

**IN THE CIRCUIT BENCH OF CALCUTTA
HIGH COURT AT JALPAIGURI**
CRIMINAL/APPELLATE JURISDICTION

Present :

THE HON'BLE JUSTICE ARINDAM MUKHERJEE.

CRR 147 OF 2019

With

CRAN 1 of 2020

IN THE MATTER OF:

KAUSHIK HALDER & ANR.

VS.

THE STATE OF WEST BENGAL & ORS.

For the petitioner	::	Mr. Rajdeep Majumder, Mr. Milindo Paul, Mr. Avrojoyti Das Advocates
For the State	:	Mr. Aditi Shankar Chakraborty, Mr. Nilay Chakraborty Advocates
For the complainant	:	Mr. Amales Roy, Mr. Deborshi Dhar Advocates
Heard on	:	12.03.2020 and 13.03.2020.
Judgment on	:	21st October, 2020.

Arindam Mukherjee, J.:

1. In this criminal revisional application, made under the provisions of section 482 of the Code of Criminal Procedure 1973 (hereinafter referred to as the Code), the petitioners have sought for quashing of the criminal proceedings in G.R. case no.3787 of 2019 arising out of Matigara PS

Case No.933 of 2019 dated 3rd November, 2019 under Sections 304A/336/420 of the Indian Penal Code, 1860 (hereafter referred to as IPC). In the said revisional petition on 24th January, 2020, an interim order was passed, inter alia, directing stay of all further proceedings in connection with the said case. The petitioners have made an application being CRAN 1 of 2020 for extension of the said interim order dated 24th January, 2020.

2. Facts of the case :

- a. Shreyan Mandal, a five year old boy, on 31st October, 2019, met with an accident in front of his house and was initially taken to a local health centre and thereafter to Neotia Hospital, Matigara (hereinafter referred to as the said hospital). The victim was admitted on the same date, i.e., 31st October, 2019 in the said hospital. Shreyan was under the treatment of Dr. Navneet Kumar Singh in the said hospital. Shreyan's family paid a sum of Rs.35,000/- to the said hospital as per the demand made by the said hospital to treat Shreyan. The family members of the victim were assured that due and proper treatment will be done and he will recover soon. Unfortunately, Shreyan died on 3rd November, 2019 at about 01:30 am.
- b. Bhabotosh Mandal (complainant), Shreyan's father, lodged a complaint with Matigara police station on 3rd November, 2019 at about 18:15 hrs. Subal Ch. Ghosh, the Officer-in-Charge of Matigara police station,

registered an FIR on the basis of the written complaint made by the complainant in Bengali. The said complaint is annexed to the petition.

- c. On a perusal of the written complaint, it will clearly appear that cheating and negligence has been alleged as against the hospital as the cause of Shreyan's death in no uncertain words. The name of the doctor who alleged to have initially treated the victim and the name of the petitioners are mentioned in the complaint.
- d. The case diary has been produced wherefrom it appears that after receiving the complaint the Officer-in-Charge of Matigara PS went to the locale, i.e., Neotia hospital, made enquiries and have recorded the same in the case diary.
- e. In terms of the FIR registered, the criminal case has been initiated and is now pending before the Court of the learned A.C.J.M. at Siliguri, District – Darjeeling under Sections 304A/336/420 of the Indian Penal Code, 1860. The revisional petition has been made at a stage when the criminal case virtually did not start rolling. The interim stay operated thereafter and as such the criminal case has not been proceeded with any further.

3. Submission of the petitioners :

- a. The petitioners said that no specific case has been made out as against the petitioners. The petitioners are not doctors but are administrative

staff in the said hospital. None of the petitioners had any role in the treatment of the victim and, as such, cannot be attributed with any medical negligence under Section 304A of IPC.

- b. The written complaint on the basis of which the FIR was registered does not disclose any offence as against the petitioners. The Officer-in-Charge without making preliminary enquiry registered the FIR which is contrary to the ratio laid down in the judgment reported in **2005 (6) SCC 1 (Jacob Mathew Vs. State of Punjab & Ors.)** which has been relied upon in **Martin F. D'Souza Vs. Mohd. Ishfaq** reported in **2009 (3) SCC 1**. The petitioners also referred to the judgment reported in **(2014) 2 SCC 1 (Lalita Kumari Vs. Govt. of U.P. & Ors.)**. Relying upon **Lalita Kumari (supra)** the petitioners submit that a preliminary enquiry before registration of the FIR is mandated by the Supreme Court and such enquiry having not been held the FIR could not have been registered. The criminal proceedings initiated on the basis of such FIR is impermissible, nonest and not sustainable in law. The said criminal proceedings, therefore, should be quashed. The petitioners rely upon the judgment reported in **(1992) 1 SCC 335 (State of Haryana & Ors. vs. Ch. Bhajan Lal & Ors.)** to demonstrate that the Court is empowered to quash the FIR as also the criminal proceedings if no specific case is made out as against the accused (here, the petitioners) in exercise of jurisdiction under section 482 of the Code.

