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C.R.R.598 of 2021

In Re: An application under Section 482 of the Code of Criminal Procedure, 1973;

Dr. Mohan Chand Seal and others
Versus
The State of West Bengal

Mr. Milon Mukherjee,
Mr. Sourav Chatterjee,
Mr. Biswajit Manna,
Mr. Soumya Nag,
Mr. Aritra Bhattacharya.
...for the petitioners.
Mr. Madhusudan Sur,
Mr. Dipankar Paramanick.
...for the State.

Mr. Sur, learned advocate appearing for the State submits written notes of argument. Let the same be kept with the record.

I have considered the written notes of argument and considered the background of the case.

The present revisional application has been filed for quashing of Raiganj Police Station Case No.409 of 2012 dated 09.05.2012 under Sections 326/467/468/471/420/120B of the Indian Penal Code. The Investigating Authority on completion of investigation has submitted charge-sheet before the jurisdictional court.

The main thrust of allegation was relating to illegal kidney transplantation racket operating in the area wherein the investigation was conducted and the version of the Investigating Officer is that the persons who have been shown to be donors are

either not available or they have not donated the kidney and, as such, the documents on which the donors have been shown on records are fake and fraudulent which makes the doctors responsible along with others who have been implicated in the case for carrying out the illegal transplantation of kidney.

I have considered the materials which have surfaced in course of the investigation in connection with the instant case and the foundation of the allegations against the doctors happen to be that they were associated/involved with the racket which carried out the business of commercialisation of human organs. The limited part with which doctors have been associated in this case are related to fake Aadhaar, PAN/Aadhaar Identification Number.

It is seen from the records that after the documents were endorsed by the doctors, the Health Department, Government of West Bengal also verified and re-endorsed the same and only thereafter when the permission was granted the doctors were able to carry out the operation/transplantation of the human organ. There are no allegations against the doctors that they have financially benefited themselves or wrongfully enriched by their act or conduct. There are also no allegations to the extent that any fatality occurred in course of operation or transplantation of the kidney or human organs so concerned.

Having regard to the complicity of the doctors in the case and the fact that the Health Department was a monitoring authority/sanctioning authority and pursuant to that the operation was carried out, I am of the view that the same reasons on which

the doctors have been implicated in this case, the Government Officers who would sanction or grant permission should have also been implicated in the case. The Investigating Officer on repeated occasions also sought permission under the Transplantation of Human Organs and Tissues Act, 1994 and the same was not granted.

Having regard to the totality of the circumstances particularly with regard to the difference between the negligence or any error committed while working and culpability of a case, I intend to grant benefit to the doctors' concerned so far as their complicity in connection with the instant case is concerned.

Accordingly, the further proceedings in respect of the petitioners in connection with Raiganj Police Station Case No.409 of 2012 dated 09.05.2012 (G.R. Case No.651 of 2012) under Sections 326/467/468/471/420/120B of the Indian Penal Code is hereby quashed. So far as the other accused persons are concerned, the proceedings would continue against them.

Accordingly, CRR 598 of 2021 is allowed.

Pending application, if any, is consequently disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Tirthankar Ghosh, J.)

