

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

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

CRR 1968 of 2022

**Jagadish Chandra & Ors
Vs.
The State of West Bengal & Anr.**

For the petitioner : Mr. Arunangshu Chakraborty
Ms. Geniya Mukherjee
Ms. Shrabani Banerjee
Mr. Arijit Bera
Ms. Jeba Rashid

For the State : Mr. P.K. Dutta, Ld. APP
Md. Kutubuddin
Mr. Santanu Deb Roy

Heard on : 23.03.2023

Judgment on : 26.04.2023

Ajoy Kumar Mukherjee, J.

1. Being aggrieved and dissatisfied with the initiation and/or continuation of the proceeding being G.R. case No. 672 of 2021, pending before the court of Learned Additional Chief Judicial Magistrate, Raghunathpur, District Purulia, present application has been preferred under section 482 of the code of Criminal procedure praying for quashing the same. One Asha Mondal Roy on 23.09.2021 filed a written complain alleging that in the evening of that date

she went to market for shopping, where she found the present petitioners claimed themselves as Dhannantari (expert doctor) were dissuading and leading common people at Santuri market, stating that many people died due to administering vaccine used to combat Corona virus Disease of 2019 (in short COVID). They also requested people in that area not to take COVID vaccine because the COVID patients can only recover by the treatment prescribed by them. It has been further alleged in the complain that hearing this, people of that locality got frightened about COVID vaccination. They (Petitioners herein) also distributed some leaflets in order to misguide the people and their only object was to earn by illegal means, propagating their fake medical treatment. With the help of such false propagation, they have misguided people, which may create tension in the locality.

2. On the basis of the said written complain police initiated the proceeding against the present petitioners under sections 188/153/417/419/505/506/120B/34 of the Indian Penal Code (in shout IPC) read with 51 (B) and 54 of the National Disaster Management Act, 2005 (in shout Act of 2005). After completion of investigation police submitted charge-sheet under the aforesaid sections against the petitioners herein.

3. Mr. Arunangshu Chakraborty learned counsel appearing on behalf of the petitioners submits that even assuming not admitting that the petitioners asked the people not to take COVID vaccine, then how the same can be treated as cheating or impersonation or conspiracy, specially when freedom of expression is guaranted under article 19 of the Constitution of India. He further submits that the leaflet attached with the FIR clearly shows that it

referred two qualified doctors and nutritionists for free consultation and it is not understandable how an attempt to create awareness about side effects of COVID vaccination and/or to give advice to consult qualified doctors and nutritionists prior to go for Vaccination, can be treated as an offence under the IPC or under the Act of 2005. He further submits that unfortunately the Magistrate had taken cognizance upon charge-sheet, though no case has been made out under any of the provisions of the said statutes. The learned magistrate without caring to apply his mind to the allegations, as well as so called material evidence collected in support of the charge-sheet, which comprises of a hand bill, one white colour maruti van (ambulance) and one permission copy of Searite Hospital and welfare society Bakhrahath, south 24 Parganas, had taken Cognizance of the offence. Taking of Cognizance on the basis of aforesaid documents, which were seized by police in support of prosecution case, only indicates non-application of mind by learned magistrate. In fact out of two leaflets one leaflet only states how one can get himself cured without medicine from COVID by following certain procedure and taking sufficient food. Invitation was also made through the leaflet that one may take advice free of cost and details of which was referred through website link.

4. Mr. Chakraborty further submits that Government of India filed an affidavit in Supreme Court in connection with writ petition civil no. 580 of 2021 wherein the health department, Government of India submitted that administering of COVID Vaccine and using of mask merely advisory and not mandatory. The other leaflet which has been distributed pertains to the

untimely death of two young ladies who died due to side effect of COVID vaccination. He further submits that said death news has been circulated through various news channel. Accordingly it is clear that if the allegations contained in the FIR are taken even at their face value and accepted in their entirety, it does not prima facie constitute any offence against the present petitioners. He further submits Article 19 of the constitution of India guaranteed freedom of speech and expression subject to reasonable restrictions contained in Article 19(2) to (6) and accordingly expressing opinion if any, against the COVID vaccination or about wearing mask is not an offence under any of the provisions of IPC or under Act, of 2005.

