

**In the High Court at Calcutta
Criminal Revisional Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Subhasis Dasgupta.

CRR No. 1310 of 2020

With

IA No. CRAN No. 1 of 2020

**Uttam Kundu
Vs.
Dr. Debasish Halder**

With

CRR No. 1311 of 2020

With

IA No. CRAN 1 of 2020

**Uttam Kundu
Vs.
Sri Abhishek Gupta**

For the Petitioner	:Mr. Jaydeep Biswas, Adv. Mr. Kaushik Ghosh, Adv.
For the State (In CRR No. 1310 of 2020)	:Mr. Ranabir Roychowdhury, Adv. Mr. Mainak Gupta, Adv.
For The State (In CRR No. 1311 of 2020)	:Mr. S.G. Mukherji, Ld. P.P., Mr. Sudip Ghosh, Adv, Mr. Bitasok Banerjee, Adv.
Heard on	:09.10.2020
Judgment on	:16.10.2020

Subhasis Dasgupta, J:-

The impugned order dated 18th July, 2020, passed by learned District and Sessions Judge, Paschim Bardhaman in criminal revision no. 32 of 2020, staying operation of the order dated 7th July, 2020, passed by learned Additional Chief Judicial Magistrate, Durgapur in connection with Durgapur P.S. Case No. 04/2020, is the subject of challenge in both these two revisional applications (CRR No. 1310/2020 and CRR No. 1311/2020) over the issue of death of a person in nursing home/hospital.

An F.I.R. was registered at Durgapur P.S. being no. 04/2020 dated 04.01.2020, under Section 420/467/468/304(II)/120B adding Section 409 of the Indian Penal Code read with Section 34 of the West Bengal Clinical Establishment (Registration, Regulation & Transparency) Act, 2017, against as many as ten (10) persons inclusive of six (6) doctors of the concerned nursing home.

The prime allegation is against the hospital authority including the doctors for their alleged negligence leading to death of the deceased, and also for raising inflated bills with regard to non-existent medical procedure and pathological examinations.

The investigation is continuing since 4th January, 2020. Learned Additional Chief Judicial Magistrate, Durgapur by an order dated 6th June, 2020, directed the concerned Investigating Officer to conduct and complete the investigation covering all aspects of allegations raised in the F.I.R. fairly, effectively, efficiently and expeditiously.

Both Chief Medical Officer of Health and Deputy Commissioner of Police of the concerned district were requested to undertake necessary

administrative actions so that investigation could be completed within a reasonable time.

The matter was next posted on 7th July, 2020. De-facto complainant filed a petition under Section 340 Cr.P.C. inviting a contempt proceeding against Chief Medical Officer of Health, Asansol, Paschim Bardhaman and Deputy Commissioner of Police (East) ADPC, Durgapur, Paschim Bardhaman.

Learned Additional Chief Judicial Magistrate, Durgapur responding to the petition of the de-facto complainant, soliciting an inquiry for drawing contempt proceeding against these two persons, proceeded to hold/initiate preliminary inquiry for initiation of a proceeding under Section 340 Cr.P.C. Notice was accordingly directed to be served upon concerned C.M.O.H. and Deputy Commissioner of Police.

Feeling aggrieved, the order dated 7th July, 2020 was challenged in criminal revision no. 32/2020 before Learned District and Sessions Judge, Paschim Bardhaman, and initiation of the proceeding under Section 340 Cr.P.C. after holding an preliminary inquiry was stayed by the impugned of learned District and Sessions Judge, Paschim Bardhaman till 29th August, 2020.

Both C.M.O.H. and Deputy Commissioner of Police were alleged to be involved in connection with the inquiry contemplated under Section 340 Cr.P.C.

Since, a common law point is involved in aforesaid criminal revisional applications, on the consent of the parties, both the revisional applications were heard together.

Learned advocate for the petitioner representing both the revisional applications submitted that learned District and Sessions Judge, Paschim Bardhaman ought not to have exercised his revisional authority, and accordingly should not have granted stay order against the order of learned Additional Chief Judicial Magistrate, Durgapur dated 07.07.2020, which is purely interlocutory in nature, and not revisable in view of the express bar engrafted in Section 397(2) Cr.P.C.

Learned advocate for the petitioner referring a decision reported in **(2005) 6 SCC 1**, delivered in the case of **Jacob Mathew Vs. State of Punjab & Anr.** submitted that direction of the court to constitute a Medical Board over the issue of alleged negligent death of a person in hospital/nursing home could not be complied causing investigation to suffer from laches, favourable to the purpose of accused persons.

C.M.O.H., Paschim Bardhaman and concerned Deputy Commissioner of Police were stated to have deliberately violated direction of learned Additional Chief Judicial Magistrate, passed on 6th June, 2020 for expeditious completion of investigation within a reasonable time after covering all necessary aspects of allegations raised in the F.I.R.

Contention was raised by the learned advocate for the petitioner that for the lackadaisical attitudes of concerned C.M.O.H. and concerned Deputy Commissioner of Police loopholes in the investigation were indirectly created, making room for the accused persons to go scot-free from the charges levelled against them.

Learned Public Prosecutor representing the CRR No. 1311 of 2020, supporting the order of learned District and Sessions Judge, Paschim

Bardhaman submitted that only the offences curbed out in Clause (b) of Sub-Section (1) of Section 195 Cr.P.C. would be amenable to the jurisdiction of Section 340 Cr.P.C.

