

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

**C.R.R. 2070 of 2012
With
CRAN 2 of 2013 (Old No. CRAN 2003 of 2013)**

**Dr. Rabindranath Halder
-Vs-
The State of West Bengal**

For the Petitioner : Mr. Arnab Chatterjee
Mr. Dhanasree Biswas
Ms. Poulami Bose

For the State : Md. Anwar Hossain
Ms. Sreyashee Biswas

Heard on : 02.08.2023, 26.09.2023, 29.11.2023, 11.12.2023

Judgment on : 08.03.2024

Ananya Bandyopadhyay, J.:-

1. The instant revisional application is filed by the petitioner against the order dated 03.04.2012 passed by the Learned Judicial Magistrate, 3rd Court, Ranaghat, Nadia in G.R. Case No. 369 of 2011 (Ranaghat Police Station Case No. 62 of 2011 dated 21.02.2011) under Sections 419/420 of the Indian Penal Code, thereby rejected the prayer of the petitioner for discharging him from the case.
2. Petitioner was functioning as a Deputy Administrative Medical Officer attached to T.B. Hospital, Ranaghat, Nadia after being appointed by the competent authority.

In the year 2000 by the order of the Assistant Chief Medical Officer, Nadia, Government of West Bengal he was deputed at Chakdah P.H.C. Nadia (O.P.D.) and subsequently he was transferred to the T.B. Hospital, Ranaghat. Petitioner stated that subsequently Ranaghat T.B. Association who operated the said T.B. Hospital, Ranaghat, (K.C. Guha Memorial T.B. Hospital, Ranaghat) handed over the said Hospital and its entire property to the Zilla Parishad, Nadia as it became impossible to protect the same from the act and activities of certain persons who tried to grab the property of the said Hospital by unwarranted means. Nadia Zilla Parishad delegated the day to day functioning the said Hospital gave “National Health Care Charitable Trust”, a charitable organization and also gave permission to the said trust to run a residential nursing training school and Thalasamia Detection Centre in the compound of the said Hospital by order dated 17.08.2010. Petitioner was attached to the said National Health Care Charitable Trust as Honorary Deputy Director.

3. Petitioner passed Unani Medicine from State Council of Unani Medicine, Government of West Bengal, 79B, Chittaranjan Avenue, Kolkata – 700073, in the year 1985 vide Registration No. 1340 and had been duly registered as Unani Practitioner. Thereafter petitioner completed the course of Bachelor of Indigenous Medicine in Allopathy from Biraja Medical College, Jajpur, Cuttack, Orissa in the year 1988. Subsequently petitioner completed the course of Family Welfare Training (F.W.T.) and Population Education Training (P.E.T.) in the year 1993. Petitioner also completed the course of Bachelor of Ayurvedic Medicine System from Nation Medical College, Umarkote, Orrissa in the year 1994. Thereafter

petitioner further completed the Allopathic Medical Refresher's Course in the year 1998 organized by Bengal Medical Union. Petitioner also completed the course of Community Medical Service (CMS) from the Indian Institute for Health Training, 226 B.B. Ganguly Street, Kolkata – 700012 conducted by Indian Rural Medical Association, registered under West Bengal Societies Registration Act, 1961 and affiliated to World Rural Medical Association, Geneva in the year 2009 and also completed Essential Drugs for Primary Health Care of WHO (EDT) from Indian Institute for Health Training, 226 B.B. Ganguly Street, Kolkata – 700012 conducted by Indian Rural Medical Association, registered under West Bengal Societies Registration Act, 1961 and affiliated to World Rural Medical Association, Geneva in the year 2010.

4. Petitioner had been arrayed as accused in Ranaghat Police Station Case No. 62 of 2011 dated 21.02.2011 for the commission of offences punishable under Section 419/420 of the Indian Penal Code and Section 6 of the Medical Degree Act, 1916/ The aforesaid case was registered for investigation on the basis of a complaint lodged by one Babu Ghosh and the same was written by one Liton Saha of Vivekanandapalli, Ranaghat. The allegations leveled in the said complaint in brief were to the effect that the petitioner had been practicing introducing him as Doctor in Ranaghat Sub-Divisional T.B. Clinic without any valid Degree to the effect and it was further alleged that he was not at all a Doctor. In the said complaint it was further alleged that without having any Degree regarding treatment of the people the accused was practicing in lieu of money and the de-facto complainant heard for a long period that for the said treatment many poor

people has suffered. The said Ramendranath Halder is a fake Doctor having no medical certificate and thereby cheated poor people of the locality.

