

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRR 345 of 2022

Health World Hospital & Anr.

-Vs.-

The State of West Bengal

For the Petitioners: Mr. Sekhar Kumar Basu, Sr. Adv.,
 Mr. Antarikhya Basu, Adv.,
 Mr. Sayan Mukherjee, Adv.,
 Ms. Madhumita Basak, Adv.,
 Ms. Sohini Bardhan, Adv.

For the Respondent No.2:
 Mr. Bikash Ranjan Bhattacharya, Adv.,
 Mr. Jaydeep Biswas, Adv.,
 Mr. Soumyadeep Das, Adv.,
 Mr. Kaushik Ghosh, Adv.

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

Heard on: 17 August & 02 September, 2022.

Judgment on: 21 December, 2022.

BIBEK CHAUDHURI, J. : –

1. The petitioner No.1 and 2 are the companies incorporated under the Companies Act having their offices at plot No.C-49, Commercial Area, Opposite to ESIC Regional Office, City Centre, Durgapur in the District-Paschim Burdwan, and 139D, Rashbihari Avenue, Ground Floor, Kolkata-700029 respectively.

2. Petitioner No.1 is represented by its Executive Director (Administration) Mr. Prabir Mukherjee (petitioner No.8). Petitioner No.2 company is represented by petitioner No.3 Dr. Arunangshu Ganguly. Petitioners No.4 and 5 are doctors attached to Health World Hospital. Petitioner No.6 and 7 are also office bearers of the said company. Petitioners have approached this Court for quashing of the proceeding in connection with G.R Case No.96 of 2020 arising out of Durgapur Police Station Case No.27 of 2020 dated 15th January, 2020 under Sections 420/467/468/406/409/328/120B of the Indian Penal Code read with Section 34 of the West Bengal Clinical Establishment (Registration, Regulations & Transparency) Act and also under the Citizenship Act and the Foreigners Act presently pending before the Learned Additional Chief Judicial Magistrate at Durgapur.

3. It is pertinent to mention at the outset that opposite party No.2 filed an application under Section 156(3) of the Code of Criminal Procedure on 13th January, 2020 in the court of the learned Additional Chief Judicial Magistrate, Durgapur against the petitioners alleging commission of offence as aforesaid and the learned Magistrate sent the said application to the Jurisdictional Police Station directing the Officer-in-Charge thereof to treat the same as FIR and register a specific case against the accused persons.

4. It is alleged in the petition of complaint that on 7th December, 2019, one Krishna Kumar Gupta was admitted to petitioner No.1/hospital with the history of abdominal pain. The treating doctor advised the patient to

undergo USG test of upper abdomen and ECG. On the same day the patient again complained of acute abdominal pain and he was admitted to the petitioner No.1/hospital at about 9 pm. On 9th December, 2019 one ECHO and Doppler test were conducted on the said patient which did not show any abnormality. USG and CT scan of the whole abdomen was also conducted. Meanwhile the patient developed acute Pancreatitis with Chole Cystitis and USG of whole abdomen dated 21st December, 2019 revealed that the patient was suffering from Chole Docholithiasis. Thereafter the patient was taken to Asian Institute of Gastroenterology, Hyderabad for further treatment and he was discharged from the said hospital after medical treatment and recovery. On 10th December, 2019 the opposite party No.2/defacto complainant brought the patient for further check up at the Health World Hospital and consulted Dr. Himangshu Gupta, petitioner No.5. In course of such consultation, the patient was informed that he was suffering from a condition known as Chole cystitis. While returning home from the hospital, the said patient again complained of acute abdominal pain and he was taken to a local doctor at Barakar, who advised the patient for medical admission in a local hospital as the condition of the patient had worsen. Accordingly he was admitted to a local nursing home under the name and style of ASTHA Hospital at Barakar. On 22nd December, 2019 he was discharged from ASTHA Hospital and was referred to Asian Institute at Hyderabad. On 23rd December, 2019 he underwent necessary medical treatment at Hyderabad and was discharged in a stable condition. On 13th January, 2020 the

