

Form No.J(1)

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION**

Present:

The Hon'ble Justice Tirthankar Ghosh

C.R.R.967 of 2021

With

CRAN 1 of 2021

Narayana Health and others

versus

The State of West Bengal and another

For the Petitioners : Mr. Sandipan Ganguly,
Mr. Krishnendu Bhattacharyya,
Mr. Avishek Guha,
Mr. Priyankar Ganguly,
Ms. Debarati Das,
Ms. Akansha Chopra.

For the Opposite Party No.2 : Mr. Angshuman Chakraborty.

Heard On : 16.05.2023 and 11.05.2023.

Judgement On : 16.05.2023

Tirthankar Ghosh, J. :

The present revisional application has been preferred challenging the proceedings relating to Complaint Case No.C-533 of 2021 alleging offences under Sections 406/420/120B of the Indian Penal Code read with Section 34 of the West Bengal Clinical Establishment (Registration, Regulation and Transparency) Act, 2017 including the orders passed therein which is

presently pending before the learned Judicial Magistrate, 2nd Court, Barasat, District-North 24 Parganas.

The relevant paragraphs in respect of the allegations made in the petition of complaint are as follows:

- (1) “That the above named complainant is a law abiding citizen having recommendation and reputation in the society.
- (2) That the accused No.1 is the Medicine Organization having its negotiated office at 261/A, 2nd floor, Bommasandra, Karnataka, 560099 and accused No.2 is the Branch of accused No.1 and accused No.2 runs under the control, guidance and management of the accused No.1 and Accused No.3, 4 and 5 are acting for or on behalf of the accused No.1 & 2 for gain.
- (3) That the mother of the complainant namely Smt. Bina Sen is a senior citizen and due to emergent affairs relating to fracture in the right femur bone of the said Smt. Bina Sen, she was admitted to Narayana Multispecialty Hospital, Barasat and she was medically treated as an indoor patient from 13.02.2021 to 19.02.2021.
- (4) That during treatment the relevant medical papers/documents/test reports relating to such treatment of Smt. Bina Sen were not supplied to the complainant/patient party/service recipient despite repeated requests to the concerned

authority of the said Hospital, though it is incumbent on the concerned authority to supply such papers, documents, medical reports, test reports to the complainant/patient party yet. The concerned authority of the Hospital kept the complainant/patient party in the dark about the real scenario of the treatment of the said indoor patient Smt. Bina Sen.

- (5) That though the said Smt. Bina Sen was discharged from the said Hospital on 19.02.2021 after making payment of the total amount of Rs.1,71,130/- by the complainant as demanded by the Hospital Authority yet, at the relevant point of time also the Hospital Authority did not supply all the relevant papers/documents/treatment sheets/medical reports/test reports relating to such patient Smt. Bina Sen and such conduct on the part of the Hospital authority raised a reasonable doubt about the veracity of the Hospital Authority in the mind of the complainant/patient party.
- (6) That finding no other alternative on 20.02.2021 the complainant went to the said Hospital and met the concerned authority and asked for the relevant documents, copies of the reports, copies of the test reports/medical papers/treatment sheets which were urgently needed for further proceeding with the affairs of the treatment of the said Smt. Bina Sen. But curiously enough that

firstly the Hospital Authority tried to evade the responsibility of discharging such scheduled duties and being failure in their attempts the concerned persons turned violent without having earthly reasons, some persons started to using some unparliamentary languages but as the complainant was very much stick to the legitimate claim for getting all such above mentioned papers relating to the treatment of Smt. Bina Sen, so ultimately the concerned authority of the Hospital supplied some papers/documents relating to such medical treatment of Smt. Bina Sen. Wherefrom it is evident that an endorsement was made by a concerned official on the back page of the 'pending diagnostic reports' dated 19.02.2021 bearing patient Id. No.-27952, Ward No.-1233 in the name of Smt. Bina Sen (Patient) that 'HRCT Test not done', but knowing it fully well the concerned Hospital Authority impressed upon the complainant to deposit all the charges for tests including such charge of Rs.2500/- for HRCT test and accordingly on good faith the complainant deposited all such money including the HRCT test charge and entrusted the concerned authority with such money. But from such relevant documents it is transparently clear that in false pretext and also in clear violation the statutory conditions laid down in West Bengal Clinical establishment (Registration Regulation & Transparency) Act, 2017. The concerned authority of the Hospital induced the

complainant/patient party to deliver all such money including the HRCT charge of Rs.2500/- to the concerned authority with some mens-rea from the zygotic stage of the treatment of said Smt. Bina Sen and consequently they succeeded to cheat the complaint/patient party.

