

(2023) 07 OHC CK 0024
In the Orissa High Court
Case No : CRLMC No.2369 Of 2022

Dr. Prahallad Panda & Another

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision : 03-07-2023

Acts Referred:

Code of Criminal Procedure, 1973 — Section 41A, 161, 482

Indian Penal Code, 1860 — Section 34, 120B, 167, 294, 323, 420, 468, 471

Citation : (2023) 07 OHC CK 0024

Hon'ble Judges : R.K. Pattanaik, J

Bench : Single Bench

Advocate : Goutam Mukherji, Partha Mukherji, S.S. Mohapatra

Final Decision : Allowed

Judgement

R.K. Pattanaik, J

1. Instant petition under Section 482 Cr.P.C is filed by the petitioners for quashment of the criminal proceeding in connection with G.R. Case No. 215 of 2022 pending in the file of learned J.M.F.C. (P) Kujang corresponding to Paradeep P.S. Case No. 69 of 2022 on the grounds inter alia that the F.I.R. and the evidence collected during investigation do not prima facie disclose commission of any of the offences punishable under Sections 420, 468, 471, 167 and 120-B read with Section 34 of I.P.C.

2. A written complaint was filed by the informant alleging therein that the misconduct of the petitioners as well as the mischief committed by them while his daughter was under their medical treatment. The circumstances leading to the lodging of the report with the local police stand described with the allegations that the petitioners are responsible for the death of the deceased daughter, who was working as a contractual staff nurse in the Paradeep Port Trust Hospital, Paradeep. Later to the F.I.R (Annexure-5) lodged by the father of the deceased, Paradeep P.S. Case No. 69 of 2022 was registered under Sections 323, 294 and

302 I.P.C. However, at the end of investigation, chargesheet under the alleged offences was filed, consequently upon which, the order of cognizance dated 11th July, 2022 was passed by the learned Court below. With the contention that neither the F.I.R. nor the chargesheet reveal or disclose commission of any cognizable offence, the petitioners have knocked the doors of this Court invoking its inherent jurisdiction under Section 482 Cr.P.C.

3. Heard Mr. Mukherji, learned Senior Advocate assisted by Mr.P Mukherji, Advocate appearing for the petitioners and Mr. Mohapatra, learned counsel for the State.

4. Mr. Mukherji, learned Senior Advocate for the petitioners submits that petitioner No.1 was the Chief Medical Officer of the hospital, whereas, petitioner No.2 was engaged as a doctor at the relevant point of time and in so far as the allegations are concerned, it is utterly falsehood since the deceased, a staff of the hospital, who had been issued with a show cause notice for dereliction in duty and according to the F.I.R, it had put her under severe mental trauma and ultimately she died on 13th March, 2022 due to cerebral hemorrhage. Mr. Mukherji would submit that on the request of the Superintendent of Police, Jagatsinghpur, a Board was constituted and inquiry was conducted which submitted a report with an opinion about no medical negligence in the treatment of the victim to have been found. While contending so, Mr. Mukherji refers to a copy of the report submitted by the Medical Board as at Annexure-1. It is also claimed that an independent inquiry was also held at the hospital level. It was conducted by the Chief Medical Officer of Syama Prasad Mookerjee Port, Kolkata, which also found no negligence in the medical treatment of the deceased. However, it is submitted that notwithstanding the inquiry report under Annexure-1, the petitioners have been chargesheeted not on account of any medical negligence but for manipulation/alteration of records maintained during the treatment of the deceased moreover when there was no such mischief committed and the alterations whatever was admitted by petitioner No.2 with proper explanation offered by her. It is contended by Mr. Mukherji that apart from the above, the offences under Sections 420 and 468 of I.P.C are not made out against the petitioners even by accepting Annexure-4 and all other material evidence submitted along with chargesheet. It is argued that independent report i.e. Annexure-2 concluded even with the original entries which are alleged to have been struck off or overwritten, the same shall have no bearing on the offences alleged, inasmuch as, the corrections made have no impact on the treatment of the deceased, as in both the cases with or without manipulation/alteration, the medication and treatment would have been the same, the fact which was fully lost sight of while the chargesheet was filed and hence, the criminal prosecution against the petitioners is unjustified, thus, liable to be quashed in the interest of the justice.

5. On the contrary, Mr. Mohapatra, learned ASC for the State referring to the F.I.R. (Annexure-5), statement of the material witnesses including the informant

submits that a subjective satisfaction was arrived at regarding manipulation of the medical papers in respect the deceased thereby leading to the submission of the chargesheet and therefore, it cannot be said that the petitioners are not liable for any criminal action notwithstanding the report of the Board at Annexure-1. It is submitted that though a case of medical negligence was overruled by the Board as revealed from Annexure-1, however, such exoneration of the petitioners is based on the manipulated medical record and when such mischief was detected during investigation, rightly, the chargesheet was filed under the alleged offences and therefore, the proceeding before the learned Court below should not be interfered with.

