

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL WRIT PETITION NO. 61/2015

Dr. Selwyn Colaco,
Presently Employed as
Regional Medical Head
Fortis Hospitals Limited,
154/9, Bannerghata Road,
Opposite IIM-B,
Bangalore – 560 076.

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Petitioner

Versus

1. State of Goa,
through Public Prosecutor,
Panaji, Goa.

2. Police Inspector,
Panaji Police Station
Panaji, Goa.

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Respondents

Shri Arun De Sa, Advocate for the petitioner.

Shri. M. Amonkar, Additional Public Prosecutor for the State.

CORAM : F.M.REIS & NUTAN D.SARDESSAI, JJ.

RESERVED ON : 08/06/2016.

PRONOUNCED ON : 18/07/2016.

JUDGMENT : (PER NUTAN D. SARDESSAI, J.)

1. Heard Shri Arun De Sa, learned Advocate for the petitioner and
Shri M. Amonkar, Additional Public Prosecutor for the respondents.

2. Rule. Rule made returnable forthwith and heard by consent
forthwith.

3. Mr. M. Amonkar, learned Additional Public Prosecutor waives service on behalf of the respondents.

4. A complaint was lodged by the complainant dated 21/12/2011 to the Officer incharge of the Panaji Town Police Station against Fortis Hospitals Limited, Dr. Vivek Jawali, Shri Abhinandan N. Dastenavar and the petitioner herein in which she alleged that on or about 30/8/2010, she was suffering from a heart ailment and a heart surgery was imperative. She consulted Dr. Jawali at the clinic of Dr. Francisco Colaco at Margao who on going through her medical reports opined that an open heart surgery was urgently required followed by AVR (Mosaic Valve) and that she would have to report to the Fortis Hospitals, Bangalore two days prior to the surgery date for necessary tests. She was advised by Dr. Jawali to meet Shri Dastenavar, Marketing Manager of Fortis Hospitals and in his presence she was examined by Dr. Jawali and she was asked to discuss the further details including the date of the surgery, its costs etc. with Shri Dastenavar. The said Shri Dastenavar told her that she had to deposit ₹4,00,000/- as a condition precedent by way of a Demand Draft in favour of Fortis Hospitals Limited and that in case she was held to be entitled to the benefit of the Goa Government Medical Scheme, then, the amount of ₹2,50,000/- would be refunded to her. This information was reduced to writing on the letterhead of Dr. Jawali at Dr. Colaco's clinic in Margao.

5. She had reported to the Fortis Hospitals, Bangalore on 08/10/2010 where she had deposited ₹4,00,000/- at the reception desk by way of a security deposit. She had also presented a letter from the Director of Health Services from the Goa Government addressed to Fortis Hospital undertaking to pay a sum of ₹1,50,000/- towards the treatment. It was the complainant's case that she was given a cardiac estimate dated 09/10/2010 amounting to ₹2,29,000/- being that which she may have to incur for the full treatment in the hospital including room charges, operating cost, etc. and that she would be given more balance estimate after preliminary investigation was conducted by the competent doctors. A revised estimate dated 09/10/2010 was given to her after the tests were conducted wherein the total expenditure was estimated at ₹1,48,700/- and on 08/10/2010, she was admitted to a multibed room bearing no.643 (L6ward NS2/ multibed) with common toilet for all the patients and their attendants as was done to the patients from Goa claiming under the Mediclaim scheme.

6. On 10/10/2010 at 13.30 hours she was asked to sign a discharge sheet while she continued to be placed in the same multibed room where she continued till the end. On inquiry she was told that it was a mere formality and that she would remain in the room till her discharge. She underwent an operation on 10/10/2010 and was discharged on 23/10/2010 when she was presented with a bill for an amount of ₹4,36,639/- against the estimate dated 09/10/2010 of ₹1,48,700/-. She was made to pay a further sum of ₹36,639/- at the

time of her discharge and thereby she paid in all a sum of ₹4,36,639/- to the Fortis Hospitals which worked out to 293.64% of the estimated cost of ₹1,48,700/-. It was her case that though she contacted Shri Dastanavar (the accused no.3), she was told that the Goa Government would effect payment to her, but he was not willing to discuss any further details. He further informed her that the Director of Health Services had requested the Mamlatdar to investigate into her financial position as she had paid ₹4,36,639/- to Fortis Hospital and applied for the benefits under the mediclaim scheme.