5. Petitioner stated that after a purported investigation the police hurriedly filed its Final Report being Charge-Sheet No. 83 of 2011 dated 08.03.2011 against petitioner under Sections 419/420 of the Indian Penal Code. Curiously enough that the investigation agency after receiving all educational certificates regarding the completion of various medical courses by the petitioner in various recognized institutions and also the appointment lettered issued by the Health Department, Government of West Bengal from petitioner declined to take note of the same and pleaded in the Charge-Sheet after collecting report from C.M.O.H, Nadia and Principal of National Medical College, Umarkote, Orissa, the investigating officer will file a supplementary charge-sheet, but no investigation was made to that effect and no report was submitted before the concerned Learned Court till date.
6. Petitioner stated that the Learned Additional Chief Judicial Magistrate, Ranaghat after receiving the Charge-Sheet took cognizance of the matter by his order dated 08.03.2011.
7. Petitioner stated that on 30.07.2011 an application was filed on behalf of the petitioner of discharge of the petitioner from the instant case as there was no iota of ingredients of the offence alleged.
8. Petitioner stated that in order to establish the commission of an offence punishable under Section 419 of the Indian Penal Code, it is imperative that the prosecution must collect materials which would indicate that the person has pretended to be some other person or he knowingly substituted on person for

another or he represented himself as some other person and by doing so he intentionally, dishonestly and fraudulently induced any body and thereby cheated the said person. Deception by the accused pretending to be some other person and thereby cheating the complainant are the most essential ingredients to constitute an offence of cheating by personation. In this case there was no complaint in any manner whatsoever that the complainant was cheated by false personation of the accused person.

9. Petitioner further stated that in order to establish the commission of an offence punishable under Section 420 of the Indian Penal Code it was also imperative that the prosecution must collect materials which would indicate that the person has fraudulently or dishonestly induced any person by deceiving him to deliver any property to some person or to consent that any person shall retain any property or to do anything which such induced person would not do or omit if he were not so deceived. Where the prosecution fails to prima facie establish before a court of law about any inducement or deception to the complainant, then no offence under Section 419 or under Section 420 of the Indian Penal Code can be said to have been established by the prosecution. Materials collected at the stage of investigation must indicate as to how and when and by whom such inducement was made and how thereafter the accused intentionally, dishonestly or fraudulently cheated the complainant and failure to collect such materials by the investigating agency would render the allegations baseless and unworthy of credit and as such the continuation of the case was not only abuse of the process of law but also detrimental to the justice delivery system itself.

10. Petitioner stated that the charge-sheet along with the accompanying documents, even after careful scrutiny, do not indicate anything which would even remotely suggest that the petitioner at any point of time had dishonestly or intentionally induced or deceived any person by any manner whatsoever to deliver any property. Absence of any materials to indicate that the petitioner has intentionally, dishonestly or fraudulently deceived or induced any person in any manner whatsoever to deliver any property at any point of time renders the allegations under Sections 419/420 of the Indian Penal Code.

11. The Learned Advocate for the petitioner submitted that –

- i. Government of West Bengal through the Chief Medical Officer of Health, Nadia vide a memo dated 25.11.1997 issued a notification and thereby permitted the Ayurvedic Medical Officer to perform duties in Government Hospital for the interest of Public Services.
- ii. The Central Council of Indian Medicine, New Delhi also through several notifications permitted Ayurvedic Medical Practitioners to practice as Medical Practitioner within the system of modern scientific medicine.
- iii. The Government of West Bengal also through several notifications permitted the Ayush doctors to prescribe medicines within the system of modern medicine.
- iv. It was an important issue to note that the Government Authorities after verifying all the relevant document and certificates had been pleased to appoint the present petitioner as Deputy Administrative Medical Officer at T.B. Hospital, Ranaghat, Nadia.