Mr. Ranabir Roychowdhury, learned advocate representing State in connection with CRR No. 1310 of 2020, submitted that there had been some delay in constituting the Medical Board pursuant to the direction of the court, which was the outcome of transfer of members of the committee already constituted for the purpose, but there had been no deliberate intention to disregard the order of the hon'ble court. It was further submitted that report of the Medical Board would be submitted shortly.

Both the learned advocates representing State in both the revisional applications conjointly submitted that the order assailed before learned District and Sessions Judge, Paschim Bardhaman was a revisable in nature, not an interlocutory, as contended.

Upon perusal of the order dated 07.07.2020, of learned Additional Chief Judicial Magistrate, Durgapur passed in G.R. No. 23/2020, it appears that a preliminary inquiry under Section 340 Cr.P.C. was initiated, and in connection therewith notice was issued against the concerned C.M.O.H. and Deputy Commissioner of Police.

While an order is assailed before a superior authority within the hierarchy of judiciary, the superior court is under obligation to determine whether the order assailed is at all interlocutory so as to attract the bar contained in Section 397(2) Cr.P.C.

It would be profitable here to refer the decision of Apex Court reported in **(2001) 7 SCC 401**, delivered in the case of **Bhaskar Industries Ltd. Vs.**

Bhiwani Denim & Apparels Ltd. & Ors. wherein the test of an interlocutory order mentioned in Section 397(2) Cr.P.C. was addressed, which may be mentioned hereinbelow:

“8. The interdict contained in Section 397(2) of the Code of Criminal Procedure (for short “the code”) is that the power of revision shall not be exercised in relation to any interlocutory order. Whether an order is interlocutory or not, cannot be decided by merely looking at the order or merely because the order was passed at the interlocutory stage. The safe test laid down by this Court through a series of decisions is this: if the contention of the petitioner who moves the superior court in revision, as against the order under challenge is upheld, would the criminal proceedings as a whole culminate? If they would, then the order is not interlocutory in spite of the fact that it was passed during any interlocutory stage.”

Applicability of the bar engrafted under Section 397(2) Cr.P.C. was further addressed by the Apex Court in the case of **Mohit Alias Sonu & Anr. Vs. State of Uttar Pradesh & Anr.** reported in **(2013) 7 SCC 789**. The ratio decided by the Apex Court in such decision is that an order which substantially affects the rights of the accused or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision.

It was further decided by the Apex Court in the case of **State of Rajasthan Vs. Fatehkaran Mehdu** reported in **(2017) 3 SCC 198** that court should apply the test as to whether uncontroverted allegations as made from record of case and documents submitted therewith, *prima facie* establish the offence or not, and if allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and there the basic ingredients of a criminal offence are not satisfied, the Court may interfere in a proper case.

The aforesaid view of the Apex Court was also taken in view in a subsequent decision of the Apex Court reported in **(2019) 13 SCC 62** delivered in the case of ***State of Madhya Pradesh Vs. Deepak***.

Mere look at the order, though passed at an interlocutory stage, cannot itself be determinative of the test for interlocutory order within the meaning of Section 397(2) Cr.P.C.

From the order dated 7th July, 2020 of the learned Additional Chief Judicial Magistrate, Durgapur it appears that a notice under Section 91 Cr.P.C. was also issued for the required purpose.

Upon applying such tests and the principle decided by the Apex Court in the given context of this case, the order assailed before learned District and Sessions Judge, Paschim Bardhaman cannot be termed to be an interlocutory order, and accordingly revisable. The bar engrafted in Section 397(2) Cr.P.C. would not be operative in the given context of this case.

Effective and expeditious investigation is always encouraged unless there are compelling reasons to the contrary. When the court below asked for co-operation from other wings of three pillars of Constitution aiming at expeditious and effective investigation, the same is always considered to be acted upon with great care and sensitivity adding fuel to the growth of investigation.

When by the order impugned learned District and Sessions Judge, Paschim Bardhaman granted stay of operation of order dated 07.07.2020, passed by learned Additional Chief Judicial Magistrate, Durgapur in connection with Durgapur P.S. Case No. 04/2020, dated 04.01.2020, for a limited period of time, presence, existence or the availability of the materials,

supportive of a initiation of a proceeding, as contemplated under Section 340 Cr.P.C. can be best adjudged in pending criminal revisional application No. 32/2020 of learned District and Sessions Judge, Paschim Bardhaman.

Matter is thus left to be decided in order to prevent conflicting decision. In view of the pendency of the criminal revision application no. 32/2020 before learned District and Sessions Judge, Paschim Bardhaman, petitioner is not remediless at the moment to agitate the points raised before this Court.

The revisional applications are thus disposed of by following directions.

Learned District and Sessions Judge, Paschim Bardhaman is directed to expeditiously dispose of the criminal revisional application no. 32/2020 within two (2) months from the date of communication of this order, and if necessary by electronic mode, as may be appropriate.

Petitioner of both the revisional applications (CRR No. 1310/2020 and CRR No. 1311/2020) is directed to raise and agitate all such points at the time of hearing of such pending criminal revisional application, and if any such points are raised, that shall be duly addressed to by learned District and Sessions Judge, Paschim Bardhaman giving sufficient opportunity of hearing to either of the parties to this case, and decide the issue in accordance with the provisions of the law.

Petitioner is directed to make communication of this order to learned District and Sessions Judge, Paschim Bardhaman.

With this both the criminal revisional applications and connected CRAN applications stand disposed of.

Office is further directed to⁹ communicate this order to Court below without making any delay.

Urgent certified copy of this order, if applied for, be made available to the parties upon compliance with requisite formalities.

(Subhasis Dasgupta, J.)