5. Accordingly Mr. Chakraborty submits that cognizance taken by the Magistrate is clear abuse of the process of the court. There is no allegation that the petitioners who are members of a “Movement” having its own website, have cheated any person by giving advise not to take vaccine. He also submits that by no stretch of imagination, expressing opinion and asking to take advice for covid treatment free of cost can be treated as an offence. Police has made a false submission before the court that the petitioners demanded themselves that they are doctors having capacity to cure COVID without any medicine but the contents of leaflet, relied in support of the prosecution case, makes it clear that in the leaflet name of the doctors given with their address with whom consultation can be made free of cost. Mr. Chakraborty strenuously argued that the materials collected in support of the allegation do not disclose any cognizable offence which can justify a trial before the learned Magistrate. He further submits that said criminal proceeding is manifestly accompanied with

malafide and the allegations made in the First Information Report (FIR) are so absurd and inherently improbable on the basis of which no prudent man can ever reach a just conclusion that there exists sufficient ground for proceeding against the accused. In fact the petitioners merely expressed their opinion regarding the side effect of COVID vaccination and have only advised local people to take advice from the registered doctors and nutritionists free of cost whose names and address are given for consultation in the leaflet. In this context he further submits that every citizen of India has right to express his opinion against using any medicine which has not been accepted till date by the World Health Organization as a sure shot remedy and when it is still under clinical trial. He further submits Covishield vaccination has been banned in many European Countries for harmful side effects. Moreover, no material has been collected by the police that due to opinion allegedly expressed by the petitioners any person has been cheated nor there is any material to show that the petitioners introduced themselves as doctor for their personal gain. Accordingly the petitioners have prayed for quashing the aforesaid proceeding.

6. Mr. Santanu Deb Roy learned Counsel appearing on behalf of the State produced the case diary and submits that materials available in the case diary does not justify continuation of further proceeding and materials collected during investigation can hardly result in a conviction against the accused persons.

7. I have gone through the FIR along with leaflets attached with the FIR. Though in the FIR, it has been stated that the petitioners were propagating that many people died due to COVID Vaccination and a COVID patient can

recover from illness only by the medication prescribed by them but the attached leaflet which is written in Bengali goes to show that in the first leaflet they have only stated that two young ladies died due to side effect of the COVID vaccination and accordingly the petitioners under the banner of “Awaken India Movement” asked the people to get following detailed information before one should go for COVID Vaccination

- (i)** About necessity of COVID vaccination
- (ii)** Whether such vaccination has passed clinical tests for injecting in human body
- (iii)** How far such vaccination is safe for human body
- (iv)** What are the present and future side effects of such vaccination
- (v)** How many people died and how many people suffered damage due to such vaccination.

In the second and third pages of the leaflet they have only stated about certain steps and concluded that neither the lockdown nor the social distancing can keep someone safe from COVID but it's the immunity power of a human being which can protect people from COVID. At the end, for free medical advice name and address of consultant doctors have also been given.

8. On perusal of the case diary it appears that during investigation police has recorded statements of some persons under section 161 of the Cr.P.C. and had seized said leaflet and one ambulance in support of prosecution case. On perusal of the statements recorded by the police under section 161 of the Cr.P.C, it appears that the witnesses have tried to demonstrate that the petitioners attempted to create panic among the common people by distributing

leaflet and propagating through leaflet about their own method of combating the disease in total disregard to the treatment prescribed by Government, but no evidence or document has been placed before the court, as to how and upon whom it created panic or who has affected by such panic or how it had frightened the common people.

9. In fact in the supplementary affidavit filed by the petitioner, the petitioner has referred an affidavit dated 13.01.2022 filed on behalf of the Union of India before Supreme Court of India in connection with writ petition (Civil No. 580/2021) and paragraph 13 and 14 of the said affidavit runs as follows:

“Consent of persons with disabilities” It is humbly submitted that the directions and guidelines released by Government of India and Ministry of Health and Family Welfare, do not envisage any forcible vaccination without obtaining consent of the concerned individual. It is further humbly submitted that vaccination for COVID-19 is of larger public interest in view of the ongoing pandemic situation. It is duly advised, advertised and communicated through various print and social media platforms that all citizens should get vaccinated and systems and processes have been designed to facilitate the same. However, no person can be forced to be vaccinated against their wishes.

