

21.05.2024

Sl. No.:31

Court No.30
BM

CRR 2512 of 2021

Health World Hospital & Ors.

Vs.

The State of West Bengal & Anr.

Mr. Sekhar Kumar Basu, Sr. Adv.

Mr. Sandipan Ganguly, Sr. Adv.

Mr. Antarikhya Basu

Ms. Madhumita Basak

Mr. Sayan Mukherjee

Ms. Priyanka Sarkar

... for the petitioners

Mr. Sudipto Moitra, Sr. Adv.

Mr. Jaydeep Biswas

Mr. Soumadeep Das

Mr. Koushik Ghosh

... for the opposite party no.2

Mr. Debasish Roy, Ld. P.P

Mr. Bitasok Banerjee

... for the State

1. The present revisional application has been preferred by the petitioners praying for quashing and setting aside of the proceedings in G.R. Case No.23 of 2020 arising out of Durgapur Police Station Case No.04 of 2020 dated 04.01.2020 under Sections 409/420/467/468/304 Part-II/120B of the Indian Penal Code read with Section 34 of the West Bengal Clinical Establishment (Registration, Regulations & Transparency) Act, 2017 now pending before the Court of the learned Additional Chief Judicial Magistrate, Durgapur.

2. The proceeding in the present case was initiated, on the basis of a complaint filed by the complainant/brother of the son-in-law of the deceased.

3. The allegations include not giving proper attendance to the patient, false, forged and inflated medical bills.

4. The complainant has further alleged that the said Hospital was running without valid permission and licence.

5. During the pendency of the revisional application a co-ordinate Bench of this court vide order dated 01.02.2024 had directed the investigating officer to record the statement of the complainant/private opposite party and also a declaration.

6. The learned Public Prosecutor has placed a report which includes the statement of the complainant recorded under Section 161 of the Cr.P.C., wherein he has stated that they do not have any grievance against the petitioners at present as the matter has been amicably settled between the parties. It has been categorically stated by the complainant that he is not willing to proceed with the proceeding in the present case against the petitioners.

7. A joint petition of compromise being IA No.: CRAN 8 of 2024 has been filed by the parties praying for amicable settlement of the dispute in the present case.

8. In the joint petition of compromise, it has been stated as follows:-

“5. That pursuant to the intervention of the Hon’ble Court, the investigating agency had submitted the enquiry report(s) of the committee(s) constituted by the concerned Chief Medical Office of the Health (CMOH) and the Swasthya Bhavan, Government of West Bengal, Department of Health and Family Welfare, whereby it has been revealed that the enquiry committee(s) have unanimously exonerated the applicant no.1-7 from the allegations of medical negligence in the facts and circumstances of the instant case.

6. That during the pendency of the instant criminal revisional application, by the assistance and intervention of the well-wishers and common friends of all the applicants, i.e., the applicant no.1-7 on one side and the applicant no.8 on the other side, the parties to the lis decided to withdraw the impugned proceeding including all the claims and counter-claims against each other in connection with the instant case, pursuant to the amicable settlement/compromise arrived at by and between them.

8. Your applicants state that now the applicant no.8 does not have any grievances against the applicant no.1-7 and has undertaken to co-operate with the applicant nos. 1-7 in every manner to get the impugned proceedings being G.R case No.23 of 2020 arising out of Durgapur Police Station Case No.04 of 2020 dated 04.01.2020 under sections 409/420/467/468/304 Part-II/ 120B of the Indian Penal Code read with Section 34 of the West Bengal Clinical Establishment (Registration, Regulations & Transparency) Act, 2017 now pending before the court of the learned Additional Chief Judicial Magistrate, Durgapur, and all orders passed in connection with the said proceedings, quashed and/or set aside by this Hon'ble Court. That in view of the compromise arrived at in between the parties, entire differences and tension which had arisen in between the parties stands resolved and the parties have undertaken not to file any proceedings, either civil or criminal or any other connected proceedings, against one another in any court of law at any place within or outside India in connection with the instant case.

9. That your applicants further state that on the basis of such mutual understanding the dispute by and between the applicants has already been amicably settled. The avowed notion of the amicable settlement has been duly communicated to the investigating agency by applicant no.8, vide letter dated 08.02.2024 which was duly received by the concerned Police Station.

11. *The applicant in the present case state that from a bare reading of the First Information Report and other documents on record relating to the aforesaid case, it can be clearly made out that the dispute was purely a personal one between the parties and that it arose out of a temporary misunderstanding between them and that there is neither any public property nor any public policy involved in the nature of the allegations made against the applicant nos.1-7.”*

9. A report has been submitted by the Deputy Director of Health Services (Administration) through the learned Public Prosecutor annexing the report submitted by the enquiry committee in respect of death of the victim in the present case.

