

Form J(1)

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

**Present :
The Hon'ble Justice Bibek Chaudhuri**

C.R.R. 4551 of 2022

***Tapan Mukherjee
Vs.
The State of West Bengal & Anr.***

**For the petitioners : Mr.Arka Pratim Chowdhury,Adv.
Mr. Sunny Nandy, Adv.
Mr. Subha Pathak, Adv.
Mr. Tamal Singha Roy, Adv.
Mr. Nurnobi Seikh, Adv.**

Heard on : 11.01.2023

Judgment On : 11.01.2023.

Bibek Chaudhuri, J.

The petitioner is facing trial in S.T. Case No.5(4) of 2017 arising out of Baguihati Police Station Case No.679 of 2012 dated 17th October, 2012 under Sections 304/304A of the Indian Penal Code read with Section 7(c) of the West Bengal Clinical Establishment Act, 1950 presently pending before the learned Additional Sessions Judge, 1st Court at Barasat.

In the said case, the petitioner filed an application under Section 227 of the Code of Criminal Procedure praying for discharge. However, the said petition was rejected. Ascertaining the order of

rejection of the petition under Section 227 of the Code of Criminal Procedure, the petitioner has moved the instant revision.

It is submitted on behalf of the petitioner that the petitioner is a Medical Practitioner sometimes in the year 2012. The deceased wife of the de-facto complainant was admitted to a Nursing Home under the present petitioner and one Jaydip Basu for operation of gallbladder and ovarian cyst. Two days after the operation, the patient collapsed and died on 17th October, 2012.

On the basis of a complaint made by the husband of the de-facto complainant, the matter was initially enquired into by the MCI. MCI penalized the doctors, suspending their practicing licences. The petitioner challenged the said penal action of the Indian Medical Council before this Court in writ jurisdiction. This Court allowed the writ petition filed by the petitioner by setting aside the order passed by the Medical Council of India and directed the West Bengal Medical Council to enquire into the matter afresh. The West Bengal Medical Council accordingly enquired into the matter. The concerned Doctors, Autopsy Surgeon, other Doctors and the administrative staff of the Nursing Home were examined by the Ethics Committee of the Council. It was specifically found that before the death of the patient, he was under the supervision of an RMO named Dr. Abdur Rahaman. It was also reported that by the side of the dead body of the deceased, an

empty ampule of Midazolam injection was lying. It was also observed by the West Bengal Medical Council that entire process of operation was videographed and immediately after the operation a CD contained photographs was handed over to the husband of the deceased. But the Autopsy Surgeon did not consider the said CD at the time of post mortem to ascertain as to whether there was any lapse in conducting the operation or not.

Petitioner is about to face trial in a Sessions Case under Sections 304/304A of the Indian Penal Code and other cognate provisions.

It is pointed out by the learned Advocate for the petitioner that the Investigating Officer did not consider that the patient was under the supervision of an RMO who was not a registered Medical Practitioner. However, he was appointed by the concerned Nursing Home. Secondly, the Investigating Officer did not also consider as to whether the PM report stands in view of the CD and the role of the petitioner was confined only in respect of successful operation of the patient.

It is submitted that patient was successfully operated and her condition was stable after the operation.

It is ascertained from the submissions made by the learned Advocate for the petitioner that police submitted charge-sheet in this

case in the year 2017. Charge was framed against the accused/petitioner. Therefore, the learned Trial Judge rightly held that the petitioner under Section 227 of the Code of Criminal Procedure cannot be entertained after framing of charge.

However, this Court is not agreeable with the observation of the learned Trial Judge that in the trial of the case pending before him, the report of the West Bengal Medical Council is not required to be looked into.

The case relates to medical negligence. A Trial Judge not being an expert of Medical Practice, surgical procedure, management of patient after surgery etc. He is bound to take recourse of expert opinion to decide the case. In the case before him expert opinion contains in the form of postmortem report and the Investigating Officer cited the Autopsy Surgeon as an witness.

Therefore, the learned Trial Judge is directed to take in to account the report of the West Bengal Medical Council. If required, he is at liberty to examine the Doctors comprising the Panel and Ethics Committee at the relevant point of time of the West Bengal Medical Council as defence witness and finally, he shall take the decision as to whether the accused persons are liable to be convicted under the charge or not.

It is also found from the record that the instant matter is pending for long. Therefore, learned Trial Judge is requested to decide the case expeditiously. If during trial, the name of any person or Nursing Home transpires as party to the negligence, the learned Judge is at liberty to issue process against them.

With the above discussion, the instant revision is **disposed of**.

(Bibek Chaudhuri, J.)

***Mithun De/
A.R. (Ct).
SI No.13.
D/L.***