Exemption from vaccination certificates for persons with disabilities: it is most respectfully submitted that the Government of India has not issued any SOPs which make carrying of vaccination certificate mandatory for any purpose.”

10. Furthermore in the supplementary affidavit dated 30th August, 2022 the petitioner has also brought to the notice of the court the Casualty Assessment result of 254 reported serious adverse events following immunization cases following COVID-19 vaccination, dated 17th May, 2022 which states that 78 out of 254 cases were found to have a consistent casual association to vaccination and out of 78 cases 31 cases were vaccine product-related reaction including two deaths and 47 cases were immunization anxiety related reaction.

122 cases have an inconsistent casual association to immunization (co-incident-not linked to vaccination) including 83 death cases. 33 cases were in the indeterminate category including one death case. Said casual assessment result concludes that the overall benefits of vaccination are overwhelmingly greater than the small risk of harm. However, as a measure of utmost precaution all emerging signals of harm are being constantly tracked and reviewed periodically.

11. In this context the observation made in paragraph 15 by the Apex Court in suo-moto writ petition (civil no. 3 of 2021) can be referred,

“The supreme court of United States, speaking in the wake of the present COVID-19 pandemic in various instances, has overruled policies by observing, inter alia, that “Members of this Court are not public health experts, and we should respect the judgment of those with special expertise and responsibility in this area. But even in a pandemic, the constitution cannot be put away and forgotten” and “a public health emergency does not give Governors and other public officials carte blanche to disregard the Constitution for as long as the medical problem persists. As more medical and scientific evidence becomes available, and as States have time to craft policies in light of that evidence, courts should expect policies that more carefully account for constitutional rights”.

12. I have considered the materials in the record as well as is the case diary wherefrom it appears that the petitioners were booked and charge-sheet submitted under sections 188/153/417/419/505/506/120B/34 of the IPC and sections 51(B)/54 of the Act of 2005. In this context it can be said that Section 188 of IPC provides punishment for any person for disobedience of any order promulgated by a public servant lawfully empowered to promulgate such order. Here informant in the present case admittedly not a public servant and as such filing of the charge-sheet and/or taking cognizance in the present case under said section is barred under section 195(1) (a) (i) of the Cr.P.C

because under the said section, there is clear cut bar for taking cognizance of the offence punishable under section 172-188 (both inclusive) of IPC except on the complaint in writing of the public servant concerned or some other public servant to whom he is administratively subordinate. Provisions of section 195 Cr.P.C. are mandatory and no court has jurisdiction to take cognizance of any of the offences mentioned therein unless there is a complaint in writing as is required under that section. (Reliance has been placed upon para 5 of **M.S. Ahlawat Vs. State of Haryana reported in (2000) (1) SCC 278**). In view of absolute bar against the courts for taking cognizance of the offence punishable under section 188 except in the manner provided by section 195 of the Cr.P.C., cognizance is barred by law and the bar under section 195 (1) of Cr.P.C. clearly applicable in the instant matter and learned Magistrate is not at all empowered to take cognizance under that section.

13. The petitioners are also booked under section 153 of the IPC and needless to say that section 153 of IPC deals with the provocation with intent to cause riot. By no stretch of imagination allegations leveled in the FIR and materials collected in the case diary suggest for a moment that any allegation of provoking riot has been leveled against the petitioners herein and as such said section does not have any application in the present context. Similarly section 505 of IPC can be triggered to a person whoever makes publishes or circulate any statements or rumor or report with intent to cause or which is likely to cause fear or alarm to the public or to any section of the public. In an offence under section 505, *mens rea* is the essential ingredient of the offence