7. She had made enquiries and was shocked to learn that her claim for reimbursement of the expenditure had been rejected by the Government of Goa on the ground that she had stayed in a Deluxe Twin Sharing Room whereas she had throughout remained in the multibed room no.643 from the date of her admission till her discharge. Her enquiries revealed that in the letter dated 24/01/2011 written by the hospital to the Joint Director of Accounts (Health), Government of Goa, the hospital had falsely and mischievously stated that she had, on admission to the hospital requested for a deluxe twin sharing room of her choice. It was thus her case that the person namely the petitioner with the other accused had hatched a conspiracy to cheat her and in that process first induced her to part with a sum of ₹4,00,000/- in favour of Fortis Hospitals i.e. the accused no.1 and thereafter a sum of ₹36,639/-. The petitioner had conspired and by misrepresentation and fraud recovered a sum of ₹4,36,659/-

and falsely represented to the Government of Goa that she had occupied a Deluxe Twin Sharing Room and undergone treatment accordingly.

8. It was her case that she discovered the fraud played on her by the accused on rejection of her medical reimbursement bill on the premise that she had received the treatment in the Deluxe Twin Sharing Room and came across the letter dated 24/01/2011 written by the accused who is the petitioner herein in which he had falsely stated to the Joint Director of Accounts that she had on admission requested for a Deluxe Twin Sharing Room and was admitted to such room on her request and prayed for investigation and registration of the F.I.R. against the accused. An offence was registered at the Panaji Town Police Station with the C.R. No.290 /2012 under Sections 403, 420 and 120-B of I.P.C. and a chargesheet was filed against the hospital through its Director, Dr. Jawali, Shri Dastanavar and the petitioner herein as the accused nos. 1 to 4 alleging that they had conspired and made the complainant to believe that she would be given the medical treatment within an estimated sum of ₹2,29,000/- and further ensured that she would be benefited by the medical facility but instead falsely represented to the Director of Health Services, Government of Goa that she had taken treatment in the Deluxe Twin Sharing Room on account of which the claim for reimbursement of the expenditure was rejected by the Government of Goa and she was cheated in the amount of ₹2,07,539/-. The learned Chief Judicial Magistrate by the

order dated 29/11/2013 took cognizance of the case for the offence punishable under Sections 403, 420 and 120-B of I.P.C. and issued summons to the petitioners to appear before him on 07/02/2014 to answer the charge to the said offences. Being aggrieved with the issuance of the summons, the petitioner has filed the present petition.

9. Shri Arun De Sa, learned Advocate appearing for the petitioner submitted that the complaint was filed by the complainant only after her claim was rejected by the Health Department. The petitioner had not played any role in the examination of the patient nor had he played any role in the administration and therefore none of the offences lodged against him were made out. The only role attributed to the petitioner was that he had purportedly falsely replied in the letter to the Health Department and therefore in the absence of any prima facie case being made out assuming that the charge sheet was true, he was entitled to an order to quash and set aside the final report in the criminal case filed against him and for setting aside the order issuing process. Learned Advocate Shri De Sa submitted that a Civil Suit for the recovery of money had also been filed by the complainant arising out of the same transaction. Therefore, there was no case made out against the petitioner and the process issued against him was without any material of whatsoever nature, an abuse of the process of law, and therefore, the same was required to be quashed and set aside. On a parting note he contended that in the circumstances therefore this Court should interfere in the exercise of

powers under Section 482 Cr. P. C. and took through the statements of the various witnesses on record forming a part of the charge sheet.