- c. The petitioners also rely upon the order dated 27.11.2019 passed by the learned District & Sessions Judge, Darjeeling granting bail to the petitioners. Relying upon the observations made in the said order, the petitioners submit that the charge of cheating under the provisions of Section 420 of IPC cannot be maintained as against the petitioners due to the specific finding therein. Relying upon a particular portion of the said order, the petitioners say that no specific case has also been made out as against the petitioners. The criminal proceeding should be quashed, if not, the interim order of stay of all further proceedings be extended sufficiently.

4. The submission of the State :

- a. The State has opposed the petition on the ground that a cognizable offence has been brought before the police station. The Officer-in-Charge was, therefore, bound to register a complaint under the provisions of Section 154 of the Code and the said police officer has rightly done so. No flaw can be found in the same, particularly, in view of the ratio laid down in **Lalita Kumari (supra)**. It is further submitted that the Officer-in-Charge immediately after receiving the complaint had visited the said hospital collected information and on being prima facie satisfied could have no say as against the FIR registered. It cannot, therefore, be alleged that no preliminary enquiry was carried on by the said Officer-in-Charge. It may not be before registering of the FIR but

immediately thereafter on the same day and as such the said action cannot be flawed. The case of negligence has been made out as against the hospital. It is an admitted position that the petitioners are staff of the said hospital. It cannot, therefore, be said at this stage without the trial that the petitioners were not involved in the case. The proceeding has been initiated on November, 2019 and without allowing the criminal case to proceed any further, the petitioners have approached this Court for quashing the same. The petition is, therefore, not maintainable.

5. Submission of the de facto complainant :

- a. The de facto complainant says that the written complaint clearly alleges about negligence as against the hospital and that the complainant being the father of the deceased was cheated. The complainant has clearly said that the family members of the deceased were not allowed to speak to the doctor. They were also told that the doctor Navneet Kumar Singh was changed but they were kept in dark as to who was thereafter treating the deceased. It is the petitioners who came in front and interacted with the complainant and with his family members as the face of the hospital. The petitioners, therefore, cannot shirk their responsibility, as a consequence whereof they cannot be exonerated at this stage without the trial by quashing the proceedings. On the aspect of negligence, the de facto complainant has relied upon a judgment

reported in **(2014) 6 SCC 173 (Sushil Ansal vs. State through Central Bureau of Investigation)**.

6. Findings :

- a) Before going into the merits of the matter since the two named persons in the complaint are administrative staff of a hospital, I think a short discussion as to the ownership, structure and administrative mechanism in the clinical establishments in India which includes the hospitals will be profitable for adjudication of the case.
- b) “Clinical establishments” in India which includes all kinds of hospitals are broadly as follows:-
 - (i) Owned by individuals or group of individuals as proprietor or partners. It is often found that one or more amongst the individuals may be a medical practitioner.
 - (ii) Owned by Trusts.
 - (iii) Owned by registered societies.
 - (iv) Owned by companies including Private Limited Companies registered under the Companies Act wherein one or more of the shareholder-directors or persons in effective control may be medical practitioners.

- (v) Owned by big industries for the benefit of their staff and employees or by public sector undertakings for the same purpose, Railways, Armed Forces etc.
 - (vi) Government owned hospital which may be Central or State Government owned hospitals or by local self government or local authority and may include even those dedicated to a class of employees, workers under any employees insurance scheme etc.
- c) In hospitals owned by individual or individual, trusts, societies or by companies except which are very small units, there are clinical and non-clinical staff. Clinical staff includes doctors, nurses, technicians etc whereas non clinical staff includes from receptionist to floor managers and administrative personnel.
- d) Medical negligence is attributable to the clinical staff and the hospital as a whole whereas negligence can be complained of against non clinical staff. For example if the action on the part of a clinical staff in course of treating a patient is rash and negligent as defined in Jacob Mathew (supra) can be termed as medical negligence which gives rise to both civil and criminal consequence. On the other hand due to lack of proper maintenance of the hospital building say causing fire hazard which takes the life of a patient undergoing treatment in the hospital then a non clinical staff may contribute to such negligence by not maintaining the hospital building property can be proceeded with for

negligence under section 304A of the IPC as in the case of Uphaar Cinema (supra).