- v. Petitioner was a registered doctor under the State Council of Unani Medicine, West Bengal. Thus, it was an admitted fact that the petitioner was an Ayush Doctor and by way of Government Order, he was posted at T.B. Hospital, Ranaghat, Nadia and he could also prescribe medicines complying to Indian System of Modern Medicine.
- vi. Column 10 of the Charge-Sheet disclosed the nature of document which were seized during the course of investigation by the investigating agency. No medical prescription was seized by the investigating agency. Based upon oral version of few witnesses, the investigating agency filed Charge-Sheet against a reputed doctor of that locality.
- vii. The issue of prescribing allopathic medicines by Ayush Doctor was already decided by the Hon'ble Apex Court by a 3 Judges Bench in Dr. Mukhtiar Chand and Ors. Vs. State of Punjab and Ors. reported in (1998) 7 SCC 579.
- viii. The same issue was also considered by the Hon'ble Apex Court in Subhasis Bakshi and Ors. Vs. W.B. Medical Council and Ors. reported in (2003) 9 SCC 269.
- ix. It was quite clear that the petitioner was a reputed Ayush Doctor registered under the State Council of Unani Medicine, West Bengal and he had all the necessary documents to that effect and his appointment at that relevant point of time at that Hospital was also by way of a Government appointment. Thus the allegation of fake doctor was not sustainable in the eye of law.
- x. So far as the other part of allegations were concerned during the course of investigation a money receipt in the name of one patient namely Babu Ghosh

(de-facto complainant) was seized by the investigating agency from where it revealed that a registration fee of Rs. 30/- was collected from the patient namely Babu Ghosh by the collector of Ranaghat T.B. Clinic. Nowhere, in the said money receipt the signature and/or the name of the present petitioner was reflected. It was also not clear from the money receipts as to the purpose and by whom the said money receipt was issued. At the same time no investigation was done by the investigating officer to unearth the truth about the issuing authority/officer of that money receipt. Thus, it was clear that the claim of the investigating agency about taking money by the petitioner based upon such money receipt was a vague allegation without having any authenticated document.

- xi. At the same time it was also an important issue to note that if the petitioner was collecting money from the patients, then in that event the hospital authority was the best source to entertain such complaint. No such complaint about the fact of collecting money from the patients was ever made by any patient and/or patient party.
- xii. It was also an important fact to note that the alleged seized money receipt was issued on 21.02.2011. However nowhere in the written complaint the de-facto complainant alleged that on 21.02.2011 he went to the said hospital and on that day petitioner collected Rs. 30/-from him. Surprisingly in the formal F.I.R., date and time of occurrence was left blank. All these inference clearly reflect that the petitioner was harassed by the de-facto complainant and his associates with an ulterior motive.

- xiii. Petitioner stated that the allegations of the written complaint and the materials collected during investigation were completely baseless and was a result of professional rivalry.
- xiv. Petitioner submitted that for the purpose of constituting an offence of cheating punishable under Section 420 of the Indian Penal Code, the complainant was required to show that the accused had fraudulent or dishonest intention at the time of making a promise or representation. Even in a case where allegations were made in regard to failure on the part of the accused to keep his promise, in absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Indian Penal Code could be said to have been made out.
- xv. The prosecution case was of such nature, which was totally false and fabricated and did not have any documentary evidence to prove its allegations as against the petitioner beyond reasonable doubt.
- xvi. Petitioner was appointed by T.B. Clinic which had been a government hospital. The hospital authority before appointing the petitioner had already verified his qualification. So the question of genuineness of all this documents relating to his degree and qualification had been proved.
- xvii. Thus, the impugned order dated 03.04.2012, passed by the Learned Chief Judicial Magistrate, 3rd Court, Ranaghat, Nadia was neither tenable in law and was liable to be set aside.
- xviii. Petitioner submitted that the continuation of the impugned proceedings shall amount to an abuse of the process of the court and it was expedient in the

interest of justice that the impugned proceedings be quashed and/or set aside in order to prevent the abuse of the process of court or otherwise to secure the ends of justice.