and the prosecution is required to show that with intent to cause which he knew to be likely to cause fear or alarm to the public, offender induced any person to commit an offence against the state or public tranquility. No such allegation has been leveled against the accused persons/petitioners. On the contrary the contents of the leaflet allegedly distributed under the banner of a movement, goes to show that they tried to aware people according to their own philosophy and way of thinking/perception and no *mens rea* is apparently reflected to the materials available in the record. Section 506 deals with punishment for criminal intimidation but in the present context there is no allegation that the accused persons threatened anyone with injury to any one's person reputation or property or they have done anything with intent to cause alarm to anyone to perform any act which he was not legally bound to do. Similarly though prosecution have alleged commission of offences under section 417 and 419 of the IPC against the petitioners which deals with the punishment for cheating by personation but there is nothing to show that under the definition of cheating as stated in section 415 of the code, the petitioners have deceived any person fraudulently or dishonestly by making false or misleading representation induced any person including the person who has lodged the complain to deliver any property to any person nor there is any material to show that they have pretended themselves to be a doctor or has represented themselves as doctor so that the provisions relating to cheating can attract in the present case. It is now well settled that absence of culpable intention at the time of making promise being absent no offence of cheating can be said to have been made out. On the contrary contents of

leaflet clearly refers to the names of doctors and others with whom they are suggesting for making free consultation.

14. Though the accused persons are also booked under the provision of section 51(B) and section 54 of the Act of 2005 but on perusal of section 60 of that Act it appears that no court shall take cognizance of offence under the said Act except on a complaint made by either the National authority or State authority or the central Government or the State Government or the district authority or any other authority or officer authorized in this behalf by that authority or Government as the case may be or by any person who has given notice of not less than 30 days in the manner prescribed of the alleged offence and his intention to make a complaint before any of the above authority. From the facts and circumstances of the case, it is also clear that the present proceeding is again barred under section 60 of the Act of 2005.

15. When no offence is made out and the allegations do not disclose any cognizable offence, the question of application of section 120(B) or 34 of the IPC does not arise in the present context.

16. In this context it would not be out of context to refer observation of Apex Court in a similar type of occurrence being Writ Petition Civil No. 1220 of 2021 (Rachana Gangu & another Vs. Union of India & others) where the submission before the Court was that after vaccination, two daughters of the petitioners aged 18 and 20 years suffered from severe Adverse Effects Following Immunization (AEFI) and died untimely. The petitioners had made representations to the authorities concerned which had not been adequately

replied. The Apex Court in the said judgment was pleased to observe as follows:-

“ Though ordinarily we would have considered relegating the petitioners to the appropriate regular remedies because the matter might involve determination of certain basic questions of fact so as to bring it within the four-corners of a case of medical negligence but having regard to the post- mortem report filed with the additional documents, the submissions that the Government has not represented to the petitioners’ representation, and the nature of reliefs claimed, it appears appropriate to call upon the respondents to reply.”

17. In view of aforesaid discussion it is clear that the prosecution has miserably failed to substantiate from materials available in the record that even if allegations are taken in it’s face value, it disclose essential ingredients of the offences under which the petitioners are booked and charge sheeted. The allegations are patently absurd and inherently improbable so that a prudent person can ever reach a conclusion that there are sufficient grounds for proceeding. In the present case the magistrate’s exercise in taking cognizance on charge sheet is capricious and arbitrary having based on no evidence and /or on the basis of materials which are barred by law in taking cognizance and as such it suffers from fundamental legal defects. On perusal of FIR, the final report and all other documents accompanied it, I am satisfied that no case is made out against any of the petitioners and it cannot be allowed to proceed with as the same would not subserve the cause of justice. Furthermore from the materials available in the record there is hardly any chance of conviction at the end of trial with regard to the offences leveled against the petitioners and as such the continuation of the present proceeding would be an abuse of process of the court and as such the proceeding is liable to be quashed.

18. Accordingly CRR 1968 of 2022 is hereby allowed.

19. The entire proceeding being G.R. Case No. 672/2021 arising out of FIR NO. 55/2021 dated 23.09.2021(charge sheet no. 65/2021 dated 31.12.2021) presently pending before learned Additional Chief Judicial Magistrate, Raghunathpur, Purulia is hereby quashed.

However, there will be no order as to costs.

Case Diary be returned to the state at once.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(AJAY KUMAR MUKHERJEE, J.)