

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.8464 of 2024

Arising Out of PS. Case No.-1373 Year-2018 Thana- BEGUSARAI COMPLAINT CASE
District- Begusarai

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Dr. Ram Suphal Pandit, Male, aged about 50 years, son of Late Ram Nandan Pandit. Resident of Muhalla- Mirganj, Ward No. 23, PS. Begusarai Town, Dist. Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Diwakar Choudhary S/o Late Jaikisun Chaudhary Village- Chiranjivipur, PS. Bachhwaraa, Dist. Begusarai.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr.Sanjeev Ranjan, Advocate
For the State	:	Mr.Madan Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

6 25-07-2024 Heard learned counsel for the petitioner and learned APP for the State.

2. The present application has been filed for quashing the order dated 23.11.2023 passed in Criminal Revision No. 213/2023 by the Additional Sessions Judge III, Begusarai, affirming the order dated 30.05.2023 passed in Complaint Case no. 1373C/2018 by the Judicial Magistrate 1st Class, Begusarai whereby the discharge petition filed by the petitioner under Section 245 of the Code of Criminal Procedure for discharging him from facing trial for offence under Sections 406 & 504 of the Indian Penal Code has been rejected and the trial Court has directed for framing of charge which order is illegal.



3. The prosecution case in brief is that a complaint case was filed by Diwakar Choudhary before the Court of CJM Begusarai alleging therein that the son of the complainant was under the treatment in the hospital of Dr. R.S. Pandit (petitioner) from 24.06.2017 to 24.08.2017. It is thereafter alleged that the operation was incorrectly performed by the petitioner as a result of which the son of the complainant, Mayank Kumar got his three-nerve cut. It is further alleged that the condition of the hand of the son of the complainant was not improving and the son of the complainant was struggling between life and death. The complainant started getting worried and thereafter the doctor advised that the patient may be taken outside Bihar for better treatment. The complainant thereafter somehow managed to arrange funds and reached Delhi and took his son to AIIMS for treatment where the doctor stated that the condition of his son was serious as the procedure for performing surgery was wrong and thereafter on 18.10.2017, the doctors at AIIMS referred him to Jayaprakash Narayan AIIMS Trauma Centre for better treatment where the treatment of son of the complainant started and the treatment continued till 08.07.2018 and the nerves got repaired and fused.

4. The complainant along with his wife and one



witness Vijay Kumar Singh was present during the course of treatment as a result of which the complainant had to incur expenditure of around Rs.9,50,000/- and thus he suffered the loss of said amount due to wrong surgery. Consequently, the complainant issued a legal notice dated 24.07.2018 whereupon the petitioner responded through reply dated 09.08.2018 sent by his Advocate.

5. Learned counsel for the petitioner submits that after registration of the complaint petition, the complainant was examined on solemn affirmation and thereafter in course of enquiry under Section 202 Code of Criminal Procedure, the complainant got examined three witnesses in support of the allegation. It is relevant to state that none of the three witnesses examined in support of the charge of rashness or negligence on part of the petitioner-doctor in performing the surgery. Further, from the perusal of prescription, there is no opinion recorded that it was a case of medical negligence or rashness in performing the surgery and the doctor has not adopted normal procedure for conducting such surgery or the nerve was cut.

6. It is further submitted that the Magistrate did not direct the son of the complainant to get medically examined by a team of expert as it is the requirement in cases of medical



negligence or charge of rashness in performing operation and therefore, the Magistrate could not have proceeded further on the complaint without first obtaining an expert opinion and thus erred in closing the enquiry without examining any expert and subjecting the son of the complainant to be examined by a team of expert to elicit their opinion to record a *prime facie* finding of negligence.

7. It is also submitted that the Magistrate after going through the complaint and on perusal of the statement of complainant and enquiry witnesses recorded in course of enquiry, made a conclusion vide order dated 11.04.2019 that a *prima facie* offence under Sections 406 and 504 of the Indian Penal Code is made out against the petitioner and accordingly directed the office to issue summons which order *per se* is illegal.

8. Learned counsel for the petitioner submits that the petitioner has assailed the order dated 11.04.2019 by preferring a quashing petition before this Court which was registered as Criminal Miscellaneous No. 82770 of 2019. Since the case was not being taken on board and the trial Court was insisting for appearance of the accused, the petitioner under such circumstances sought withdrawal of the quashing petition and



accordingly the quashing petition was dismissed as withdrawn vide order dated 25.01.2023.

9. It is further submitted that the complainant got examined four witnesses before charge to support the allegation that there was an expenditure of Rs.9,50,000/- incurred by the complainant for the treatment of his son and the reason for such expenditure was on account of performance of wrong surgery by the petitioner.

10. It is next submitted that the petitioner thereafter filed a discharge petition under Section 245 of the Code of Criminal Procedure stating therein that no case for proceeding against the petitioner is made out and the pre-charge evidence if unrebutted would not warrant his conviction and the criminal proceeding cannot be instituted and allowed to be used as an arm twisting method for money recovery. Since the basic requirement to establish medical negligence is the examination of medical expert and admittedly no medical expert has been examined in the present case and therefore, the charges levelled against the petitioner are groundless.