10. The report of the said medical board/enquiry committee, has concluded their enquiry with the finding as follows:-

“Several studies have shown that cardiovascular morbidity and mortality are significantly increased in patients with COPD. COPD is also a risk factor for supraventricular and ventricular tachyarrhythmia. So although unfortunate, the occurrence of acute myocardial infarction, ventricular tachyarrhythmia and eventually death in this patient are not uncommon in natural course of COPD.

In absence of chest pain, the first ECG (done at 17:13 hrs on 01.12.2019) is quite consistent with the diagnosis of COPD and is not definitely diagnostic of myocardial infarction. Hence, omission of Trop-T test at that point does not amount to medical negligence. The second ECG (done at 23:12 hrs on 01.12.2019) showed new onset LBBB. Troponin T & I and Echocardiography were done at that point and the diagnosis of acute myocardial infarction was made on the top of an acute exacerbation of COPD.

As the patient had to be stabilized before PCI (Percutaneous Coronary Intervention) through intubation,

ventilation and management of invasive ventilation, this whole procedure along with preparation of Cardiac Cathlab might have delayed taking the patient to the Cathlab.

But unfortunately, the patient had a cardiac arrest from which he was at first resuscitated. But a second cardiac arrest, which is not uncommon in Acute Myocardial Infarction, led to his death.

The patient was under continuous monitoring during his staying period in hospital from the date and time of admission.

The whole treatment given by the attending doctors after discussion of the case with admitting doctor and cardiologist from time to time and the treatment was as per standard treatment protocol.

Admitting doctor (consultant), though advised the treatment protocol of the patient to attending physician, which was as per standard treatment protocol, the BHT/treatment sheet has no signature of Dr. Sandip Yadav.

Considering previously submitted documents and documents received on 08.05.2023, we are of the opinion that the undersigned (Members of the Medical Board) did not find any negligence from the part of the doctors who treated the patient i.e. Late Shankar Pal.”

11. Relying upon the judgment of the Supreme Court in **Dr. (Mrs.) Chanda Rani Akhouri & Ors. Vs. Dr. M. A. Methusethupathi & Ors., Civil Appeal No.(s) 6507 of 2009 dated 20.04.2022**, this court finds that the detailed report submitted by the Medical Board and the other materials on record, prima facie show that the ingredients required to constitute the offences alleged in the present case are absent in respect of the petitioners herein.

12. A Three Judge Bench of the Court in **(2012) 10 Supreme Court Cases, 303, Gian Singh vs State of Punjab** and another

has cleared the position in respect of the power of the High Court in quashing a criminal proceedings in exercise of its inherent jurisdiction in para 61 of the judgment, which is reproduced here in:-

“The position that emerges from the above discussion can be summarised thus : the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz. : (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High

Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

13. In Anita Maria Dias & Anr. vs The State of Maharashtra & Anr. (2018) 3 SCC 290.

The Court held:-

(a) Offences which are predominant of civil character, commercial transaction should be quashed when parties have resolved their dispute.

(b) Timing of settlement would be crucial for exercise of power or declining to exercise power (stage of proceedings).

14. The joint application filed by the parties clearly shows that an amicable settlement and compromise has been arrived at between the parties and the complainant does not wish to proceed with the criminal case against the petitioners being G.R. Case No.23 of 2020 arising out of Durgapur Police Station Case No.04 of 2020 dated 04.01.2020 under Sections 409/420/467/468/304 Part-II/120B of the Indian Penal Code read with Section 34 of the West Bengal Clinical Establishment (Registration, Regulations & Transparency) Act, 2017 now pending before the Court of the learned Additional Chief Judicial Magistrate, Durgapur.

15. From the materials on record, it is clear that dispute in the present case is a private dispute and the parties have now resolved their entire dispute by way of a compromise/settlement

on affidavit and as such the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice could be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the complainant. As in the words of the Supreme Court in ***(Gian Singh Vs. State of Punjab and another, (Supra))***.

16. As such this court is of the view that it would be unfair and contrary to the interest of justice to continue with the criminal proceedings which would tantamount to abuse of process of law in view of the settlement arrived at between the parties in respect of their dispute and to secure the ends of justice it would be prudent to quash the proceedings in the case as prayed for.

17. Accordingly, the revisional application being CRR 2512 of 2021 is allowed.

18. The proceeding being G.R. Case No.23 of 2020 arising out of Durgapur Police Station Case No.04 of 2020 dated 04.01.2020 under Sections 409/420/467/468/304 Part-II/120B of the Indian Penal Code read with Section 34 of the West Bengal Clinical Establishment (Registration, Regulations & Transparency) Act, 2017 now pending before the Court of the learned Additional Chief Judicial Magistrate, Durgapur, **is hereby quashed in respect of the petitioners.**

19. All connected Applications, if any, stands disposed of.

20. Interim order, if any, stands vacated.

21. Copy of this order be sent to the learned Trial Court for necessary compliance.

22. Urgent certified website copy of this order, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)