opposite party No.2 filed an application under Section 156(3) of the Cr.P.C alleging, inter alia, that on 7th December, 2019 the above named patient was brought to the emergency department of Health World Hospital at Durgapur by the complainant and other family members. He was admitted to the hospital at about 8 pm in the cardiology unit under the supervision of petitioner No.3 Dr. Arunangshu Ganguly and petitioner No.4 Dr. Indranil Deb. ECG test were conducted on the patient and angioplasty was also conducted. Angioplasty did not suggest any heart problem however the patient was unnecessarily detained in the critical care unit without any treatment of abdominal pain. The defacto complainant requested the doctors to treat the patient by a Gastroenterologist, but petitioner No.4 did not pay any heed to it. On 9th December, 2019 ECHO and Doppler test was conducted on the patient which showed normal results. On the contrary USG of the whole abdomen and CT scan of the whole abdomen of the patient indicated adverse results. The complainant again requested petitioner No.4 to treat the said patient by a Gastroenterologist, but he was abused and threatened by the petitioner No.4. Ultimately on 10th December, 2019 petitioner No.5 Dr. Himangshu Gupta and Dr. Sumikesh Anand of the gastroenterology Unit of the said hospital examined the patient and medical treatment under the supervision of the gastroenterologist was ultimately started. Petitioner No.5 Dr. Himangshu Gupta informed the complainant that the patient was undergoing intravenous treatment and no oral food or oral medicine should be given to the patient. However, when the complainant went to

see the patient, he found that the patient was taking food after it was served by the attending sisters. It is alleged that there is no coordination between the doctor's advice and nursing procedure in the said hospital. Petitioner No.5 Dr. Himangshu Gupta assured the defacto complainant that proper medicines were administered to the patient and his pain would gradually subside. Subsequently, he was discharged from the hospital. However the condition of the patient was gradually deteriorating. On 20th December, 2019, the complainant brought the patient for re-check up at the Health World Hospital and consulted petitioner No.5. He informed the complainant that the patient was suffering from Chole-Cystitis. It is alleged by the defacto complainant that the patient was wrongfully admitted to the cardiac unit of Health World Hospital with ill motive and greed for realization of money for unnecessary treatment. Petitioner No.4 Dr. Indranil Deb terrorized the patient party by stating that the patient has suffered a heart attack and forced the patient party to go for unnecessary tests only to cheat and extort money from the patient party. All the accused persons in conspiracy with each other prepared inflated bills only to squeeze the patient party including the complainant.

5. It is submitted at the very outset by Mr. Sekhar Kumar Basu, learned Senior Counsel referring to page 111 of the instant revision that on the basis of a complaint submitted by the opposite party No.2/defacto complainant before the West Bengal Clinical Establishment Regulatory Commission, the Chief Medical Officer of Health, Paschim Burdwan was requested by the Secretary of the West Bengal Clinical Establishment

Regulatory Commission to cause an inquiry to ascertain as to whether there was any mal management in respect of the treatment of the said patient for the purpose of causing wrongful loss of the said patient and the complainant and wrongful gain to the hospital. The CMOH, Paschim Burdwan constituted a Medical Board under the leadership of the Superintendent of Asansol District Hospital. The said board inquired into the matter and submitted their observations to the CMOH, Paschim Burdwan. The observation of the Medical Board reads as follows:-

“Mr. Krishna Kr. Gupta 60 years old gentlemen arrived the emergency medicine department of health world hospital at 9pm on 07/12/2019 with the complain of upper abdominal pain radiating to back and chest since 06/12/2019. An USG of upper abdomen with kidneys was done on 07/12/2019 which revealed an impression of “HEPATOMEGALY”. The EMO diagnosed the case clinically as acute coronary syndrome at 10:30 pm in emergency medicine department and the patient was admitted under cardiology team to establish the diagnosis. Relevant cardiac investigations were done and significant coronary artery disease was ruled out (after taking the consent of patient’s relative): A repeat USG whole abdomen was done which revealed Acute cholecystitis bulky pancreas & mild heterogeneous echo. This was taken care of from 09/12/2019 by Gastroenterology department. Patient was treated conservatively, improved symptomatically and discharged with advice for further management. The patient was followed up in health world hospital by surgical gastroenterologists who planned LAP CHOLESYSTECTOMY after 4-6 weeks and asked to review after 2 weeks after prescribing conservative management. Meanwhile the patient developed acute pancreatitis with cholecystitis and subsequent USG whole abdomen on 21/12/2019 revealed choledocholithiasis as well. Then he went to AIG hospital, Hyderabad for further management, Surgical Lap, Cholecystectomy and ERCP was done there Biliary stenting

and stent removal were also done there in due course of management. Patient was doing better after that.

