
(2013) 04 RAJ CK 0024

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 1376 of 2012

Kamal B. Kapur (Dr.) and Another

APPELLANT

Vs

State of Raj. and Another

RESPONDENT

Date of Decision : 04-04-2013

Acts Referred:

Citation : (2013) 4 RLW 3536

Hon'ble Judges : Sandeep Mehta, J

Bench : Single Bench

Advocate : Vineet Jain, for the Appellant; Chandralekha, PP for State and Umesh Srimali, for the Respondent

Final Decision : Dismissed

Judgement

Sandeep Mehta, J.—Heard learned counsel for the parties. The instant misc. petition has been preferred by the petitioners seeking quashing of F.I.R. No. 204/2012 registered against them at the instance of the respondent No. 2 at P.S. Kotwali, Sri Ganganagar for the offences under Sections 336 and 420 IPC.

2. Succinctly stated the facts necessary for the disposal of the instant misc. petition are that the respondent No. 2 Shri Amit Chitlangia (hereinafter referred to as the complainant) filed a written report at the Police Station, Kotwali, Sri Ganganagar on 5.5.2012 alleging inter alia that he was suffering from a serious vision defect and was forced to wear glasses of 4-1/2 power. He further alleged that acting on the basis of an advertisement pamphlet distributed in Rajasthan Patrika newspaper on 5.2.2000, the complainant approached a clinic by the name of Perfect Vision Basic Laser Center. The operator of the Center was one Om Prakash Agarwal. The respondent No. 2 got his eyes tested at the centre and was advised surgery by the operators of the Laser Center. The complainant was allegedly informed that specialist doctors from Delhi namely, Dr. Samir Sood and Dr. Kamal B. Kapur, the petitioners herein, would be called for performing the surgical procedures on the complainant. The complainant was subjected to correctional procedure through laser therapy by these two petitioners allegedly

on 28.3.2000. The complainant also alleged that he developed serious problems and complications after the procedure and repeatedly approached the laser center as well as the petitioners at Delhi for resolution of his problems. He was allegedly turned back after giving false assurances. Ultimately, he approached another eye clinic and there he was told that the procedure performed on him was defective leading to the impairment of his vision. It was alleged that the petitioners acted in rash and negligent fashion and by carrying out laser procedure irresponsibly, destroyed the complainant's vision and also cheated him out of a sum of Rs. 20,000/-. On the basis of the aforesaid report, an FIR No. 204/2012 was registered at the P.S. Kotwali, Sri Ganganagar for the offences under Sections 336 and 420 IPC and investigation commenced.

3. The petitioners both eye surgeons who have been arrayed as accused in the FIR, have approached this Court by way of the instant misc. petition seeking quashing of the FIR impugned.

4. Learned counsel for the petitioners submitted that the FIR which has been filed implicating the petitioners as accused is a blatant abuse of process and is nothing but a gross abuse of criminal law for oblique motives. Learned counsel for the petitioners submitted that the laser procedure on the respondent No. 2 was carried out way back in the year 2000 and that too at Jaipur. Learned counsel for the petitioners further contended that the advertisement which the respondent No. 2 claims to have seen, was issued by Perfect Vision Basic Laser Center and the complainant claims to have been induced by the said advertisement. Learned counsel for the petitioners submitted that the petitioners have nothing to do with the said pamphlet. They simply were visiting surgeons in the clinic and performed the laser procedure on the complainant to the best of their abilities. Learned counsel for the petitioners further submitted that there is no allegation of the complainant in his FIR that the petitioners fraudulently induced and made the complainant to part with any valuable security and thereby caused him any loss. Learned counsel for the petitioners has placed on record a legal notice issued to the petitioners on behalf of the complainant in the year 2001 wherein the complainant has alleged that the petitioners by performing the faulty procedure, committed the offence u/s 338 IPC. Learned counsel for the petitioners further submitted that as per the admitted case of the complainant he was aware of the fact about the petitioners having committed the offence u/s 338 IPC way back in the year 2001 and hence, there was no justification for him to have waited for a period of nearly 11 years before filing the FIR. Learned counsel of the petitioners further submitted that ex-facie there is no allegation against the petitioners regarding having practiced any fraud upon the complainant. Furthermore, he urged that as the offence u/s 336 IPC is punishable with imprisonment of 3 months only, the limitation for prosecution of the said offence has lapsed long back. He thus prayed that the prosecution of the petitioners for this offence after more than 11 years is absolutely unjustified in view of the bar of limitation prescribed u/s 468 Cr.P.C.