- e) The legislature found that despite the Clinical Establishment Act, 1950 and the West Bengal Clinical Establishment Rules, 2003 being in force the clinical establishments were not dealing transparently with the patients and as such promulgated the West Bengal Clinical Establishments (Registration, Regulation and Transparency) Act, 2017. In section 34(1) (b) and 34 (2) the said 2017 Act it has been clearly stated that death caused or injury of patient or service recipient due to negligence shall be liable to punishment as provided in IPC notwithstanding anything contained in the said Act. The legislature has not clarified negligence as medical negligence or restricted the same to clinical staff only. It is, therefore, clear that negligence can be against a non clinical staff or even against the directors, secretary, president of the hospital as the case may be. Thus the petitioners cannot escape their liability if they have contributed to any negligence while working in the hospital without being exonerated at the trial by alleging that there is not specific charge against them when the trial is yet to commence in true sense and pray for quashing of the proceedings.
- f) The cases relied upon in **Jacob Mathew (supra)** and **Martin F. D'Souza (supra)** as also **Sushil Ansal (supra)** are very helpful in deciding a case of medical negligence in view of the detailed discussion

made therein. In fact the findings in Martin F. D'Souza (supra) so far as it relates to Consumer Forum cases has been doubted in 2010 (5) SCC 513 [V. Kishan Rao Vs. Nikhil Super Speciality Hospital & Anr.] The said judgments would be very helpful to the Court at the time of trial. However, we are at the initial stage when the trial has virtually not commenced and the petitioners are seeking quashing of the criminal proceedings initiated on the basis of a complaint leading to registering of an FIR. These judgments, therefore, does not help either of the parties nor the Court to decide the issue as to whether the criminal case is required to be quashed.

- g) It will appear from the judgment in Lalita Kumari (supra) that reasonable or credibility of the information is not a condition precedent for registration of a case (paragraph 72). The admitted position in the instant case is that the victim was admitted in Neotia Hospital where he underwent treatment from 31.10.2019 till his death on 03.11.2019. The complainant has specifically alleged in writing about the grievance and has provided the name of the doctor treating the victim. It has been also stated that the victim's family could not talk much with the concerned doctor treating the victim. The complainant also says that he was informed that the doctor initially treating the victim was changed but who was subsequently treating the victim was not disclosed. The family members of the victim could not meet or speak to the changed doctor. The complainant also stated that he was regularly assured that his son

will gradually recover and there is no need to shift him to any other place for treatment. At the end the complainant has said the he firmly believes the he has been cheated and the death has been caused due to the negligence of the hospital. The complainant thereafter provided the name of the petitioners describing them as management staff of the hospital.

- h) The word “cheated” and negligence of the hospital in clear Bengali language is contained in the written complaint. This gives rise to an information of cognizable offence. The officer-in-charge of Matigara police Station had no other option to register an FIR in terms of the mandate in section 154 of Cr P C. The police officer concerned was not required to go the reasonableness or credibility of the information before registering a case as laid down in Lalita Kumari (supra). The question of proving the case is at the trial with which one should not be troubled at this stage.
- i) The petitioners have referred to the order enlarging the petitioners on bail. The said order is not under challenge before me and as such. I refrain from commenting on the merits of the same. I may, however, say that any recording in an order of the learned District and Session Judge granting bail has no bearing on the revisional application before the High Court for quashing a proceeding as the High Court is neither bound by the same nor require to consider any observation contained

therein either in law or otherwise since the High Court has to apply its own independent mind to the case. It is also true that the District and Session Judge while granting bail should not comment on the merits of the case which is likely to have an impact over the court trying the matter which is obviously subordinate to such judge in the instant case.

- j) The uncontroverted allegations as made in the complaint prima facie established an offence. The police authorities have registered the FIR. Since the complaint disclosed a cognizable offence, the police authority has to make an investigation and after gathering materials, evidence, etc. shall lay before the Magistrate well done the same to frame the charges and proceed with the criminal case. There is as such very limited scope when it is well settled that the jurisdiction under section 482 of Cr. P C has to be exercised sparingly and with circumspection. Following the ratio laid down in Vajanlal's case (supra) and therefore not inclined to interfere with the proceeding commends. Pursuant to the complaint made by the father of the victim on 3rd November, 2019.
- k) The Civil Revisional Application, therefore, fails and is accordingly dismissed. The learned Trial Judge has to proceed with the case as expeditiously as possible.

There shall, however, be no order as to cost.

Urgent photostat certified copy of this judgment and order, if applied for, be supplied to the parties on priority basis after compliance with all necessary formalities.

(ARINDAM MUKHERJEE, J.)