From the above documents supplied by health world hospital and patient's relative the board did not find any discrepancy concerning treatment purpose in the health world hospital."

6. Thus, it is submitted by Mr. Basu, learned Senior Counsel on behalf of the petitioners that the course of treatment of the patient was examined by an independent board of medical experts. The board did not find any anomaly in the treatment. Under such circumstances, registration of Durgapur Police Station Case No.27 of 2020 dated 15th January, 2020 under Sections 420/467/468/406/409/328/120B of the IPC was illegal and uncalled-for.

7. The learned Senior Counsel on behalf of the petitioners next refers to the decision of the Hon'ble Supreme Court in **Martin F.D'Souza vs. Mohd. Ishfaq** reported in **(2009) 1 SCC (Cri) 958** to submit that whenever a complaint is received against a doctor or hospital by the Criminal Court, then before issuing notice to the doctor or the hospital against whom the complaint has been made, the Court should first refer the matter to a competent doctor or committee of doctors, specialized in the field relating to which the medical negligence is attributed, and only after that doctor or committee reports that there is a prima facie case of medical negligence, should notice be then issued to the doctor/hospital concern. This is necessary to avoid harassment to doctors who may not be ultimately found to be negligent. On this score he also refers to another

decision of the Hon'ble Supreme in **Jacob Mathew vs State Of Punjab & Anr.** reported in **(2005) SCC (Cri) 1369**.

8. The learned Senior Counsel on behalf of the petitioners by placing reliance on **Priyanka Srivastava & Anr vs. State Of U.P.& Ors** reported in **(2015) 6 SCC 287** submits that there has been no compliance of Section 154(1) and 154(3) of the Cr.P.C by the complainant before filing application under Section 156(3) of the Cr.P.C in the court of the learned Additional Chief Judicial Magistrate at Durgapur. The application under Section 156(3) of the Cr.P.C was filed after lapse of about one month from the date of the treatment of the said patient at Health World Hospital. In paragraph 26 of the application the complainant has averred that he informed the local police station at Kulti and wanted to file a complaint in the said P.S but police refused to accept any complaint from him on the ground that the scope of investigation allegedly does not fall within the jurisdiction of police. Similarly, the Officer-in-Charge of Durgapur Police Station refused to entertain any complaint. Thereafter the complainant informed the incident to the Commissioner of Police. The complainant/opposite party has failed to produce any document to show that he really went to Kulti P.S or Durgapur P.S to lodge complaint. In the application under Section 156(3) of the Cr.P.C he did not mention any date when he went to Kulti or Durgapur P.S. He also failed to mention the date on which he allegedly lodged a complaint with the Commissioner of Police. In view of non-compliance of Section 154(1) and 154(3) of the

Cr.P.C, application under Section 156(3) of the Cr.P.C filed by the complainant could not be treated as an FIR and on this score alone the criminal proceeding against the petitioners is liable to be quashed.

9. Mr. Bikash Ranjan Bhattacharya, learned Advocate for the opposite party No.2, on the other hand submits that the opposite party No.2 has not only made complaint against the petitioners alleging medical negligence. It is the allegation of the petitioner that the petitioners had pressurised the patient party by falsely exaggerating the extent of medical problem of the said patient for the sole object to extort money from the patient and the patient party. The hospital authority compelled the complainant to make payment of inflated bills by creating forged and false medical bills and other documents. Therefore, police has registered a case against the petitioners under Section 420/467/468/406/409/328/120B.

