

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

Present:
The Hon'ble Justice Uday Kumar

**C.R.R 152 of 2023
With
CRAN 3 of 2024**

**Santanu Chakraborty
-Vs-
The State of West Bengal & Ors.**

For the Petitioner : Ms. Anita Kaunda

For the State : Mr. Madhu Sudan Sur, A.P.P.
Mr. Monoranjan Mahata

Hearing concluded on : 21.01.2025

Judgment on : 25.04.2025

Uday Kumar, J:-

1. This is an application under Section 482 of the Code of Criminal Procedure filed by the petitioner, Dr. Shantanu Chakraborty, for quashing of the Charge-Sheet No. 552 of 2018 dated 15.12.2018 submitted in Deganga Police Station Case No. 562 of 2016 dated 03.08.2016 under Sections 420/336/337/338/120B of the Indian Penal Code, which is presently pending before the Learned Additional Chief Judicial Magistrate, Barasat.
2. On a Court complaint of Md. Monowar Hossain (opposite party no.2), a Complaint Case No. 1492/2016 was started before the Court Learned Additional Chief Judicial Magistrate, Barasat. On his direction issued under Section 156(3) Code of Criminal Procedure, Deganga P.S. Case No. 562/16 was registered initially against the Managing Directors of

Sundarban Nursing Home – Rejaul Karim and Mafuz Mandal - for alleged medical negligence and fraud. The petitioner, Dr. Shantanu Chakraborty, a General Surgeon and Orthopaedic practitioner, was not named in the original FIR.

- 3.** Initially, the case was endorsed to PSI Paritosh Halder and subsequently re-endorsed to ASI Pradip Biswas, SI Tapash Ghosh, and finally to SI Anup Kumar Ghosh. During the course of investigation first I.O. P.S.I. Paritosh Halder visited place of occurrence, prepared rough sketch map of the scene of crime, examined the complainant and witnesses and recorded their statement under Section 161 Code of Criminal Procedure. Thereafter, investigation was re-endorsement to the second I.O. A.S.I. Pradip Biswas, who served notice under Section 91 of Code of Criminal Procedure to the complainant. The third I.O., S.I. Tapash Ghosh seized valuable documents from the complainant and prayed to the Court of Learned Additional Chief Judicial Magistrate, Barasat, for seeking direction on the concerned authority to form a medical board to enquire and ascertain whether petitioner had committed any act of medical negligence or not. Learned Additional Chief Judicial Magistrate, Barasat allowed his prayer on 01.03.17. Accordingly, a medical board was constituted, but the petitioner Surgeon Dr. Shantanu Chakraborty did not turn up before the medical board despite several notices, and ultimately appeared before the Investigating Officer on 09.12.2018. He was released on the assurance of cooperation after interrogation. Later, petitioner surrendered before the Court on 12.12.2018, and was instantly released on bail.

4. After completion of investigation, SI Anup Kumar Ghosh filed charge-sheet on 15.12.2018 vide No. 552 of 2018 under Sections 420/336/337/338/1208 of Indian Penal Code, against Rejaul Karim, Mofus Mandal Md. Majujur Rahaman, and Dr. Shantanu Chakraborty.
5. The petitioner sought quashing of the charge-sheet, inter alia, on the grounds that:
 - a) The petitioner was not named in the FIR.
 - b) No prima facie case is made out against him.
 - c) The allegations are civil in nature and are being used to pressurize the petitioner with ulterior motives.
 - d) The continuation of the proceedings is an abuse of the process of law.
6. Furthermore, the petitioner has also been arrayed as a respondent in a consumer complaint case bearing C.C. No. 312 of 2017, filed before the District Consumer Forum at Barasat, where the complainant has sought compensation for alleged medical negligence amounting to Rs. 19,50,000/-.
7. Ms. Anita Kaunda Learned Counsel for the Petitioner submits that:
 - a) There is no material to establish that the petitioner had any direct intent to cheat or cause hurt to the patient.
 - b) Medical complications arising out of treatment, even if established, may amount to civil negligence but do not ipso facto attract criminal liability under Sections 336 to 338 of Indian Penal Code, unless the element of gross negligence or recklessness is demonstrable.

- c) The insertion of the petitioner's name at a later stage, without any cogent material or medical expert opinion, is indicative of malice and an afterthought.
 - d) The pendency of a consumer complaint on the same issue demonstrates the complainant's civil remedy is already in motion, and this criminal proceeding is merely a pressure tactic.
- 8.** Ms. Kaunda, further contended that Deganga Police Station Case No. 562 of 2016, dated 03.08.2016 was registered under Section 156(3) of the Code of Criminal Procedure, 1973, only against Rejaul Karim and Mafuz Mondal of Sunderban Nursing Home. The name of the petitioner did not feature in the initial FIR, and his implication at a later stage is clearly an afterthought.
- 9.** The petitioner contended that the criminal proceeding is primarily motivated by a desire to pressurize him into making a monetary settlement, and that the allegations are vague, malicious, and do not disclose the essential ingredients of the offences alleged.
- 10.** Mr. Madhu Sudan Sur, A.P.P., Learned Counsel for the State opposes the prayer and submits that:
- a) During investigation, the name of the petitioner emerged.
 - b) Despite constitution of a medical board, the petitioner failed to appear, raising suspicion.
 - c) Statements recorded under Section 164 Code of Criminal Procedure and seized documents prima facie support further inquiry and trial.

d) The trial must proceed to determine the veracity of the charges, especially given the serious nature of injuries alleged.

11. The prosecution, on the other hand, relies upon the investigation, statements of witnesses, medical records, and other documents collected during the investigation to argue that a prima facie case exists against the petitioner and the trial should be allowed to proceed.
12. I have perused the case diary, charge sheet, medical records, and relevant documents. At this stage, it is not the function of this Court under Section 482 Code of Criminal Procedure to conduct a mini-trial or assess the sufficiency of evidence. The material on record shows that the case arises out of alleged surgical complications following an operation performed by the petitioner, resulting in deterioration of the patient's condition.
13. Though the evidence against the petitioner may not be conclusive at this stage, it cannot be said that there is no material at all connecting the petitioner with the alleged offences. The delay in implication and initiation of complaint is a matter of trial, and cannot be a ground for quashing when there is some prima facie material on record.
14. The Hon'ble Supreme Court in *State of Haryana v. Bhajan Lal* (1992 Supp (1) SCC 335) has enumerated categories where criminal proceedings may be quashed. The present case does not fall squarely within those categories. The existence of parallel civil proceedings also does not ipso facto bar criminal prosecution if the ingredients of the criminal offence are disclosed.

15. In view of the above deliberations, I am of the opinion that no ground has been made out for quashing the proceedings at this stage. The petitioner shall be at liberty to raise all legal and factual contentions before the Trial Court.
16. Accordingly, the instant **C.R.R 152 of 2023** under Section 482 of Code of Criminal Procedure, stands dismissed.
17. Connected application CRAN 3 of 2024 is also disposed of accordingly.
18. There shall be no order as to costs.
19. Interim orders, if any, stand vacated.
20. However, it is prudent for the Trial Court to conclude the proceedings as expeditiously as possible, in consonance of the earlier direction given in CRR 1239 of 2021.
21. Let a copy of this judgment be sent to the Learned Additional Chief Judicial Magistrate, Barasat, along with the trial court records for proceeding in accordance with law.
22. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Uday Kumar, J.)