10. Shri M. Amonkar, learned Additional Public Prosecutor on behalf of the respondent adverted to the complaint and the letter written by the petitioner to buttress his case that there was material on record to fasten the liability on the petitioner and there was no case made out for quashing of the proceedings and therefore the petition was liable for dismissal.

11. We have gone through the entire material on record including the copy of the chargesheet alongwith the annexures and besides considered the arguments advanced by the learned Counsels for the parties. This Court in exercise of the powers under 482 of the Cr. P.C. can quash the criminal proceedings if the allegations made in the First Information Report and the evidence collected during the investigation, even if given the face value and taken to be correct in its entirety, does not disclose any offence. Jurisdiction under Section 482 of Cr. P. C. can be exercised to prevent the abuse of the process of Court and otherwise to secure the ends of justice. In the present case, a perusal of the chargesheet and the annexures would reveal that there were no allegations against the petitioner though the F.I.R. too named him as one of the accused. The only material on which much reliance was placed by Shri Amonkar, learned Additional Public Prosecutor on behalf of the respondent was the letter written by the

petitioner to the Director of Accounts. This again was on the basis of the records maintained in the hospital pursuant to which he had stated that the complainant had taken treatment in Fortis Hospital, Bangalore and that on admission she had requested for a Deluxe Twin Sharing Room and as per her request she was admitted in the room of her choice. Barring this letter there is no other material on record to even remotely connect the petitioner with the crime inasmuch as he had admittedly not examined the complainant nor processed any of her papers including those in respect of the claim for medical reimbursement.

12. The complainant apparently had no grievance insofar as the opinion of Dr. Jawali was concerned and his advise to report to the hospital nor on the medical procedures undergone by her. There was no dispute at her instance that she had made a deposit of ₹4,00,000/- by a Demand Draft in favour of Fortis Hospitals Limited and the only grievance stems out from the letter purportedly written by the petitioner to the Director of Accounts stating that she had requested for a Deluxe Twin Sharing Room and that it was at her request that she was admitted in a room of her choice. No ingredients of the offence of cheating or dishonest misappropriation of property pursuant to a criminal conspiracy can be attracted to the petitioner taking at the highest that the letter with the said contents was written by him. The complainant had failed to carve out what was the nature of the conspiracy entered into by the petitioner with the other accused to

cheat the complainant and / or to dishonestly misappropriate the property when the record shows that she had willingly made the deposit of the amount in the hospital.

13. The records relied upon alongwith the chargesheet show that the cardiac estimate given to the complainant was for an amount of ₹2,29,000/- and that she was initially admitted in a multibed room for which the estimate was given at ₹1,48,700/-. No doubt the bill relating to the complainant refers to the bed as 643 (L6ward NS2/multibed) but by no stretch of imagination can the discharge of the complainant and assignment to a private room on twin sharing basis be assigned to the petitioner herein. The incident as per the case of the complainant took place in October,2010 while the complaint was lodged by her almost two years later in October,2012 and that too after her claim for reimbursement was disallowed by the Director of Health Services based on the letter issued by the petitioner. Moreover, it is not particularly in dispute that the complainant had sought for reimbursement of the mediclaim as a special case and it is not as if she was labouring under the impression that she was entitled to the reimbursement as a matter of course. Last but not the least, the complainant has also pursued her remedy by way of a Civil Suit claiming damages and from that perspective too she was well aware of the consequences of her complaint and was seeking alternate remedy for the recovery of money and compensation.

14. Irrespective of the Civil Suit, the material on record as examined by us does not at all make out any offence against the petitioner and therefore no purpose would be served by directing the petitioner to undergo the entire process of a full fledged trial. The petitioner has made out a case for the exercise of the jurisdiction under Section 482 of Cr. P.C. and in view thereof we pass the following:

O R D E R

- 1) The petition is allowed and the process issued by the learned Chief Judicial Magistrate in the Criminal Case against the petitioner is quashed and set aside.
- 2) Rule is made absolute in the aforesaid terms.
- 3) The petition stands disposed off accordingly.

NUTAN D.SARDESSAI, J

F.M. REIS, J

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