10. It is further submitted by My Bhattacharya, learned Senior Counsel on behalf of the opposite party No.2 that the decision in **Priyanka Srivastava (supra)** has to be read as a whole. The Hon'ble Supreme Court mandates that prior applications under Section 154(1) and 154(3) should have been made before filing of an application under Section 156(3) before the Jurisdictional Magistrate, with specific averment made in such application and necessary document as well as affidavit to that effect, filed. However, the learned Senior Counsel for the private opposite party invites this Court to consider the background under which the Hon'ble Supreme Court passed certain directions as a precondition for

entertaining an application under Section 156(3) of the Cr.P.C. In order to buttress his argument, Mr. Bhattacharya refers to the introductory paragraph of the said judgment which runs thus:-

“The present appeal projects and frescoes a scenario which is not only disturbing but also has the potentiality to create a stir compelling one to ponder in a perturbed state how some unscrupulous, unprincipled and deviant litigants can ingeniously and innovatively design in a nonchalant manner to knock at the doors of the Court, as if, it is a laboratory where multifarious experiments can take place and such skillful persons can adroitly abuse the process of the Court at their own will and desire by painting a canvas of agony by assiduous assertions made in the application though the real intention is to harass the statutory authorities, without any remote remorse, with the inventive design primarily to create a mental pressure on the said officials as individuals, for they would not like to be dragged to a court of law to face in criminal cases, and further pressurize in such a fashion so that financial institution which they represent would ultimately be constrained to accept the request for "one- time settlement" with the fond hope that the obstinate defaulters who had borrowed money from it would withdraw the cases instituted against them. The facts, as we proceed to adumbrate, would graphically reveal how such persons, pretentiously aggrieved but potentially dangerous, adopt the self- convincing mastery methods to achieve so. That is the sad and unfortunate factual score forming the fulcrum of the case at hand, and, we painfully recount.”

11. Mr. Bhattacharya also refers to a relevant portion of paragraph 29 of the aforesaid report which reads as false:-

“At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same.”

12. A principled and really agrieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same.

13. Thus, it is submitted by Mr. Bhattacharya that even when the background of **Priyanka Srivastava’s** case (supra) is considered, it is abundantly clear that the direction for compliance of Section 154(1) and Section 154(3) of the Code of Criminal Procedure was laid down only to discourage unscrupulous and unprincipled litigant, from abusing process of law. Therefore, such compliance cannot be made a sine qua non to defeat the purpose of law and justice.

14. Coming to the instant case it is submitted by Mr. Bhattacharya that the complainant did not initiate multiple litigations against the

petitioners. He is aggrieved of the act of extortion of money by petitioner No.1 and 2 through other petitioners, some of whom are medical practitioners only to harass an unfortunate patient and his family members by raising inflated bills in the name of medical treatment and diagnosis making them practically bankrupt. Thus, Mr. Bhattacharya submits that the guidelines of **Priyanka Srivastava (supra)** is not strictly applicable in the instant case.

15. It is also submitted that the case is at the stage of investigation. In order to unearth the truth investigation cannot be stopped and the criminal proceeding cannot be quashed at this stage. According to him the prayer made on behalf of the petitioners is premature and not entertainable at this stage.

16. Having heard the learned Senior Counsels on behalf of the petitioners and the private opposite party as well as the learned P.P-in-Charge who submits memo of evidence collected so far by the Investigating Officer in course of investigation in connection with the instant case it is ascertained that main grievance of the opposite party No.2 is that the petitioner No.1 Health World Hospital, Durgapur and the Medical Officers attached thereto with the ulterior motive for the purpose of extorting money by raising inflated bills in the name of the patient committed criminal offence and on the basis of the application under Section 156(3) of the Cr.P.C police registered specific case against the petitioners under Sections 420/467/468/406/409/328/120B of the