12. The Learned Advocate for the State in all fairness submitted to have called for a report from the health authorities to assess the ingenuity of the documents and thereafter on gleaning the same filed the report, to prevent the process of abuse of law.
13. During course of hearing the Learned Advocate for the State submitted that the report of the Assistant Chief Medical Officer of Health dated 21.11.2023 which is replicated as follows:

**“To
Md. Anwar Hossain,
Ld. State Advocate,
High Court,
Calcutta.**

Ref.: C.R.R. No. 2070 of 2012
In the matter of : Dr. Rabindranath Halder Son of Late Dhirendranath Halder
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The State of West Bengal

Sir,
i.c.w with the above-cited Reference and after going through the attachments the undersigned would like to inform that:

Sl. No.	Annexure No.	Type of Document	Remarks
1	P1	Certificate of Registration from State Council of Unani Medicine, West Bengal (Regn. No. 51340)	The Certificate is valid and he can do private practice (as informed by the office of the Registrar of the Department over Telephone)
2	P2	Certificate from The Biraja Medical College of Allopahty Diploma	The Course namely “Bachelor of Indigenous Medicine in Allopathy” is under AYUSH and can be pursued by Unani System.
3	P3	Certificate of BAMS from National Medical College, Umarkote	The certificate could not be verified.

4	P4	Order issued by ACMOH Ranaghat on 30.03.2000	The order issued is valid.
5	P5	Notification issued by Central Council of Indian Medicine	As per the notification, the concerned Doctor can indulge in Private Practice.
6	P6	Notification issued by Central Council of Indian Medicine	As per the notification, the concerned Doctor can indulge in Private Practice.
7	P7	Notification issued by the Govt. of West Bengal, Health & Family Welfare Department, AYUSH Branch	As per the notification, the concerned Doctor can prescribe only those Allopathic Medicines detailed in Schedule A and can perform procedures as detailed in Schedule B.
8	P8	Notification issued by the Govt. of West Bengal, Health & Family Welfare Department, AYUSH Branch	As per the notification, the concerned Doctor can indulge in Private Practice.

Assistant Chief Medical Officer of Health

Ranaghat, Nadia

Dated: 21.11.2023”

14. From the aforesaid it is conclusively proved that the aforesaid certificate of Registration being challenged by the complainant with regard to the authentication of the petitioner being entitled to private practice and empowered to prescribe such Allopathic Medicine detailed in Schedule – A and can conform to the procedure as detailed in Schedule – B has been infallibly proved in favour of the petitioner absolving him from criminal activity being indulged in illegal practices.
15. In order to establish the commission of an offence punishable under Section 419 of the Indian Penal Code, it was imperative that the prosecution must collect materials which would indicate that the person has pretended to be some other person or he knowingly substituted one person for another or he represented himself as some other person and by doing so he intentionally, dishonestly and

fraudulently induced the complainant and thereby cheated the complainant, as deception by the accused pretending to be some other person and thereby cheating the complainant was the most essential ingredients to constitute an offence of Cheating by personation. Where prosecution fails to prima facie satisfy a court of law about such intentional, dishonest or fraudulent inducement or deception by personation then no offence under Section 419 of the Indian Penal Code can be said to have been established by the prosecution.

16. In order to establish the commission of an offence punishable under Section 420 of the Indian Penal Code, it was imperative that the prosecution must collect materials which would indicate that the person has intentionally, fraudulently or dishonestly induced any person by deceiving him to deliver any property to some person or to consent that any person shall retain any property or to do anything which such induced person would not do or omit if he were not so deceived. Failure to collect materials which would indicate such fraudulent or dishonest inducement of a person by deceiving him would render the allegations baseless and unworthy of credit and as such the continuation of the case was not only abuse of the process of law but also detrimental to the justice delivery system itself. The allegations against the petitioner are fictitious and frivolous and to allow the proceedings to continue would be result in harassment and abuse of process of law.

17. In view of the above discussions, the order dated 03.04.2012 passed by the Learned Judicial Magistrate, 3rd Court, Ranaghat, Nadia in G.R. Case No. 369 of

2011 (Ranaghat Police Station Case No. 62 of 2011 dated 21.02.2011) under Sections 419/420 of the Indian Penal Code is set aside.

18. Accordingly, the instant criminal revisional application being no. CRR 2070 of 2012 is allowed.
19. Accordingly, CRR 2070 of 2012 stands disposed of.
20. There is no order as to cost.
21. Let the copy of this judgment be sent down to the Learned Trial Court and the concerned police station as well for necessary action.
22. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)