

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 10th DECEMBER, 2021

IN THE MATTER OF:

+ **CRL.M.C. 470/2021**

VIBHA KAPOOR & ANR.

..... Petitioner

Through Petitioner-in-person

versus

THE STATE OF NCT OF DELHI AND ORS. Respondent

Through Ms. Meenakshi Chauhan, APP for the
State

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

CRL.M.A. 11996/2021 in CRL.M.C. 470/2021

1. This petition has been filed under Section 482 Cr.P.C. for setting aside of Order dated 12.11.2020 passed by the Ld. Court of M.M.-03, North-West, Rohini Court, Delhi in Complaint Case No. 689/2020.

2. The facts, in brief leading up to this petition are as follows:

- i. On 17.09.2019, Petitioner No.2 was taken to the hospital/Respondent No.4 by Petitioner No.1 (mother of Petitioner No.2) for vaccination/medical treatment after he was bitten by a stray dog. It is stated that the doctors on duty, i.e. Respondents No. 2 and 3 examined Petitioner No.2 and informed him that the vaccination required for the treatment was unavailable at the hospital/Respondent No.4, and advised him to visit another hospital.
- ii. It is stated that when Petitioner No.1 requested Respondents No.2

and 3 to refer Petitioner No.2 to another hospital, Respondents No.2 and 3 became angry and used abusive language. Furthermore, they started beating Petitioner No.2 as well. It is stated that Petitioner No.1 called the police who reached the spot, but did not take any action against Respondents No. 2 and 3 as well as other staff members. It is stated that the Petitioners wrote a complaint dated 20.11.2020 to SHO, P.S. North Rohini, Delhi, but the police have allegedly not taken any legal action against Respondents No. 2 and 3 till date.

- iii. It is stated that thereafter, the Petitioners filed a Complaint under Section 200 Cr.P.C., along with an application under Section 156(3) Cr.P.C. against Respondents No. 2 to 4 seeking registration of an FIR. However, the same was dismissed by the Ld. Trial Court *vide* Order dated 12.11.2020. Aggrieved by this Order, the Petitioners have approached this Court seeking for the same to be set aside.
- iv. The petition filed under Section 482 Cr.P.C. against the Order dated 12.11.2020 passed by the Ld. Trial Court was, after some arguments, sought to be withdrawn by Mr. Vineet Gupta, learned Counsel appearing for the Petitioners. This Court *vide* Order dated 16.02.2020 granted liberty for the petition to be withdrawn.
- v. Subsequently, Crl. M.A. 11996/2021 was filed wherein Petitioner No.2, Karan Kapoor, appeared in person, and sought for the original petition, i.e. Crl. M.C. 470/2021 to be restored on the ground that Counsel who had sought the withdrawal of the petition had not taken the consent of the Petitioners. Without

passing any formal order for restoration of the petition, this Court *vide* Order dated 02.08.2021 directed Ms. Meenakshi Chauhan, the learned APP for the State, to file the status report that had been filed before the Learned Metropolitan Magistrate on the basis of which the impugned Order dated 12.11.2020 was passed.

vi. On 7.12.2021, the learned APP has handed over the status report that had been filed before the learned Metropolitan Magistrate in this matter. The same has been reproduced as follows:

“Brief facts of the complaint are as follows: on 17.09.2019, Karan Kapoor S/o Vibha Kapoor was bitten by the dog and for his Vaccination; the complainant took her to BSA Hospital, Rohini, the doctor Shubham along with Doctor Gagandeep examined him and told him that they don't have any kind of medicine or injection available in the hospital and asked them to go to another hospital. When the complainant requested to give this in writing that the vaccination in the hospital is not available. On this Dr Subham became angry and started abusing the complainant in filthy language. When the complainant opposed his abusiveness, he became aggressive and started beating the complainant no 2 and other staff of the ward also joined him. The complainant further alleged that they started assaulting her also and staff members snatched her mobile phone, purse and gold chain. Karan Kapoor got severe injuries and a fracture in nasal bone. Hence the present complaint was registered by the complainant. An FIR no 305/19 U/S 3/4 Medicare Service Institution and Medicare Service Persons Act, 2008 had already been registered in this case and the undersigned is the 10 of this case. The chargesheet has already been filed in the same. As far as injuries of Karan Kapoor are concerned, the Opinion on MLC No 15238 is taken from SGM

Hospital, Mangolpurl which describes the injuries is SIMPLE in nature. The complainant is doing this just to burst out her anger as the doctor Subham had already registered a case against her and her son. There is no basis of the complaint nor there do any evidence which supports the version of the complainant.