5. Learned counsel for the petitioners has also placed on record the copy of the complaint filed by the respondent No. 2 in the year 2002 before the National Consumer Disputes Redressal Commission, which is still pending consideration. He thus submitted that despite a lapse of nearly 10 years, the respondent No. 2 has not been able to establish the negligence of the petitioners before the Commission. On the aspect of delay in filing of the FIR and the effect thereof, learned counsel for the petitioners has placed reliance on the decision of the Hon"ble Apex Court in the case of Kishan Singh (D) through LRs. Vs. Gurpal Singh and Others, On the strength of the above Judgment, he submitted that the FIR impugned qua the petitioners is a gross abuse of process of Court.

6. As regards the prosecution of the doctors for alleged medical negligence, learned counsel for the petitioners has placed reliance on the decision of the Apex Court rendered in the case of Jacob Mathew Vs. State of Punjab and Another,

7. He submitted that in view of the principles laid down by the Apex Court in the aforesaid two cases, the prosecution of the petitioners is absolutely uncalled for and the FIR impugned deserves to be quashed.

8. Per contra, learned Public Prosecutor as well as learned counsel for the complainant vehemently opposed the arguments advanced on behalf of the petitioners. They submitted that because of rash and negligence act of the petitioners, the complainant has virtually lost his eye sight. They submitted that the impugned FIR does not call for interference in exercise of the inherent powers of this Court. It was argued on the question of delay that the complainant was diligently prosecuting the petitioners before the National Consumer Commissioner and therefore the FIR cannot be said to be delayed. They thus submitted that the petition seeking quashing of FIR was not fit to be accepted.

9. Heard and considered the arguments advanced at the bar and perused the FIR impugned and the documents placed on record.

10. Undisputedly, in this case, the offence, if any, which was committed upon the complainant was in the year 2000. As per his own version, the complainant immediately realised that the surgical procedure carried out on him was defective and faulty. A legal notice has been issued by the complainant to the petitioners way back in the year 2001. Despite admittedly knowing that his alleged sufferings were because of rash and negligent acts of the petitioners, the complainant chose not to initiate the prosecution for a period of nearly 12 years. Even from the admitted case of the complainant, no inducement was offered to him by the petitioners. The complainant approached the clinic operator Om Prakash Agarwal on the basis of pamphlet issued by him. It is no case of the complainant that the petitioners were concerned or connected with the pamphlet which he received with Rajasthan Patrika newspaper. Admittedly, the allegedly defective surgical procedure was carried out on the complainant at Jaipur.

Therefore, it cannot be accepted on the face of the record that (a) the petitioners cheated the complainant so as to make them liable for the offence u/s 420 IPC and (b) any of the offences claimed to be committed with the complainant was committed at Sri Ganganagar so as to justify the registration of the F.I.R. at the Police Station, Sri Ganganagar.

11. Now coming to the aspect of delay. The Hon'ble Apex Court in the case of Kishan Singh (D) through LRs. Vs. Gurpal Singh and Others, considering the aspect of delay in initiation of the prosecution, observed as below:--

21. Prompt and early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of its version. In case, there is some delay in filing the FIR, the complainant must give explanation for the same. Undoubtedly, delay in lodging the FIR does not make the complainant's case improbable when such delay is properly explained. However, deliberate delay in lodging the complaint is always fatal, (vide; Sahib Singh Vs. State of Haryana,

22. In cases where there is a delay in lodging a FIR, the Court has to look for a plausible explanation for such delay. In absence of such an explanation the delay may be fatal. The reason for quashing such proceedings may not be merely that the allegations were an after thought or had given a coloured version of events. In such cases the court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before the Civil Court may initiate criminal proceedings just to harass the other side with malafide intentions or the ulterior motive of wreaking vengeance on the other party. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the criminal court. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and prosecution. In; such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case, (vide: Chandrapal Singh and Others Vs. Maharaj Singh and Another, State of Haryana and others Vs. Ch. Bhajan Lal and others, G. Sagar Suri and Another Vs. State of U.P. and Others, and Gorige Pentaiah Vs. State of A.P. and Others,

12. Admittedly in this case, the prosecution which has been initiated/launched by the complainant is highly belated having been initiated after nearly 12 years of the occurrence. The delay is totally unexplained and cannot be excused.

13. Even if for the sake of arguments it is accepted that the act of the petitioners in performing the surgical procedure on the complainant is covered within the offence u/s 336 IPC, then too, the petitioners prosecution in this case is grossly delayed and the delay is not fit to be condoned. That apart, if the allegations levelled in the FIR are tested in the light of the principles laid down in the case of Jacob Mathew (supra), this Court is of the opinion that the act of the petitioners

cannot be said to be falling within the definition of gross negligence so as to make them liable for the offence u/s 336 IPC.

14. The upshot of the above discussion is that the instant misc. petition succeeds and the FIR No. 204/2012 registered at P.S. Kotwali, Sri Ganganagar for FIR No. 93/2011 and all subsequent proceedings thereupon qua the petitioners are hereby quashed. Stay petition also stands disposed of.