

16.08.2022
Item no.25.
Court No.6.
AB

CRR No. 1663 of 2016

In the matter of : Dr. Subhash Ch. Pratihari

.....Petitioner.

Mr. Naba Kumar Das,
Mr. Pathik Bandhu Banerjee,
Ms. Diana Ghosh Dastidarfor the Petitioner.

Learned Advocates on behalf of the petitioner appear and submit in Court the affidavit of service, affirmed on August 5, 2022. It is noted that notice sent to respondent nos.1 to 4 and 13 were returned with postal endorsement as 'left' and that to the respondent no.12 was returned with postal endorsement 'deceased'. Likewise, notice sent to respondent no.7 was returned in tampered condition with the remarks 'deceased' (struck off) and "left".

Let the same be kept with the records.

In consideration of the affidavit of service, the service appears to have been completed so far as the opposite parties who are still alive. However, no one appears in court at the time of call, on behalf of opposite parties. Hence, without wasting any further time, the matter is taken up for hearing and delivering order.

This is an application filed by the petitioner under Section 482 Cr.P.C., 1973, by dint of which he has challenged

an order dated March 18, 2016 passed by 2nd Judicial Magistrate, Sealdah, in Complaint Case no.C-64 of 2015 under Sections 34/44/108/117/120B/406/420/499/500 IPC.

Petitioner's case in a nutshell is that he is an honorary medical superintendent/treasurer of J. N. Roy Sishu Seva Bhavan wherein he has been discharging duty as above since 2011. He has alleged of indisciplined actions and disturbances created in the said hospital by some group of employees during the past some time. He further specifies that on November 19, 2014, there was a meeting scheduled to be held when due to the unruly actions by the said group of persons led by some doctors of the hospital, the meeting could not happen and the regular functioning of the hospital was severely jeopardized.

It is further stated that all this prompted the petitioner to lodge a complaint case under Section 200 Cr.P.C., 1973 in the trial court being Complaint Case no.64 of 2015. The certified copy of the order sheets in the said Complaint Case no.64 of 2015 has been annexed with the present revisional application wherefrom it appears that the court examined witnesses and thereafter called for a report from the responsible police officer in terms of Section 202 Cr.P.C. as regards the allegations made in the said Complaint Case.

The petitioner is severely aggrieved with the report filed by the Sub Inspector, Narkeldanga Police Station dated 28.1.2016 which may be quoted hereunder for better understanding of the case.

“Sir,

With due Honour and veneration, beg to submit that and enquiry into the matter was duly caused at the behest of your Honour’s Order.

This refers to Narkeldanga P.S, G.D Entry No.2461 Dated 27/01/16 and 2565 Dated 28/01/16.

In course of enquiry, the Petitioner Dr. Subhash Chandra pratihar was contracted and examined in the light of his alleged complaint. He alleged as per the Court Petition that the O.PS being the medical and non medical staffs of Jitendra Narayan Roy Sishu Seva Bhawan situated at 58/15 Raja Dinendra Street, Kolkata-06 in collusion with each other causes disturbances in the functioning of the said Hospital for personal gain of its charitable character and over the issues of salary matters despite the fact that the Hospital is running deficit and has to pay long pending outstanding dues. He also alleges ill behaviour by the O.P No.1 Dr. A.C Bagchi and that O.P No.4 Dr. Somnath Ganguly as the head attached to the said hospital shifts patients from the said hospital to nursing homes for personal gain. He further alleges irregularities and unscrupulous activities against other O.PS including non medical staffs i.e O.PS No.5. Partha Roy, 6. Bablu Mete, 7. Sk. Asif Ali, 8. Asit Bose and 9. Sibu Roul.

