patient is not good and it can be critical. The applicant also advised for surgery forthwith and told the informant to meet with Tanveer Hussain. The informant again met with Tanveer Hussain, who repeated the demand of Rs.50,000/- and told that this amount will be paid to the applicant. However, when the informant failed to satisfy the illegal demand, the date of surgery of the patient was given by the officials of the SGPGI as 07.08.2015, on which, the informant went to the chamber of the applicant and made complaint that Tanveer Hussain is demanding Rs.50,000/-. On hearing the complaint of the informant, the applicant felt offended and started abusing the informant and ousted him from the chamber. Again on 07.08.2015, informant came to the CVTS OPD, but on seeing him, Tanveer Hussain started abusing and told that as complaints are being made against him, he will see that how the operation will be done. Thereafter, the next date for surgery was given in the OPD as 25.08.2015. It is also alleged that prior to 07.08.2015, Rs.4,000-5,000 in advance was deposited for some tests as well as 6 unit blood was also given in the hospital. Certain investigations/tests were also advised from outside the SGPGI, which was also done costing Rs.10,000-15,000.

On 25.08.2015, the father of the informant was admitted with the information that the surgery will be done on 31.08.2015. On 30.08.2015, the applicant visited the ward and after seeing the complainant, he felt offended and told that he will not do the surgery tomorrow. However, the applicant scheduled the surgery of two other patients, those were admitted after the father of the informant. The ward staff and junior doctors started murmuring that why the operation of the father of

the informant is not being done by the applicant and he was informed that the surgery of the patient will be done on 02.09.2015 and prior to 02.09.2015, the applicant was told to purchase some medicines and surgical items from the open market. On 02.09.2015, since morning at about 4 a.m., some medicines were given to the patient and he was advised not to take any food. At 8.30 a.m., patient was sent to operation theatre. However, at 9.30 a.m., the complainant was informed by the staff nurse that the surgery of the patient is postponed. The next date was also not informed to the complainant. The complainant tried to meet the applicant, but he could not meet him. The staff nurse talked to the applicant on phone and after having been given anaesthesia, patient was discharged on the advise of the applicant. It is also alleged in the F.I.R. that all the medicines, those were purchased from the open market amounting to Rs.15,000-20,000, investigation fees, surgical items and 6 unit blood were usurped, which caused financial injury to the complainant.

5. Submission of the learned counsel for the applicant is that the F.I.R. does not make out any alleged offences against the applicant. It has vehemently been submitted that it is surprising that, in case, Rs.50,000/- was demanded on 22.06.2015, why the informant had not made any complaint to the Management or any other competent authority of the SGPGI till the date of lodging of the F.I.R., i.e., 03.09.2015. It has further been submitted that on the basis of advise of the attendant of the patient, the treatment is not possible and it is always done on the wisdom of the doctor and his team members, subject to the condition of the patient and other circumstances. Moreover, admittedly the surgery was not possible by one doctor and it is a team work. It has also been submitted that though the allegations have been made that Rs.50,000/- was demanded by Tanveer Hussain in the name of the applicant, but there is no whisper in the entire F.I.R. that the applicant had ever demanded any bribe from the informant. Neither there is any endorsement of any document that any illegal demand was made by the applicant. It has vehemently been submitted that indisputably, the patient was admitted on 25.09.2015 and he was being given the treatment. Learned counsel for the applicant submitted that, as a matter of fact, on the request of the complainant, the patient was discharged after completion of all the formalities.

6. In the case diary, it is also mentioned that the surgery of the patient of the informant was scheduled on 31.08.2015, but due to some extreme urgency, the operation theatre was engaged for surgery of two minor children on 31.08.2015 and, therefore, 02.09.2015 was fixed for surgery of the patient of the informant.

However, on the said date, the applicant had not conducted any surgery due to pain in his back. It has also been submitted that the father of the complainant as well as other patient of the applicant were under the monitoring of the applicant and on his advise, breakfast was given to the patient of the informant. However, since the surgery could not be done on 02.09.2015, the complainant got annoyed and forced to discharge his patient.