Indian Penal Code. It is alleged by the opposite party No.2 that the Medical Officers purposefully made wrong treatment, prescribed wrong medical investigation only to extort money from the said patient and patient party. It appears from the record that the said patient was initially examined in the emergency department of Health World Hospital on 7th December, 2019 at about 9 pm with a history of upper abdominal pain radiating to back and chest since 6th December, 2019. On the same date at about 10.07 pm the opposite party No.2 in writing gave consent to the hospital authority to treat the patient as per his requirement. It also appears from the record that the patient was admitted to the hospital under the supervision of cardiology team. On 8th December, 2019 he was medically examined. At the time of medical examination he was diagnosed with severe chest and upper abdominal pain with breathing problem. It is also recorded that the patient had no history of hypertension. ECG and Echocardiograph was done but no abnormality was found in the heart of the patient. He was medically examined by the Dr. Indranil Deb. The patient was admitted to critical care unit of the hospital. The Medical Officer recorded a query (??) as to whether the patient was suffering from acute coronary syndrome. Finally on 9th December, 2019 at about 9.30 pm he was medically examined by the Dr. Monojit Pal and he was diagnosed suffering from Chole Cystitis. Subsequently, the patient was taken to Asian Institute at Hyderabad and he was recovered following medical treatment in Hyderabad and relieved of his ailment.

17. It is pertinent to mention that the petitioner previously made a complaint before the Chairman, West Bengal Clinical Establishment Regulatory Commission. The Commission sent his complaint to the Chief Medical Officer of health, Paschim Burdwan requesting him to ascertain as to whether there was any mal management in respect of medical treatment of the patient. The Chief Medical Officer of Health constituted a Medical Board under the supervision of the Superintendent of Asansol District Hospital. The Board on due examination of the documents and the treatment sheet found that there was no medical irregularity in respect of treatment of the patient and such treatment was made observing relevant medical protocol.

18. Under such circumstances, it is necessary at this stage to adjudicate as to whether investigational process in connection with Durgapur Police Station Case No.27 of 2020 is to be proceeded with or not.

19. The Hon'ble Supreme Court in **Jacob Mathew vs. State of Punjab & Anr.** reported in **(2005) 6 SCC 1** is pleased to hold that indiscriminating prosecution of medical professionals for criminal negligence is counter-productive and does no service or good to society. A medical practitioner is faced with an emergency ordinarily tries his best to redeem the patient out of his suffering. He does not gain anything by acting with negligence or by omitting to do an act. Obviously, therefore, it will be for the complainant to clearly make out a case of negligence before

a medical practitioner is charged with or proceeded against criminally. Time and again it is stated that the pith and substance of the case of the opposite party No.2 is that the petitioner No.1/hospital and the Medical Officers conducted wrong treatment of his brother on a false finding that he was suffering from cardiac problem. In this way the hospital authority managed to create inflated medical bill in the name of the patient. The complainant failed to make out a case that the petitioners/medical officers did something or failed to do something which in the given facts and circumstances, no medical profession in his ordinary senses and prudence would have done or failed to do. When the patient came to a doctor with history of pain on the upper part of the abdomen, radiating towards back portion and chest and the medical officer admits him in the critical care units and prescribed certain investigation to rule out as to whether the patient was suffering from acute coronary disease or not, the medical officer cannot be blamed for compelling the patient to undergo certain medical test for which the patient was not suffering. Moreover, the independent medical board consisting of the doctors of West Bengal Health Services clearly opined that treatment of the patient was committed in Health World Hospital, Durgapur in conformity with established Medical Rules and Procedure. Section 92 of the IPC states:-

“92. Act done in good faith for benefit of a person without consent.—Nothing is an offence by reason of any harm which it may cause to a person for whose benefit it is done in good faith, even without that person’s consent, if the circumstances are such that it is impossible for that person

to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit:

Provisos.—Provided—

First — That this exception shall not extend to the intentional causing of death, or the attempting to cause death;

Secondly—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

Thirdly — That this exception shall not extend to the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt;

Fourthly —That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

20. The Investigating Officer has not been able to collect any material to show that the hospital authority and the medical officers failed to treat the patient in good faith providing basic standard of care and protection.

21. Therefore, I do not find any material in support of the case registered against the petitioners.

22. For the reasons stated above the criminal proceeding pending in the court below against the petitioners is liable to be quashed.

23. Accordingly, the instant revision is allowed.

24. Pending criminal procedure being G.R Case No.96 of 2020 arising out of Durgapur Police Station Case No.27 of 2020 dated 15th January, 2020 against the petitioners be quashed.

(Bibek Chaudhuri, J.)