

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRR 2922 of 2019

Sandeep Rohatgi

-Vs-

1. Ms. Maya Dayani

2. The State of West Bengal

For the Petitioner: Mr. Sandeep Rohatgi (In-person)

For Opposite party No.1: None

For the State: Mr. Swapan Banerjee, Adv.,
Mr. Suman De, Adv.

Heard on: June 18, 2021.

Judgment on: June 23, 2021.

BIBEK CHAUDHURI, J. : –

1. Petitioner in person is present. Mr. Swapan Banerjee with Mr. Suman De, learned P.P's-in-Charge are present on behalf of opposite party No.2. Opposite party No.1/defacto complainant remains absent in spite of service of notice being effected upon her.

2. The matter was heard on 18th June, 2021.

3. The petitioner has prayed for quashing of charge-sheet being No.36 of 2017 dated 3rd March, 2017 under Sections 420/406 of the Indian

Penal Code in CGR Case No.728 of 2018 (Old No.CGR-5345 of 2016) pending before the learned Judicial Magistrate, 6th Court at Alipore.

4. It is the case of the petitioner that he is a paramedical professional who works as Eye Care Professional Optometrist Contact Lens Specialist. The father of the petitioner was a reputed Ophthalmologist and Eye Surgeon. He along with his father established Dr. Rohatgi's Vision Eye Hospital at 70A, Block-D, New Alipore, Kolkata-53 at least three reputed Eye Specialist Professional practice in the said private hospital. It is alleged by the petitioner that on 22nd November, 2016 he received a notice under Section 41A of the Code of Criminal Procedure with reference to New Alipore P.S Case No.317 dated 22nd November, 2016 under Section 420/406 of the Indian Penal Code and came to know that the opposite party No.1 was allegedly induced by the petitioner sometimes in November, 2015 to pay Rs.3300/- only as advance payment for contact lenses at his private hospital but he has not issued any receipt against the said payment. Therefore, the petitioner got some medical tests done by the eyes specialist to check the condition of the eyes of the petitioner No.1. According to the defacto complainant/opposite party No.1 the said tests were done against and without her consent at two different diagnostic centers.

5. The defacto complainant requested the petitioner to give contact lens to her or return the aforesaid money which he took for giving the contact lens but the petitioner refused to pay the same. It is alleged that

petitioner thereby committed an offence under Section 420/406 of the Indian Penal Code.

6. It is submitted by the petitioner on production of the documents that the defacto complainant had cataract in her both eyes and therefore she was referred to Dr. Swarup Pathak on 5th December, 2015. Dr. Pathak advised her for cataract operation. It is also found that the petitioner had decomposed cornea and therefore she cannot provided with contact lens. The prescription of Dr. Pathak and the documents relating to medical tests of the eyes of the defacto complainant are annexed with the instant application.

7. It is submitted by the petitioner that a person having decomposed retina cannot use any contact lens. The said matter finding was duly connected to the defacto complainant but she insisted upon providing her with a pair of contact lens.

8. It is further submitted by the petitioner that the sum of Rs.3300/- was spent for medical test of the defacto complainant and Doctor's fees. The petitioner has no intention and never cheated or misappropriated any money of the defacto complainant. According to the petitioner, police submitted charge-sheet against him falsely without considering the medical aspect of the matter.

9. I have perused the documents submitted by the petitioner in support of his contention.

10. It is admitted that the petitioner is a paramedical staff. He has no right or authority to medically examine any patient. He can at best assist

a Doctor. It is alleged by the defacto complainant that he took a sum of Rs.3300/- for giving a pair of contact lens to the defacto complainant. From the four corners of the copy of the charge-sheet I do not find any document that the petitioner actually medically treated the defacto complainant. If he treated the defacto complainant and prescribed her for contact lens and took money for such purpose, it would have been a case of cheating. But from the documents filed by the petitioner it is found that one Swarup Pathak, M.S Ophthalmology medically treated the defacto complainant.

11. In view of the aforesaid circumstances this Court is of the view that charge-sheet was filed by the police in New Alipore P.S Case No.317 dated 22.11.2016 bearing Charge-Sheet No.36 of 2017 dated 3rd March, 2017 is liable to be quashed.

12. In view of the above discussion, the instant revision is allowed on contest, however without cost.

13. Charge-sheet being No.36 of 2017 is quashed.

(Bibek Chaudhuri, J.)