- (7) That having a glance to the relevant papers and documents while the complainant tried to enquire into the matter at that material point of time one Mr. Anup Bhaduri and another Mr. Suvendu Prakash pushed the complainant into their chamber and without caring any system or law such persons blurted out threat by saying that Narayana Hospital has got the organization throughout the India and as they keep the local media and police administration in their control, so they are list bothered of any such offence committed by them, on the other hand they threatened the complainant not to raise any question anywhere about such wrongful activities of the Hospital authority; otherwise they will put the complainant in some unwarranted troubles. Even it may cause the safety and security of the life of the complainant.
- (8) That though the complainant submitted written information to the District Magistrate, North 24 Parganas, Superintendent of Police Barasat Police District and Inspector-in-Charge Barasat Police Station stating all such relevant facts with a request for taking

action against such offenders, yet till date no response to have been received by the complainant from the end of such legal authorities.

- (9) That having no other alternative the complainant is constrained to file such petition of complaint before the Ld. Court seeking legal redress.”

The petitioners before this Court are the accused persons who have been implicated and against whom the learned Magistrate was pleased to issue process being Narayana Health (Accused No.1), Narayana Multispecialy Hospital (Accused No.2), Chairman, Narayana Health (Accused No.3), Anup Bhaduri @ Anup Kumar Bhaduri (Accused No.4) and Suvendu Prakash (Accused No.5).

Mr. Sandipan Ganguly, learned senior advocate appearing for the petitioners submitted that the petitioner nos.1 and 3 are having its office outside the territorial jurisdiction and in spite of the same, there were substantive non-compliance of Section 202 of the Code of Criminal Procedure and the learned Magistrate by mechanically examining two witnesses (complainant and another) by a non-speaking order issued process under Sections 406/420/120B of the Indian Penal Code and Section 34 of the West Bengal Clinical Establishment (Registration, Regulation and Transparency) Act, 2017.

It was also contended that the summons which were served upon the accused/petitioners were kept in blank and to substantiate such contentions learned senior advocate relied upon an unreported judgment of this Court in the case of Greaves Cotton Limited and others vs. The State of West Bengal and another (CRR 1979 of 2021) and Anand Mahindra vs. Saudan Singh reported in 2008 Law Suit (SC) 2639.

Additionally, it was submitted on behalf of the petitioners that the patient Bina Sen was admitted on 13th February, 2021, she undergone a surgery on 15th February, 2021 and was discharged on 19th February, 2021. Complainant paid a sum of Rs.1,71,130/- out of the total bill of Rs.1,94,307.84/- , thereby a discount to the tune of Rs.23,177.91 was offered to the complainant. The complainant had been to the petitioners' office on 20th February, 2021 with regard to discrepancies in the bill, he was attended by the billing desk and referred to the grievance redressal system, consequently, the complainant issued a letter expressing his requirement for original bills and indoor case sheets for reimbursement from insurance, the same were supplied to him on 24th February, 2021. On 23rd February, 2021 the bills which was issued reflected Rs.1,71,130/- for which payment was already accepted while the final bill issued on 24th February, 2021 reflected total of Rs.1,68,630/-, the same was because of HRCT test charges of Rs.2,500/- being deducted from the earlier bill for which refund was also offered and subsequently e-mail was also sent to the complainant. Learned advocate additionally submitted that there was no complaint regarding the treatment as best possible efforts were offered

and the Hospital Authorities also requested for refund as the HRCT test was not required. Petitioners submit that there is no element of cheating or criminal breach of trust involved, to that extent reliance was placed upon **S. N. Palanitkar and others Vs State of Bihar and another** reported in **AIR 2001 SCC 2960**; **Vinod Natesan Vs. State of Kerala and others** reported in **(2019) 2 SCC 401**; **Dr Sharma's Nursing Home Vs. Delhi Admn. and others** reported in **(1998) 8 SCC 745** and **Binod Kumar and others Vs. State of Bihar and another** reported in **(2014) 10 SCC 663**. Challenging the issue relating to vicarious liability, petitioners relied upon **S.K. Alag Vs. State of U.P.** reported in **AIR 2008 SC 1731**, **Maksud Saiyad Vs. State of Gujarat** **2007 Law Suit (SC) 1039** and **Sunil Bharti Mittal vs. Central Bureau of Investigation** reported in **(2015) 4 SCC 609**.