In the view of the above facts, it is requested from this Hon'ble Court to file the complainant. However, any direction passed by this Hon'ble Court will compliance at once”

3. Mr. Karan Kapoor, petitioner-in-person, is present before this Court and has argued that the impugned Order dated 12.11.2020 of the Ld. Trial Court contravenes the law laid down by the Supreme Court. He submits that the custodial interrogation of Respondents No. 2 and 3 is necessary for the proper adjudication of the matter.

4. The Petitioner goes on to submit that the Ld. Trial Court has failed to take into account MLC No. 15238 dated 18.09.2019 of Petitioner No.2 conducted at Sanjay Gandhi Memorial Hospital, Mangol Puri, wherein it indicates signs of physical assault and bleeding of the nose. He states that a subsequent x-ray of the nose of the Petitioner No.2 reveals fracture of the nasal bones on both sides. The Petitioner further submits that in order to save Respondents No.2 and 3 from criminal prosecution and to coerce the Petitioners to withdraw their complaint, the police officials, in connivance with the Respondents, have filed a false FIR, i.e. FIR No. 305/2019, against Petitioners No. 1 and 2.

5. Mr. Kapoor, the Petitioner-in-person, also submits that the Ld. Trial Court has committed a glaring error by disregarding the authority bestowed in a Magistrate under Section 156(3) Cr.P.C. whereby the learned Magistrate

can direct the police to carry out investigation as well as monitor the same. He submits that impugned Order dated 12.11.2020 is, therefore, liable to be set aside.

6. Heard Mr. Karan Kapoor, Petitioner-in-person, Ms. Meenakshi Chauhan, learned APP for the State, and perused the material on record.

7. A reading of the Status Report that was filed before the learned Metropolitan Magistrate reveals that FIR No.305/2019 under offences Section 3 and 4 of the Medicare Service Institution and Medicare Service Persons Act, 2008, has already been registered, and that chargesheet has been filed in the same. It further states that this FIR was registered by the Respondents herein and that the instant petition is merely a bid to get an FIR registered so as to counter the same. Further, there is no evidence that supports the claims of the Petitioners herein.

8. The petitioner has not filed any material in this Court to support the statement that he suffered an injury. Other than trying to flash some photographs which, according to him, were taken to show that the Petitioner was grievously injured, nothing has been filed before this Court.

9. Further, there is nothing on record to show that these photographs were filed before the Trial Court or that the Petitioner had argued about the same before the Trial Court.

10. In the instant case, the application of the Petitioners herein filed under Section 156(3) was dismissed *vide* impugned Order dated 12.11.2020. A reading of the said impugned Order indicates that the Ld. Trial Court has painstakingly weighed the Status Report placed before the Ld. Trial Court before arriving at the decision to dismiss the application under Section 156(3) Cr.P.C. This Court is of the opinion that the matter before the Ld.

Trial Court has clearly not been adjudicated in a mechanical manner and the Ld. Trial Court has used its judicial discretion in accordance with the law before passing the impugned Order dated 12.11.2020. This Court, therefore, finds no reason to interfere with the impugned Order.

11. Even though the learned counsel for the Petitioner had withdrawn the petition, in order to satisfy itself and in the interest of justice this Court had permitted the learned Counsel for the Petitioner to argue the matter once again.

12. Accordingly, this petition is dismissed with the aforementioned observation, along with pending application(s), if any.

DECEMBER 10, 2021
Rahul

SUBRAMONIUM PRASAD, J.