7. While elaborating the case of the applicant, learned Senior Counsel submitted that as the informant of the present case was posted on the post of Senior Prosecuting Officer at Lucknow and was trying to influence the investigation, and in place of cooperation in the same, he was making pressure on the Investigating Officer. It has been pointed out from the case diary that the Investigating Officer mentioned in the case diary on 30.11.2016 that investigation is being influenced by the complainant, who is working as Senior Prosecuting Officer and also requested for transfer of investigation to any other Officer. Learned counsel for the applicant submitted that thereafter, the investigation was transferred and after conducting a detail investigation, final report was submitted.

8. Learned counsel for the applicant submitted that thereafter, a protest petition was filed by the complainant with the allegation that Technician demanded the bribe of Rs.50,000/- on 22.06.2015 and since the same was not paid, the surgery was not done by the applicant on due date. In the protest petition, it is further mentioned that Technician, Tanveer Hussain was conducting the OPD and prescribing the medicines, as also fixing the date of surgery of patients and the applicant was only putting his signatures. It is also averred in the said petition that Tanveer Hussain was working as an agent of the applicant for realizing the illegal money.

It has vehemently been submitted by the learned counsel for the applicant that as per allegation, the bribe was demanded on 22.06.2015 by Tanveer and even though the same was not paid, but the treatment of the patient of the informant was going on under the monitoring of the applicant and on his advise, the patient was admitted also on 25.08.2015. It is also not disputed that the patient was discharged on the request of the informant and was brought to Escort Fortis Hospital in Delhi, where the surgery was done.

However, the court below vide impugned order rejected the final report and summoned the applicant for the offences under Sections 406, 420, 504, 506 I.P.C. and Section 7/13 PC Act, with the observation that during the course of

investigation, the statement of the patient was not recorded, which shows that the investigation was done in casual manner. The court below further observed that the CCTV footage was also not taken into custody, as a result of which, the evidence was destroyed, which is condemnable. Further observing that the facts reveal that matter related to Prevention of Corruption Act, the court below directed the Senior Superintendent of Police, Lucknow to ensure that the investigation is to be done under the provisions of Prevention of Corruption Act by a competent officer.

7. Submission of the learned counsel for the applicant is that it is undisputed fact that not even a single complaint was made to the Management of the Hospital by the complainant. It has been submitted that admittedly, in the present case, the case diary clearly shows that the pressure was being made by the complainant on the Investigating Officer to file charge sheet. Moreover, as the applicant is a public servant, therefore, the prosecution sanction order was needed at the time of taking cognizance on the protest petition. It has also been submitted that the court below is not a simple post office and it is obligatory on the part of the court below to consider all the evidences collected by the Investigating Officer before passing the order on the protest petition. Learned Senior Counsel submitted that the court below, while passing the impugned order, has not taken into account the fact that further investigation cannot be directed in absence of sanction under Section 17A of the P.C. Act, without obtaining of which, the police is bereft with the powers to investigate the matter post November, 2018. It has vehemently been submitted that the applicant, being a public servant, cannot be deprived of his statutory protection available to him under 17A of the P.C. Act. Lastly, it has been submitted that evidently there is no sanction for prosecuting the applicant under Section 19 of the P.C. Act or under Section 197 of the Code of Criminal Procedure and in absence of the sanction for prosecution, the impugned proceedings are nothing but abuse of process of law. In support of his argument, learned counsel for the applicant placed reliance on the decision of the Hon'ble Apex Court in the case of **Anil Kumar & Ors. Vs. M.K. Aiyappa & Anr., (2013) 10 SCC 705**. It has, thus, been submitted that the entire proceedings are liable to be set aside.

8. Learned A.G.A. as well as learned counsel for the complainant opposed the prayer of the applicant and submitted that there is no illegality in the order passed by the court below. However, learned A.G.A., on the basis of contents of the case diary, did not dispute that the complainant was Senior Prosecuting Officer at the time of investigation and one of the Investigating Officer mentioned in the case

diary that he was being influenced by the complainant for favourable investigation. It is also not disputed by the learned A.G.A. that the said Investigating Officer requested for transfer of the investigation, which was later on completed by some other Officer and submitted final report.

