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2025
Ct. No. 29

C.R.R. 2585 of 2024
With
IA No. CRAN 3 of 2025
Shri Manabendra Dinda
Vs.
Apollo Multispeciality Hospitals Ltd.

Mr. Manjit Singh
Mr. Biswajit Mal
Mr. Arkaprabho Roy
Mr. Soujanya Pattanayak

... For the Petitioner

Mr. Prabir Adhya
Mr. Somnath Saha
Ms. Madhumanti Chakraborty

...For the Private Opposite Party

In the instant Application the petitioner has prayed for quashing of the proceedings being Complaint Case, No. C/225/2023 under Section 420/406 of the Indian Penal Code.

The allegations leveled against the petitioner herein in the complaint is that during medical treatment of his father in the hospital of the complainant, the outstanding dues stood at Rs. 8,08,000/- and in spite of several request made by the opposite party, the petitioner or his family members did not pay the outstanding amount and for which a complaint was lodged on 30th December, 2017 before the Officer-in-Charge, Phulbagan Police Station, Kolkata.

Being aggrieved by the aforesaid proceeding learned Counsel for the petitioner submits that petitioner's father Gopal Chandra Dinda, since deceased was admitted in the complainant hospital on 04.01.2018 and an amount of Rs. 10,16,486/- was raised. Petitioner paid Rs. 2,08,486/- but could not pay Rs. 8,08,000/-. However, the petitioner handed over an account payee cheque being No. 489196 dated 05.01.2018 to the complainant towards payment of outstanding amount.

Mr. Singh, learned counsel for the petitioner argued that the father of the petitioner has been arraigned as accused no.1 in the petition of complaint, though he passed away during the treatment in the hospital of complainant. The opposite party has issued his death certificate. The offence of cheating or criminal breach of trust does not attract in the present context. Therefore continuance of further proceeding will be mere abuse of the process of Court.

Learned Counsel appearing on behalf of the opposite party raised objection contending that the petitioner assured them that they will make the payment within specific period and requested not to deposit the cheque before the bank. There were several communications between the Nursing Home authorities and the petitioner but the petitioner on various false pretext avoided the payment which compelled the complainant to initiate the instant complaint.

Having heard the learned Counsel appearing for the petitioner it appears that out of total medical expenditure of Rs. 10,16,486/- petitioner has paid Rs./ 2,08,486/-.

Furthermore it appears from the submission of petitioner that the petitioner immediately upon knowing about outstanding amount issued cheque with the promise to pay the remaining outstanding amount. Thus the intention to deceive from the very beginning is absent in the instant matter which is sine-qua-non for a prosecution under section 420 IPC.

So far as allegation under section 406 IPC is concerned, it is alleged by the petitioner that dead body of deceased accused No.1, who

happens to be the father of the petitioner along with his death certificate was issued only after opposite party received the cheque along with undertaking from the petitioner/accused No.2 with regard to payment of outstanding amount and therefore in the complaint there appears to be neither any entrustment by the opposite party nor it is the case of complainant that the petitioner dishonestly misappropriated any property or converted it to his own use.

A breach of agreement for payment of outstanding medical expenses per se does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning. Merely on the allegation of failure to make payment of outstanding medical bill is not enough to initiate criminal proceeding. The mere inability if any, of the petitioner to pay the outstanding medical bill of the Hospital cannot give rise to the prosecution for cheating as intention of deception from the inception is clearly absent in the present case. The supreme Court in a number of cases has cautioned against criminalizing civil dispute such as breach of contractual obligations and also cautioned that criminal courts are not meant to be used settling scores or pressurize parties to make payment of outstanding medical bill. High Court is not supposed to swayed way merely by the moral element, if any, involved in the breach of promise about payment of, even if, a considerable amount.

There are other aspects in the matter. From the complaint it appears that admittedly, the petitioner/accused No.2 resides at a place

beyond the jurisdiction of the court below and therefore before issuing process against the petitioner, it was mandatory for the court to have conducted an inquiry under section 202 Cr.P.C., which the court below has failed to conduct.

Moreover in view of ratio laid down in Delhi Race Club(1940) Ltd. & others Vs. State of U.P. & another (Criminal Appeal No. 3114 of 2024) it is clear that criminal breach of trust and cheating are independent and distinct offences and the two offences cannot co-exist simultaneously in the same set of facts as they are antithetical to each other.

In view of aforesaid discussion allowing aforesaid proceedings to continue would be abuse of process of court.

In view of the above, C.R.R., 2585 of 2024 along with the application, being CRAN 3 of 2025 are allowed. The Complaint Case No. C/225/2023 under Section 420/406 of the Indian Penal Code presently pending in the Court of the learned Judicial Magistrate, 2nd Court at Sealdah, 24 Parganas is hereby quashed.

Urgent Photostat certified copy of this order, if applied for, be given to the parties, on priority basis upon compliance of all necessary formalities.

(Dr. Ajoy Kumar Mukherjee, J.)