As the petitioners contend that further continuance of the proceedings would be an abuse of the process of law, the same should be quashed.

Mr. Angshuman Chakraborty, learned advocate appearing for the complainant/opposite party no.2 submitted that the very purpose of the accused persons were to inflate the bills and accept the payment. In fact had the complainant not demanded the requisite documents under no circumstances the accused persons would have accepted the extra billing which was charged and paid by the complainant. To substantiate his contention learned advocate relied upon Sri **Aurobinda Seva Kendra and**

others Vs. State of West Bengal and another reported in **2017 SCC OnLine Cal 9198** wherein paragraph 22 was relied upon which is as follows:

“22. It is true the petitioner No. 1, Sri Aurobinda Seva Kendra, a juristic person and both the offences involve presence of mens rea and the offence punishable under Section 420 IPC prescribes mandatory imprisonment. However, in the light of the decisions of the Apex Court in the case of Iridium India Telecom Limited v. Motorola Incorporated reported in (2011) 1 SCC 74 that would not operate as a bar in prosecuting the nursing home, Sri Aurobinda Seva Kendra, the petitioner No. 1 on the face of the allegation against it that the nursing home authority raised inflated bills for the medicines and realised payment against such bills without actually administering such medicines to the patient and unused medicines were not returned to the complainant. The question that those allegations are false, are pure questions of facts and essentially the defence of the accused, therefore, the same cannot be gone into. So far as the petitioner Nos. 4 and 5 are concerned, who are the Medical Director and Chief Executive Officer of the petitioner No. 1, from their designations itself it is apparent that they were the persons, who were managing, running and looking after the day-to-day affairs of Sri Aurobinda Seva Kendra, a juristic person, at that material point of time, when the offence allegedly committed. Thus, the question of quashing of the impugned criminal proceeding against them does not at all arise.”

Mr. Ganguly, learned senior advocate distinguishes the factual matrix of the cited case relied upon by the complainant on the ground that there were allegations of negligence in treatment, deficiency of service along

with inflated bills being raised and as such the said case has no applicability to the present case.

I have considered the allegations made in the petition of complaint as also the evidence under Section 200 of the Code of Criminal Procedure (initial deposition) of the complainant Kollol Kumar Sen and his witness Uttam Kumar Basu. Both the witnesses apart from the issue relating to inflated bill of Rs.2,500/- being charged for a test which was not done also specifically alleged in respect of accused persons Suvendu Prakash and Anup Bhaduri who pushed the complainant into the office and threatened him that they are least bothered of such crimes and if the same is disclosed he may have to face concern relating to safety of his life.

The aforesaid act of the two accused persons prima facie do make out an offence under Section 504 of the Indian Penal Code. At this stage, the concern of the Court is to see whether the allegations in the complaint do make out an offence.

On an assessment of the whole complaint, I am of the view that offence has been made out, however, the complicity of all the persons are to be assessed. It is an admitted position that the petitioner nos.1 and 3 are having their address at a separate territorial jurisdiction, although petitioner no.1 is an artificial person but petitioner no.3 is a natural person, his complicity relating to the offence is to be assessed on a different yardstick under Section 200 of the Code of Criminal Procedure prior to issuance of process.

Accordingly, the order dated 11.03.2021 issuing process is set aside. Learned Judicial Magistrate, 2nd Court, Barasat, North 24 Parganas would assess regarding the complicity of the petitioner no.3 as also petitioner no.1 before issuing process.

The revisional application being CRR 967 of 2021 is partly allowed.

Pending applications, if any, are consequently disposed of.

Interim order, if any, is hereby vacated.

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

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

(Tirthankar Ghosh, J.)