

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

Present: - Hon'ble Mr. Justice Subhendu Samanta.

**CRR 1618 of 2018
With
IA CRAN 6 of 2020
(Old No. CRAN 948 of 2020)
+
CRAN 7 of 2021**

**Sanjay Prasad
Vs.
State of West Bengal & Anr.**

For the petitioner	:	Mr. Milon Mukherjee, Sr. Adv. Mr. Biswajit Manna,
For the State	:	Ms. Sujata Das, Mr Narayan Prasad Agarwala, Mr. Pratick Bose
Judgment on	:	09-01-2023

Subhendu Samanta, J.

This is an application under Section 482 of the Code of Criminal Procedure for quashing of criminal proceedings of A.C.G.R. Case No.1809 of 2015 corresponding to T.R. 933 of 2015 pending before the Court of the Learned Judicial Magistrate, 3rd Court. Alipore arising out of Purba Jadavpur Police Station Case No.42 of 2015 dated 29.3.2015 under Section 338 of the Indian Penal Code.

The present petitioner is the erstwhile Chief Executive Officer

Medica Superspeciality Hospital, Calcutta. One petition of complaint was lodged by the opposite party no.2 with the Officer-in-Charge of Purba Jadavpur Police Station contending inter alia that brother of the de facto complainant namely, Somnath Roy was admitted to Medica Superspeciality Hospital on 5.3.2015 under the supervision of Dr. Akhilesh Aggarwal in Bed No.405. On 6.3.2015 at around 5.30 a.m. the hospital authority informed the opposite party no.2 that her brother had fallen from the 5th floor window and is in a very serious condition. It is also alleged that the entire incident occurred due to the negligent attitude of the hospital authorities. The hospital authorities had also assured best treatment from their end. The opposite party no.2 alleges serious negligence on the part of the hospital authorities.

On the basis of the said complaint Purba Jadabpur Police Station case no.42 of 2015 was initiated and police took up the investigation. After completion of investigation the investigating agency submitted charge sheet being no.183 of 2015 dated 31.8.2015 under Section 338 of the Indian Penal Code against the present petitioner. The Learned Magistrate took cognizance of the offence on the basis of the said charge sheet. Hence this revisional application.

Learned advocate for the petitioner submitted before this Court that the present petitioner is the Chief Executive Officer and he is responsible for the policy making decision for the hospital/company. He further argued that the ingredients under Section 338 of the Indian Penal Code were not at all fulfilled by the purported investigation of the police. He again pointed out that the statement of available witnesses, which was

recorded by the police under Section 161 of the Code of Criminal Procedure would reveal that the victim himself jumps from the 5th floor of the terrace. The voluntary act of the person cannot be described as a criminal complicity. No active participation of the present petitioner is there for commission of such incident wherein the brother of the opposite party no.2 was sustained injury. He further submits that Section 338 of the Indian Penal Code relates to the act of a person in his individual capacity. Only for being the head of an institution the petitioner cannot be held as an accused in the case where the act speaks of an act by an individual. So, he prayed for quashing of the criminal proceeding.

Learned advocate appeared on behalf of the State submitted before this Court that the negligence on the part of the hospital authority cannot be denied the investigation of the police ended in charge sheet. The materials in the charge sheet are sufficient regarding prima facie involvement of the present petitioner in the alleged offence. The present petitioner being the head of the institution cannot deny his liability. At this juncture, the criminal proceeding cannot be quashing.

Heard the learned advocate perused the FIR also perused the charge sheet along with the materials therein. It appears that during the course of investigation police has recorded the statement of available witnesses. All and every witnesses equivocally stated that the victim himself open the window and jump out from 5th floor and sustained injury. The attending Doctor and Nurses also does not stated regarding the involvement of the present petitioner in the alleged offence. The statement of the victim was also recorded. He also did not state regarding the participation of rash and

negligent act by the present petitioner.

Section 338 of Indian Penal Code defines causing grievous hurt by act endangering life or personal safety of others is as follows:

“338. Causing grievous hurt by act endangering life or personal safety of others.- Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.”

To prove an offence under Section 338 of the Indian Penal Code there are some ingredients to be fulfilled. They are (1) Accused did some act. (2) He did it rashly or negligently; (3) The act was such as to endanger human life or personal safety of others. (4) Grievous hurt was caused in consequence of such act.

So it is quite clear that to fulfil the first ingredients, there must have been some act by the accused here. The prosecution case is miserably failed to indicate any Overtact by the present petitioner in the alleged commission of jumping by the victim from the 5th floor of the hospital. If I can stretch the definition of the term “act” as mentioned in Section 338 of Indian Penal Code as “Omission” then also the prosecution could not bring out any materials so that anything has been done by the hospital authority/petitioner negligently so that the victim has committed jumping.

Considering the entire circumstance and considering the materials on record, I am of the view that if the fact of the FIR is taken to be true in its face value, then also the prosecution could not prove the guilt

against the present petitioner in trial. Thus, this is a fit case where this court can invoke its inherent power enumerated under Section 482 of the Code of Criminal Procedure to quash the criminal proceeding pendency of which would tantamount to be the abuse of the process of the Court.

In conclusion, the instant criminal revisional application is allowed. The criminal proceedings of A.C.G.R case No.1809 of 2015 corresponding to T.R. 933 of 2015 pending before the Court of the Learned Judicial Magistrate, 3rd Court. Alipore arising out of Purba Jadavpur Police Station Case No.42 of 2015 dated 29.3.2015 under Section 338 is hereby quashed.

Connected pending CRAN applications, if any, are consequently disposed of.

Any order of stay passed by this Court during the pendency of the instant criminal application is hereby also vacated.

Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Subhendu Samanta, J.)