During enquiry, the undersigned had been to Jitendra Narayan Roy Sishu Seva Bhawan Situated at 58/15 Raja Dinendra Street, Kolkata-06 at various occasions and physically caused enquiry therein. The O.PS declined allegations lebelled against them. However, they voiced grievances and labelled counter allegations against the Petitioner Dr. Subhas Chandra Paratihar regarding running of the hospital with several irregularities in collusion with other members of the Committee running the said hospital. It was ascertained that irregular disbursal of salaries of the staffs of the said hospital has become a common scenario every month including improper and unsatisfactory accountability regarding their PF benefits.

Enquiry revealed that the hospital Jitendra Narayan Ray Sishu Seva Bhawan and school Jitendra Narayan

*Ray Infant School stands established under a trust “Jitendra Narayan Benefit Society” since long and earlier headed by one Sri Jahar Gupta as the President and Dr. P.K Bhowmik as the Secretary and being run by Govt. Grants. Soon after the demise of the President Sri Jahar Gupta a new management committee headed by Dr. Somnath Gangopadhyay as Vice President, Dr. Pranab Bhowmik as Secretary, Dr. Subhas Chandra Pratihari (**Petitioner**) as treasurer cum Medical Superintendent and Ajay Chakraborty along with others was formed. However, soon after the new management committee was formed since around the year 2011, a bitter relation cropped up between the petitioners side and that of the O.PS over the issue of irregularities of salaries, other benefits and infrastructures of the hospital followed by financial crisis due to irregular Govt. grants resulting acute financial and infrastructural crisis at the hospital. The intensity of the situation at present is such that it has taken impact among every members and staffs attached to the said hospital venting their grievances, discontents and vice versa complaints hurling at each other followed by frequent unrest among them. Intervention of the Director of Swasthya Bhawan and Commissioner of Provident Funds are required to unearth the actual fact and circumstances and to fix up such alleged irregularities or misappropriations, if any.*

This is favour of your Honour’s kind information and for onward transmission.”

Petitioner is further aggrieved with the impugned order dated March 18, 2016 on the ground that while passing the said order and rejecting the complaint of the present petitioner under Section 203 Cr.P.C. by the trial court, the court has only concentrated on the police report without taking into consideration the facts stated in the complaint or other attending circumstances. It would be beneficial if the impugned order be quoted, which is as follows:

“Order dated 18/03/16

Today is the date fixed for passing order. Complainant is present.

This Court has already heard the submissions of the Ld. Lawyers. Perused the petition U/S 200, the supported documents. S.A of the complainant and witness and police report U/S 202 of the Cr.P.C. Considered.

Complainant of this case is a practicing doctor and he holds the post of honorary medical superintendent of Jitendra Narayan Roy Sishu Seva Bhavan, a non profit making hospital. Accused persons are doctors and staffs of the said hospital. Complainant alleges as to financial irregularity and harassment by the accused persons in as much as some doctors are taking salary without any work and staffs are insubordinate. It is alleged that accused persons have connived to privatize the hospital. It is further alleged that some of the doctors and staffs have shouted calling the complainant a thief. Complainant and one witness are examined in S/A. This court, thereafter called for a report u/s 202 of the Cr.P.C. from the concerned police station, which is duly received by this court. Complainant prays for issuance of process against all the accused persons for the offences punishable U/S 34/44/108/117/120b/406/420/499/500 of I.P.C.

At the very outset this Court rules out invocation of section 34/44/108/117/499 of the I.P.C as these sections are not penal provisions. Now it has to be seen whether materials on record discloses prima facie commission of offences U/S 120b/406/420/500 of the I.P.C. Complainant in his petition and in his S.A does not quantify the amount of money which is subjected to cheating and criminal breach of trust. Material on record also does not disclose the specific date and time or the period during which this offences were committed. I further find that there is no averment as to how and in what manner the entrustment of property/money was made to any of the accused persons and in what manner accused persons

committed the offences U/S 406 & 420 of the I.P.C. This Court finds one averment that accused persons shouted on complainant by calling him thief. To constitute offence U/S 500 of the I.P.C the alleged act must satisfy the requirement of section 499 of the I.P.C. Accused persons must make or publish such statement which is false and tends to lower the image of the complainant in the estimation of people generally. In the instant case it is stated that the alleged act of accused persons shouting at complainant lowered the reputation of the complainant. This Court further finds that the entire petition is very weak and there is no specific allegation whatsoever against any particular person. It is to be noted that complainant being superintendent is on the helms of affairs of the said hospital and he has all the authority to act upon the delinquent doctors and the staffs. Complainant has not explained as to what is preventing or persuading him to not take action against these staffs.