11. He submits that the discharge petition filed by the petitioner was rejected vide order dated 30.05.2023 passed in Complaint Case no. 1371C/2018 by the Judicial Magistrate, 1st



Class, Begusarai on the ground that on perusal of the statement on solemn affirmation of the complainant and statement of three enquiry witnesses, a *prime facie* case is made out to attract offence under Sections 406 and 504 of the Indian Penal Code, which finding is illegal and unsustainable.

12. It is submitted on behalf of the petitioner that being aggrieved by the order dated 30.05.2023 passed in Complaint Case no. 1371C/2018 by the Judicial Magistrate, 1st Class, Begusarai, the petitioner preferred Criminal Revision under Section 397 Code of Criminal Procedure before the Sessions Judge, Begusarai which was registered as Criminal Revision no. 213/2023.

13. He further submits that the case was transferred to the Court of Learned Additional Session Judge III, Begusarai. The Additional Session Judge III, Begusarai after hearing the parties dismissed the Criminal Revision no. 213/2023 vide order dated 23.11.2023 by holding that slight suspicion raised against the accused on the basis of material available on record would be sufficient for framing of charges under Sections 406 and 504 of the Indian Penal Code and accordingly rejected the criminal revision without assigning any reason as to how and in what manner the case of entrustment, which is a *sin que non* to



constitute an offence under Section 406 of the Indian Penal Code is made out.

14. Learned counsel for the petitioner submits that the petitioner is a qualified doctor who was competent to perform the surgery on the son of the complainant. The son of the complainant had come with a broken right forearm with weakness in the fourth and fifth finger with loss of sensation and on clinical and radiological examination, it transpired that there was a fracture of both bones of the forearm i.e, radius and ulna situated in between the elbow and wrist. The son of the complainant was admitted in his hospital after 4 days of suffering injury in his right forearm. It is relevant to state that except oral evidence that surgery by the petitioner resulted in cutting of his son's nerve, there is no iota of documentary evidence in the form of medical prescription issued by doctors who treated the son of the complainant at Delhi that he was treated for cutting of nerve on account of wrong procedure in performing a surgery. The treatment at Delhi was for loss of movement in fourth and fifth finger and not for cutting of nerve due to surgical intervention.

15. It is further submitted that the petitioner has completed his MBBS course from A.N.M.C.H, Gaya and his



MS degree in orthopedics from D.M.C.H, Darbhanga both from a recognized government college and is registered with the Bihar Council of Medical Registration. Thus, the petitioner was a qualified doctor who was competent and qualified to perform the surgery on the son of the complainant.

16. Learned counsel for the petitioner submits that no case under Section 406 of the Indian Penal Code is made out as there is no allegation that any amount was entrusted to the petitioner which the petitioner had dishonestly misused in violation of any contract or obligation imposed upon the petitioner as mere expenditure incurred at Delhi for treatment by the complainant on his son under no stretch of imagination would attract the mischief of Section 406 of the Indian Penal Code and further in absence of evidence that there was an intentional insult which provoked the complainant to cause him to break the public peace or to commit any other offence, no case under Section 504 of the Indian Penal Code is made out, and thus the orders impugned suffers from perversity as both the courts below failed to notice that there was no averment in the complaint nor any material was available to constitute an offence under Sections 406 and 504 of the Indian Penal Code.

17. Learned counsel further submits that from perusal



of the complaint it is apparent that the complainant had lodged the present complaint for recovery of money incurred on his son's treatment at Delhi and instead of pursuing civil remedy, had illegally set the process of criminal law in motion to pressurize and coerce the petitioner to meet his illegal demand.

18. Learned counsel for the opposite party no. 2 and learned APP for the State have opposed the prayer of the petitioner.

19. Learned counsel for the opposite party no. 2 submits that the complainant is a poor person and he has suffered and therefore he has filed the criminal case.

20. I have considered the submissions of the parties. From perusal of the complaint, it appears that the complainant has lodged this complaint for recovery of money which he has spent for his son's treatment in Delhi. For any negligence said to have been committed by the petitioner, who is a doctor, before taking cognizance in a complaint against a doctor, the opinion of an expert doctor should have been taken.

21. From the reading of the complaint, it appears that the thrust of the allegation is for recovery of an amount spent on the treatment of the son of the complainant in Delhi. The complaint falls under the category of consumer under the



Consumer Protection Act, 2019 and he could have filed a case under the Consumer Protection Act against the doctor but he has chosen not to do so and filed a false case in the Court below.

22. In my opinion, no offence is made out against the petitioner in the facts of the case and this appears to be a *mala fide* prosecution which cannot continue.

23. In view of the above, this application is allowed.

24. The impugned order dated 23.11.2023 passed in Criminal Revision no. 213/2023 by the Additional Sessions Judge III, Begusarai, and also order dated 30.05.2023 passed in Complaint Case no. 1373C/2018 by the Judicial Magistrate 1st Class, Begusarai, are hereby quashed.

(Sandeep Kumar, J)

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