6. Initially, a case under Section 302 I.P.C was registered along with allied offences but finally the allegation of murder did not find favour with and hence, chargesheet was filed under other offences, considering which, order of cognizance dated 11th July, 2022 (Annexure-3) was passed by the learned court below. There has been no chargesheet alleging medical negligence against the petitioners. Mr. Mukherji, learned Senior Advocate referred to the judgment of the Apex Court in Jacob Mathew Vrs. State of Punjab and Others AIR 2005 SC 3180 and by placing reliance on Annexures-1 & 2 claimed that the deceased after having been admitted at the hospital received proper medical treatment but the petitioners stood chargesheeted otherwise by alleging manipulation of medical records, all the more when, petitioner No.2, who was in-charge of maintenance of such records fairly admitted about the correction she made and hence, overwriting which ought to have been taken cognizance of before submission of the chargesheet. As evident from Annexure-1, on the requisition received from the Superintendent of Police, Jagatsinghpur dated 19th April, 2022, a Special Medical Board was constituted which proceeded to the hospital at Paradeep and commenced the inquiry on 25th April, 2022 on the death of the deceased, the fact which is not in dispute. As per the report at Annexure-1, the Board reached at a conclusion that the deceased was admitted at the hospital on 12th March, 2022 with symptoms of Hypertensive emergency with sudden intra-cranial hemorrhage and received appropriate treatment and after a little bit of improvement, she was referred to a hospital with better facility and accordingly, was treated at AIIMS, Bhubaneswar, however, she expired thereafter and her death was natural and so far as the negligence in treatment, it could not be established. The said opinion under Annexure-1 was submitted by the Medical Board which ruled out any such medical negligence vis-à-vis the petitioners. As it is made to understand, an independent inquiry into the death of the deceased was held at the instance of the hospital itself, which also did not attribute any medical wrong or negligence being committed by the petitioners and particularly, petitioner No.1. The said report under Annexure-2 is not a part of the chargesheet since the inquiry was separately conducted by the hospital, which is, however, referred to in order to supplement and support the findings and report of the Special Medical Board at Annexure-1. Now the consideration is, for the alleged offences for which the chargesheet is submitted, whether, the petitioners

may be prosecuted, when a case of medical negligence was not prima facie established after inquiry was conducted by a specially constituted Board.

7. According to Mr. Mukherji, learned Senior Advocate even with the alteration in medical record with respect to the deceased, it hardly makes any difference since the line of treatment would have been the same. The medical papers so alleged to have been manipulated were seized and sealed and sent to the Handwriting Bureau CID (CB), Rasulgarh, Bhubaneswar for examination and opinion with a query as to if there is any manipulation with regard to the marked items, such as, A1 to A7 and if in case of any such manipulation, what were the original writings. The Case Diary which is made available to the Court by the State reveals that the above exercise was undertaken on 21st June, 2022 and thereafter, the original two sheets of bed head tickets dated 12th March, 2022 in respect of the deceased was sealed and sent for examination, however, it is not revealed as to if any such scientific opinion was received before submission of the chargesheet. In fact, as made to appear from the Case Diary, there was no defence from the side of the petitioners and after a prima facie case was made out under the alleged offences, for which the investigation was concluded, with a notice under Section 41-A of the Cr.P.C. served with a direction to them to appear before the learned court below and on receiving the orders from the Superintendent of Police, Jagatsinghpur, the chargesheet was filed on 5th July, 2022. In between 21st June, 2022 and 5th July, 2022, whether, any such scientific report and opinion was received is not disclosed from the Case Diary. Nevertheless, according to Mr. Mukherji, learned Senior Advocate, the alteration has been admitted by petitioner No.2 explaining the circumstances under which it had to be carried out and the said aspect was examined during the independent inquiry as made to reveal from Annexure-2. With the submission that even admitting the alteration, the line of treatment would not have been different, Mr. Mukherji lastly submits that even otherwise cheating and forgery which has been alleged is not at all made out against the petitioners.

8. Mr. Mohapatra, learned ASC for the State, however, claimed that it cannot be assumed that the nature of treatment would have been no different despite the manipulation and in any case, since the alterations have been admitted by petitioner No.2, the alleged offences are prima facie established.