On being asked the specific question from the learned A.G.A. that whether any demand of bribery was made by the applicant, he informed on the basis of contents of the case diary that no facts were found in regard to any demand raised by the applicant.

9. On the other hand, learned counsel for the complainant vehemently submitted that conduct of the applicant clearly shows that he had demanded bribe of Rs.50,000/- through Tanveer Hussain. It is further submitted that when the complainant denied to pay the bribe, he was victimized and despite giving admission to the patient of the complainant on 25th August, 2015, the surgery was not done on the date fixed. Learned counsel for the complainant further submitted that medicines and surgical items, which were purchased from the open market amounting to Rs.15,000-20,000 along with 6 unit blood, were usurped by the hospital staff including the applicant. Placing reliance on the decision of the Hon'ble Apex Court in the case of **State Vs. M. Maridoss & Anr., 2023 (4) SCC 338**, learned counsel for the complainant submitted that the police has the statutory right and duty under the provisions of the Cr.P.C. to investigate the cognizable offences and as the court below has passed the order for further investigation, there is no illegality in the same. It has also been submitted that no sanction under Section 19 of the Prevention of Corruption Act as well as Section 197 Cr.P.C. is needed at the time of passing the order for further investigation. It has next been submitted that the order passed by the Magistrate for further investigation cannot be presumed that the court has taken cognizance.

In reply to the argument advanced by the learned counsel for the applicant that sanction was required before passing the order for further investigation while placing reliance on the decision of the Hon'ble Apex Court in the case of **Anil Kumar & Ors.** (supra), learned counsel for the complainant submitted that another Bench of the Hon'ble Supreme Court has referred the issue related to the controversy decided in the case of **Anil Kumar & Ors.** (supra) to larger Bench in the case of **Manju Surana Vs. Sunil Arora, (2018) 5 SCC 557**. In support of the argument that the order for investigation under Section 156(3) Cr.P.C. read with Section 178(3) Cr.P.C. cannot be said to have been taken cognizance of the offence, learned counsel for the complainant placed reliance on the decision of

the Hon'ble Apex Court in the case of **RR Chari Vs. State of U.P., 1951 SCR 312.**

10. I have considered the arguments advanced by the learned counsel for the applicant, learned A.G.A., learned counsel for the complainant and gone through the contents of the application, F.I.R., impugned order as well as other relevant documents.

11. It is undisputed fact that the patient of the private respondent was under treatment in SGPGI since 23.06.2015 and the F.I.R. was lodged on 03.09.2015, when on 2nd September, 2015, the surgery of the patient was not conducted. Admittedly, no evidence was placed by the complainant that prior to lodging of the F.I.R., he made any complaint whatsoever to the Management of the Hospital for the illegal demand of Rs.50,000/- raised by Tanveer Hussain. It is further evident from the record that the allegation for usurping 6 unit blood, certain medicines and surgical items purchased from open market, have been made against the Hospital. Evidently, the blood was deposited in the blood Bank and was not given to the applicant. Further, there is no allegation against the applicant that he ever demanded Rs.50,000/- from the complainant. This fact is also mentioned in the Protest Petition that Rs.50,000/- was asked on 22.06.2015 by Tanveer Hussain, to which, the complainant denied. However, even then, the complainant was visiting the Hospital for the treatment of his patient under the applicant and on the advise of the applicant, the patient was admitted on 25.08.2015 and when the surgery on the date fixed could not be conducted, the F.I.R. was lodged.

12. In view of above facts and discussions and after going through the contents of the F.I.R. as well as protest petition, no alleged offence is made out against the applicant and at the time of passing order, Additional District & Sessions Judge/Special Judge (Prevention of Corruption Act), Court No. 6, Lucknow failed to consider this aspect that whether any offence is made out against the applicant or not.

13. The impugned order dated 20.11.2019 is hereby set aside. Final report filed by Investigating Officer dated 23.03.2017 is hereby accepted.

14. The application stands allowed.

15. Office is directed to communicate this order to the court concerned, forthwith.

Dated : October 17, 2023

VKS