

372.
15.07.2025
Bd.
Ct. 29

**CRR 2431 of 2017
IA No. CRAN 1 of 2017
(Old No. CRAN 4191 of 2017)**

**Putul Das
Vs.
The State of West Bengal & Anr.**

**Mr. Niladri Sekhar Ghosh
Ms. Laboni Sikdar ... for the petitioner.**

Mrs. Sohini Bhattacharya ... for opposite party no. 2

Ms. Diksha Ghosh ... for the State.

The petitioner herein has prayed for quashing the proceeding being Ghatal P.S. Case No. 56 of 2012 dated 06.03.2012 qua the petitioner herein.

The averments made in the FIR were to the effect that wife of de-facto-complainant Mithu Das was treated by different doctors. Doctors opined that hemoglobin level of the patient was notably decreased while she was carrying. On 02.03.2012 said Mithu Das was admitted to the nursing home and was under the observation. On 5.3.2012 Caesar operation was done and said wife of the opposite party no. 2 gave birth of a male child but the opposite party no. 2 was not allowed to visit his wife. Thereafter another accused/doctor asked the opposite party no. 2 to sign on a paper and at about 4.p.m, the opposite party no. 2 found his wife lying dead in operation theatre. In the FIR it is alleged that Dr. Tushar Kanti Karmakar, is solely responsible for the death of the wife of the opposite party no. 2 for his alleged negligent act.

During investigation the petitioner herein who stated to act as staff (Nursing) in operation theatre was granted anticipatory

bail by the Sessions Judge, Paschim Medinipur. After completion of investigation the investigating officer submitted charge-sheet under section 304A/385/420/201 of the Indian Penal Code against two doctors and another staff Mita Basu Karmakar and against the present petitioner.

Being aggrieved by the impugned proceeding the petitioner herein submits that the allegation against the doctor is that knowing fully well that the hemoglobin level in the blood of the patient was shockingly low, doctor/accused admitted the patient and without taking any precautionary measure operated the patient and though the opposite party no. 2 herein made request to the doctor not to operate the patient but the doctor did not pay heed to such request, though from the admission form it appears that opposite party no. 2/complainant and the patient herself signed on it giving consent for operation. He further submits that from the post mortem examination report it appears that cause of death was due to the effect of haemorrhagic shock following surgical operation.

Mr. Ghosh, learned counsel appearing on behalf of the petitioner further submits that the present petitioner was appointed as nurse of said Nursing Home namely Ghatal Fertility Centre and she had no role to play in the offence, if any, and therefore she cannot be held responsible for doing any negligent act causing death of the patient. He further submits that from the FIR statements as well as the statement recorded during investigation under section 161 of the Cr. P.C, it appears that no allegation has been leveled against the present petitioner.

In such view of the matter, further continuance of the present proceeding against the present petitioner will be a mere abuse of the process of the Court.

Learned counsel appearing on behalf of the private opposite party/complainant submits that from the statement recorded during investigation, it would reveal that the present petitioner is a staff of that nursing home had asked the de-facto complainant/opposite party no. 2 herein to put signature on a blank paper and that she in connivance with the doctor/accused have committed the offence which is also reflected in the operation note, wherefrom it is clear that the present petitioner Putul Das acted as an assistant with the surgeon and the anesthetist. Accordingly, her involvement with the alleged offence cannot be ruled out and the real picture will reveal only during trial and at this stage of trial, it would not be proper to throw away the case of petitioner's involvement with the alleged offence at its threshold.

Learned counsel appearing on behalf of the State placed the case diary and submits that the petitioner's role transpired during investigation and for which she has been charge-sheeted and her involvement with the alleged offence along with doctor in committing negligence, causing death of the victim, cannot be ruled out.

I have considered the submissions made on behalf of the parties. From the FIR itself it is very much clear that the FIR maker/opposite party no. 2 herein has made clear averments that Dr. Tushar Kanti Karmakar is responsible for causing death of the victim. In fact nowhere either in the FIR or in the statements of

witnesses recorded during investigation, the name of the petitioner has been transpired, far from disclosing, the role actually played by the petitioner in committing the said offence. It further appears that the operation note by which the prosecution wants to implicate the present petitioner as an assistant, of the doctor who operated the patient, is also not made part of the charge-sheet. It is submitted that said document was never seized by the prosecution agency. There is also no evidence to show that present petitioner allegedly forced the complainant to put signature on blank paper.

Learned counsel for the petitioner also relied upon the judgment of ***Jacob Mathew -vs- State of Punjab and Another*** reported in (2005) 6 SCC 1 and contended that a particular mode and method has been prescribed in the said judgment in connection with the law of negligence for professionals such as lawyers, doctors, architects and others and said established procedure has not been followed in the present context. It further appears that there is no allegation that the present petitioner has no prescribed qualification or the required skill to act in that branch of profession i.e, to act as an assistant of the concerned doctor. Only because she was present and may have assisted the doctor at the time of operation in the operation theatre cannot make her offender in the instant case in absence of any specific role attributed to the present petitioner in committing the alleged offence. It is also not the case of prosecution that doctor had acted any alleged negligent act under the advice of petitioner to make out a case of conspiracy.

As the instant FIR along with materials collected during investigation does not make out any case against the petitioner herein, I am unable to persuade myself that the petitioner must still undergo the agony of criminal trial. In fact the allegations made in the FIR and other materials collected during investigation, if are accepted in their entirety and are taken at the face value, it does not make out any prima facie case constituting any offence against the petitioner. The provisions of Section 482 of the Cr. P.C. are devised to advance justice and not to frustrate it and if it appears to High Court that continuance of further proceeding against the petitioner will be mere abuse of process of court, it should not shy away in exercising its extraordinary jurisdiction.

In **Bhajan Lal's** case, **1992 Supp (1) SCC 335**, the Apex Court stated that it may not be possible to lay down any precise, clearly defined, sufficiently channelized and inflexible guidelines or rigid formulae or to give an exhaustive list of myriad kind of cases, wherein power under Section 482 of the Code should be exercised but the court would be justified in exercising power under Section 482 of the Code inter alia where the FIR does not prima facie constitute any offence and where the allegations are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there are sufficient ground for proceeding against the accused.

Having considered the contents of the FIR as well as materials collected during investigation I find that the Sub-Paragraph (1) and (5) of Paragraph 102 of the case of **State of Haryana & Ors. –Vs- Bhajan Lal & Ors. (supra)** clearly attracts

in the instant case in respect of the present petitioner and as such further continuance of the present proceeding will be an abuse of process of the Court.

In such view of the matter, CRR 2431 of 2017 is allowed. Connected application, if any, is also disposed of.

The impugned proceeding being Ghatal Police Station Case No. 56 of 2012 corresponding to G.R. Case No. 137 of 2012 presently pending before learned Additional Chief Judicial Magistrate, Ghatal is quashed qua the petitioner, herein namely, **Putul Das**.

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

(Dr. Ajoy Kumar Mukherjee, J.)