

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

CRR 3097 of 2023
with
IA No. CRAN 4 of 2025
(Application not in the file)

Dr. Raktimava Sarkar
Vs.
The State of West Bengal & Anr.

Mr. Moyukh Mukherjee
Ms. Gargi Goswami
... For the petitioner

Mr. Anwar Hossain
Ms. Suchismita Dutta
... For the State

1. Affidavit of service filed in Court today is taken on record.
Opposite party no.2 is also served through email by the petitioner.
2. From a report filed on behalf of the State on 18th July 2024, it appears that the opposite party no.2 was served through email at Mumbai where he was then residing.
3. In spite of service, none appears on behalf of the opposite party no.2.
4. This revisional application has been filed with a prayer for quashing the proceedings in connection with GR Case No.4518 of 2018 corresponding to Baguiati Police Station Case No.42 of 2018 dated 5th February, 2018 under Section 304A of the Indian Penal Code.
5. The de facto complainant/opposite party no.2 herein lodged a complaint before the Inspector-in-Charge of Baguiati

Police Station on 1st February, 2018 alleging, inter alia, that he got her mother admitted in Charnock Hospital at Teghoria, Major Arterial Road, New Town, Kolkata on 18th January, 2018 with the problem of urine infection and pain in lower limb. She was moved from general ward to minor ICU in the evening on the same day and on 25th January, 2018, she was moved out of ICU and doctor confirmed her to be discharged by 29th January, 2018.

6. It was further alleged that on 28th January, 2018 at about 7.30 a.m. she was moved to ventilator due to respiratory problem and RMO on duty gave “**TRAMADOL**” to the patient “**without consulting**” primary consultant Dr. Raktimava Sarkar. He has further made allegation against medical negligence and hospital management. On receipt of that complaint, Baguiati Police Station Case No.42 of 2018 dated 5th February, 2018 was started under Section 304A of the Indian Penal Code. After investigation, charge sheet was submitted on 17th October, 2022.

7. Mr. Moyukh Mukherjee, learned counsel appearing on behalf of the petitioner has referred to the complaint itself and submits that written complaint did not disclose any single word towards negligence of the petitioner, Dr. Raktimava Sarkar. That apart, he relied on a case of **Jacob Mathew v. State of Punjab & Anr.**, reported in **(2005) 6 SCC 1** and particularly, paragraphs 50, 51 and 52 thereof which run as follows:

“**50.** As we have noticed hereinabove that the cases of doctors (surgeons and physicians) being subjected to criminal prosecution are on an increase. Sometimes such prosecutions are filed by private complainants and

sometimes by police on an FIR being lodged and cognizance taken. The investigating officer and the private complainant cannot always be supposed to have knowledge of medical science so as to determine whether the act of the accused medical professional amounts to rash or negligent act within the domain of criminal law under Section 304-A of IPC. The criminal process once initiated subjects the medical professional to serious embarrassment and sometimes harassment. He has to seek bail to escape arrest, which may or may not be granted to him. At the end he may be exonerated by acquittal or discharge but the loss which he has suffered in his reputation cannot be compensated by any standards.

51. We may not be understood as holding that doctors can never be prosecuted for an offence of which rashness or negligence is an essential ingredient. All that we are doing is to emphasize the need for care and caution in the interest of society; for, the service which the medical profession renders to human beings is probably the noblest of all, and hence there is a need for protecting doctors from frivolous or unjust prosecutions. Many a complainant prefers recourse to criminal process as a tool for pressurising the medical professional for extracting uncalled for or unjust compensation. Such malicious proceedings have to be guarded against.

52. Statutory Rules or Executive Instructions incorporating certain guidelines need to be framed and issued by the Government of India and/or the State Governments in consultation with the Medical Council of India. So long as it is not done, we propose to lay down certain guidelines for the future which should govern the prosecution of doctors for offences of which criminal rashness or criminal negligence is an ingredient. A private complaint may not be entertained unless the complainant has produced prima facie evidence before the Court in the

form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor. The investigating officer should, before proceeding against the doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion preferably from a doctor in government service qualified in that branch of medical practice who can normally be expected to give an impartial and unbiased opinion applying **Bolam v. Friern Hospital Management Committee, (1957) 1 WLR 582 : (1957) 2 All ER 118 (QBD)** test to the facts collected in the investigation. A doctor accused of rashness or negligence, may not be arrested in a routine manner (simply because a charge has been levelled against him). Unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the investigating officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld.”

8. Mr. Mukherjee, learned counsel appearing on behalf of the petitioner has submitted that the officer concerned of the Baguiati Police Station should have obtained one independent and competent medical opinion from a doctor in Government service qualified in that branch of medical practice who can normally be expected to give an impartial and unbiased opinion applying the test of **Bolam v. Friern Hospital Management Committee, (1957) 1 WLR 582 : (1957) 2 All ER 118 (QBD)**.

9. Here, in this case, According to Mr. Mukherjee, no such effort was taken before registration of FIR. Accordingly Mr. Mukherjee prays for quashing of the proceedings.

10. Mr. Anwar Hossain, learned counsel appearing on behalf of the State has submitted that medical opinion suggested in

Jacob Mathew (supra) was duly complied with in this case by obtaining a report from Dr. Subir Guha Roy, MO (Physician), Salt Lake SD Hospital. But, at the same time, Mr. Hossain, in his usual fairness, has submitted that there is no allegation in the FIR against this particular petitioner, Dr. Raktimava Sarkar.

11. I have carefully perused the case diary.

12. After careful perusal of the opinion of the doctor, I find that the opinion is given on 10th February, 2022 whereas FIR was registered on 5th February, 2018, i.e., prior to obtaining any opinion of the doctor in accordance with the guideline laid down by the Hon'ble Apex Court in **Jacob Mathew** (supra).

13. That apart, written complaint did not disclose any single allegation against the petitioner Dr. Raktimava Sarkar or any kind of negligence whatsoever on the petitioner Dr. Raktimava Sarkar.

14. Considering all facts and circumstances as discussed above, I find that further continuation of the proceeding against this **particular** petitioner Dr. Raktimava Sarkar will be an example of abuse of process of Court.

15. As a sequel, the proceedings in connection with GR Case No.4518 of 2018 corresponding to Baguiati Police Station Case No.42 of 2018 dated 5th February, 2018 under Section 304A of the Indian Penal Code stands quashed against the petitioner Dr. Raktimava Sarkar **only**.

16. With the aforesaid observation, the instant revisional application stands allowed.

17. Connected application is also disposed of.

18. Interim order stands vacated.

19. All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court.

20. Criminal Section is directed to supply certified copies of this order to the parties, if applied for, upon compliance of all necessary formalities.

(Bibhas Ranjan De, J.)