This court finds that materials on record do not disclose any offence punishable under I.P.C or any other penal provision and accordingly the complaint petition is rejected U/S 203 of the Cr.P.C.”

On behalf of the petitioner, an unreported judgment of the Hon’ble Apex Court dated February 4, 2022 (Rajesh Yadav and Anr. Vs State of UP) is also relied on to submit that in the said case the Hon’ble Apex Court has been pleased to find that the final report u/s 173 (2) Cr.P.C, would have sufficient evidenciary value in a criminal case. On behalf of the petitioner, the statute has also been referred, to submit as to which components would have sufficed due compliance of provisions u/s 173 (2) Cr.P.C., 1973.

The petitioner has pleaded grounds that the impugned order is lacking any reasoning, proper appreciation of the facts and circumstances of the case, proper application of judicious

mind and thus, the same is liable to be set aside and quashed in this proceeding.

The petitioner filed his complaint in the court below on February 25, 2015, after which the trial court has proceeded to examine him under Section 200 Cr.P.C. Thereafter by dint of an order dated November 21, 2015 the court has recorded its findings that the evidence of the complainant lacked elucidation as to the offences, alleged in the complaint. On such finding the court had called for a report from the concerned police officer.

Copy of such report is annexed in this case being annexure P-1 which is set out in this order. In the said report the reporting officer has contended about the counter allegations made by the parties against each other and narrated the ground reality upon which the complaint has been based. At this stage, upon consideration of the materials before it, the court has passed the order dated March 18, 2016, quashing of which has been prayed by the petitioner in this case. No doubt the order of the trial court dated November 21, 2015 is unambiguous and categorical one to show that after examining the petitioner under Section 200 Cr.P.C. no sufficient material could be gathered for the court to take cognizance of the offence. Accordingly police report was called for and weighed upon by the court to come to the finding. There is no material to doubt and challenge the finding as above of the court in its order dated November 21, 2015. The court when considered the police report dated

January 28, 2016, no other material was available before it excepting the same to found its decision thereupon.

The judgment as mentioned above relied on in this case is factually distinguishable from the present case, in so far as the scope of “Chapter XV” Cr.P.C., 1973 and “Chapter XII” Cr.P.C., 1973, is different and distinct from each other. In this complaint case, the court proceeded in accordance with provisions under “Chapter XV” and rightly so. There is no scope for this court, in this case, to examine compliance of court, of any provision under “Chapter XII” Cr.P.C., 1973, as the petitioner has tried to emphasise.

So far as findings of the court in its order dated March 18, 2016 is concerned, there is no incoherence or inconsistency in the same in view of the trail of proceedings before the trial court. Under such circumstances I am constrained to differ with the submissions made on behalf of the petitioner that in delivering the said order dated March 18, 2016, the court has erred in not considering the case made out in the complaint, which is in a way a misconceive statement particularly in view of the orders of the trial court. I am also unable to accept the submission that the police report does not contain the actual or true facts as there is no contrary material to be shown against the facts stated therein or that the trial court has caused any error or irregularity in relying on the police report as it has already found that no sufficient or cogent material could be available after examining the complainant.

On the findings as above this court is constrained to hold that the petitioner has failed to make out any substantive case on the basis of cogent and tangible material in order to warrant this court's interference into the order, as impugned in this revisional application under the aforestated provision of law. Hence, this revision application does not merit success.

The revisional application being C.R.R 1663 of 2016 is thus dismissed.

Interim order, if any, stands vacated. Connected application, if any, is disposed off.

Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Rai Chattopadhyay, J.)