9. As far as the exercise of inherent jurisdiction is concerned, such power is wide and expensive and the settled legal position is that it should be invoked sparingly. While seeking for the proceeding to be quashed, Mr. Mukherji, learned Senior Advocate placed reliance on the decisions in Jacob Mathew (supra) which is on medical negligence and Rekha Jain Vrs. State of Karnataka 2022 87 OCR 67; Motisinh Gambhirsinh Vrs. The State of Gujarat AIR 1961 Gujarat 117; Usha Chakraborty & Anr. Vrs. State of West Bengal & Anr. decided in SLP (Crl.) 5866 of 2022 and disposed of on 30th January, 2023 to contend that the essential ingredients of the alleged offences are not satisfied and hence, therefore, extraordinary jurisdiction under Section 482 Cr.P.C. should be exercised in the present

case considering the law enunciated in *State of Haryana vs. Ch. Bhajan Lal and Others* AIR 1992 SC 604. In *Ch. Bhajan Lal (supra)*, the Supreme Court laid down the principles while considering quashing of criminal proceeding exercising inherent and writ jurisdictions. In *Neeharika Infrastructure Pvt. Ltd. Vrs. State of Maharashtra and Others* 2021 SCC OnLine SC 315, the Apex Court reiterated the above principles and held that inherent power may be exercised to secure the ends of justice or to prevent abuse of law. Similarly, in *Kapil Aggarwal and Ors. Vrs. Sanjay Sharma and Others* (2021) 5 SCC 524, it is held that Section 482 Cr.P.C. is designed to achieve the purpose of ensuring that criminal proceedings do not become oppressive and weapons of harassment and such power to do substantial justice may be exercised at any stage even when the investigation is in progress provided a case is made out and falls in one of the categories illustrated in *Ch. Bhajan Lal (supra)* and reiterated by the Apex Court in subsequent decisions.

10. When the medical negligence was not established, the chargesheet was filed alleging manipulation of the medical record of the deceased. It is claimed by Mr. Mukherji, learned Senior Advocate that it is not a case of manipulation but correction of the entries made in the original bed head ticket duly admitted by petitioner No.2. From the chargesheet and the Case Diary, it is made to suggest that necessary changes made in the bed head ticket of the deceased have been acknowledged by petitioner No.2. Even by referring to Annexure-2, such correction is not denied. On the one hand, the petitioners and particularly, petitioner No.2 claimed that it was merely a correction and not a case of manipulation to tamper with the findings on medical record by placing reliance on Annexure-2 (which is apparently not a part of chargesheet), whereas, on the other hand, the same is alleged as a mischief. In so far as the statement of the petitioner No.2 recorded under Section 161 Cr.P.C. is concerned, she admitted about the necessary correction and explained the circumstances under which it had to be carried out. The other witnesses including the staff of the hospital have been examined during investigation. Of course, other private witnesses alleged ill-treatment on the part of petitioner No.1 alleging that whatever happened at the hospital was at his instruction and because of negligence during the treatment, the deceased had died. The inquiry report under Annexure-1 as discussed earlier ruled out medical negligence by petitioner No.1 which is not disputed by the local police with any incriminating material disclosing manipulation which distorted or suppressed the medical negligence. Whether there was a wrong line of treatment or the deceased did not receive medication as per the protocol, which was attempted to be suppressed by the petitioners through manipulation of the bed head tickets, is the question under consideration. The bed head ticket in original was seized and sealed and it was sent for examination. As stated, no scientific report had been received before submission of the chargesheet. When petitioner No.2 admitted herself and claimed that the correction was to be made under the circumstances narrated, sending the original bed head ticket for examination to an extent lost its relevance. Nevertheless, what were the original writings in the

bed head ticket of the deceased ought to have been ascertained to find out whether the original treatment which the deceased received was not according to the protocol and was an outcome of medical negligence. Without any such satisfaction being reached at, the chargesheet was filed simply alleging manipulation of the medical record as against the clear admission and explanation of petitioner No.2 claiming it to be a mere correction without any ill-motive. If the original writings have not been revealed, the purpose being to ascertain whether there was any medical negligence or not and in case of negligence, if there was any attempt to distort it, sending the original bed head ticket simplicitor without any report having been obtained really served no purpose especially on the anvil of the statement of petitioner No.2 and her open admission about the correction in the bed head ticket. So therefore, the Court, in the peculiar facts and circumstances of the case, does not find any reason to subject the petitioners to go through the criminal prosecution which would lead to nowhere rather result in unnecessary harassment. The Court is not oblivious of the pain and trauma suffered by the family of the deceased but to force the petitioners to face the prosecution in absence of strong material evidence would result in travesty of justice which it can allow to perpetuate.

11. Hence, it is ordered.

12. In the result, the petition stands allowed. Consequently, the criminal proceeding in connection with G.R. Case No. 215 of 2022 pending in the file of learned J.M.F.C. (P) Kujang corresponding to Paradeep P.S. Case No. 69 of 2022 is hereby quashed for the reasons discussed herein before..

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