
(2011) 06 CAL CK 0005
In the Calcutta High Court
Case No : C.R.R. No. 2741 of 2007

Subhas Chandra Mitra

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 24-06-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 401, 482
Penal Code, 1860 (IPC) — Section 120B, 406, 420, 506

Citation : (2012) 1 CHN 359

Hon'ble Judges : Syamal Kanti Chakrabarti, J

Bench : Single Bench

Advocate : Manjuli Chowdhuri and Chinmoy Chowdhuri, for the Appellant; Barin Roy for the State, for the Respondent

Judgement

Syamal Kanti Chakrabarti, J.—In the instant application u/s 401/482 Cr, PC three petitioners have prayed for quashing of the proceedings in complaint case No. 6384 of 2007 u/s 420/406/506/ 120B IPC now pending before the IXth Court of learned Metropolitan Magistrate, Calcutta including order dated 03.04.2007 and 05.04.2007. It is contended by the petitioners that OP No. 2 Sankar Singh lodged a false complaint against them stating, inter alia, that the complainant is a practising lawyer of this Hon'ble Court and Courts subordinate thereto having his chamber at 10, K.S. Roy Road, 2nd Floor mezzanine, Kolkata - 700 001 and also at 21, Old Court House Street, Kolkata - 700 001 and is a resident of 8, Ram Chandra Sett Road, 4th Floor, Flat No. 404, P.S. Shibpur, Howrah. Accused Nos. 1 to 3 are his neighbours residing in the same premises at his above residential address. Accused No. 1 is a Doctor and accused No. 2 is his wife while accused No. 3 is the daughter of the accused No. 1 and accused nos. 4 and 5 are relatives of accused Nos. 1 to 3.

2. As a physical patient the complainant was under treatment of different doctors and in course of his treatment he came across with accused No. 1 and ultimately family relation grew up with accused Nos. 1 to 3. On good faith the complainant

allowed the accused No. 3 to join his chamber at 10, K.S. Roy Road, 2nd Floor, Mezzanine, Kolkata - 700 001 as a part-time computer operator from the month of July, 2005. He also gave Rs. 50,000/- in cash at his chamber to accused No. 3 for payment of her fees to prosecute her studies in presence of his clerk Prahallad Singh and Sukanta Mondal. Thereafter, the accused No. 3 stopped coming to his chamber and ultimately on 03.12.2005 accused No. 3 intimated over phone that she was not inclined to work as computer operator but remained silent regarding refund of the said Rs. 50,000/-.

3. Moreover, on allurement of better treatment complainant gave a sum of Rs. 25,000/- in cash to accused No. 1 on 02.11.2005 at his place of residence for minor operation over the right posterior part of his skull. Thereafter they refused to keep up their promise and shifted their residence from 8, Ram Charan Set Road, P.S. Shibpur on or about 03.11.2005 and no further contact with them was possible. Accused No. 3 then was trying to leave India to prosecute her studies abroad. However, contact was made with accused No. 1 at his shifted residence at 42, Kali Kundu Lane, First floor No. 1-D, Howrah where complainant was treated on 24.04.2006 by accused No. 1, But complainant realised that accused No. 1 was really not a competent doctor for brain treatment. Then he lodged a complaint with the Officer-in-Charge, Howrah PS by his letter dated 29.04.2006 which was received on 03.05.2006. As the accused persons threatened him of dire consequences he lodged another general diary being G.D. No. 1288 dated 12.04.2006. Their subsequent reconciliation efforts were futile for which the complainant was lodged on which learned Chief Metropolitan Magistrate, Kolkata took cognizance on 03.04.2007 and issued process against the petitioners which is now assailed.

4. It is contended by learned lawyer for the petitioners that the payment of money as alleged was not the outcome of any fraudulent misrepresentation or by any deceitful means. Complainant admits that he gave the amount on two occasions voluntarily once for education of daughter of accused No. 1 and the other for his own treatment. In fact admittedly he has received some treatment on 24.01.2006. Such state of affairs can under no stretch of imagination be treated as dishonest inducement to part with the transaction in favour of the accused and thereby cheated the complainant with the knowledge of wrongful gain to the accused persons and wrongful loss to the complainant.

5. From the copy of the complaint it appears from paragraph 8 as follows:

In the month of November, 2005 the accused no. 2 demanded a sum of Rs. 50,000/- from the complainant as an advance with a pretext to deposit the said sum to her management institute with a promise to return the same as early as possible.

6. In paragraph 10 of the complaint it is further alleged as follows:

That in the same period the accused No. 1 allured your complainant by saying to provide best treatment for the complainant so that the complainant would be got

recover from his ailing condition of suffering from the said disease for which the complainant made a close touch with the accused and all on a sudden on the verbal demand the complainant gave a sum of Rs. 25,000/- in cash to the accused at his request on 02.11.2005 at 10.00 pm at his place of residence at 8, Ram Charan Set Road within PS Shibpur, District Howrah for providing a minor operation over the right posterior part of his skull by the said accused person having a Degree of Doctorate of Medicine and being next door neighbours the complainant got the confidence over the accused that is why the complainant demanded no acknowledgement from the accused person accepting the said amount.

7. From paragraph Nos. 15 and 16 of the complainant his real grievance against the doctor emerges as under:

Paragraph 15. That on 24.04.2006 the complainant was called for at his chamber at 42, Kali Kndu Lane and start treatment of the complainant by prescribing some medicines with advice in his pad with his letter head and your petitioner craves leave to refer the same at the time of hearing which was caused in presence of the witness.

Copy of the said prescription is annexed hereto and marked with the letter "B".

Paragraph 16. That by the medicines prescribed by the accused No. 1 on his prescription the complainant realised that the accused No. 1 is neither a doctor of brain nor the medicine prescribed by him was for mental problem.

8. After careful consideration of the contents of paragraph Nos. 10, 15 and 16 of the petition of complaint it appears that in the estimation of the patient the doctor was not competent to cure his ailment and such claim of brain treatment for which he paid R. 25,000/- in advance was made by fraudulent representation. It also appears that complainant (para 24) has already lodged another complaint against accused No. 1 before the State Medical Council which is still pending. Hon"ble Apex Court in the case of Jacob Mathew vs. State of Punjab reported in 2005 (6) SCC 1 has already set forth certain guidelines for prosecution of doctors on charges of professional misconduct, wrong treatment etc. and has given a safeguard to the responsible doctors from unnecessary harassment and frivolous litigation. Such guidelines include that opinion of another doctor shall be obtained by aggrieved party as to whether the doctor really and intentionally committed any mischief/ misconduct for which he should be prosecuted. In this case complainant being an Advocate has lodged the complaint on the basis of his self-assessment that accused No. 1 is really not a doctor of brain treatment and in his estimation the medicine prescribed by accused No. 1 as for mental problems. Allegation based on self-appraisal of persons not directly connected with medical profession cannot be the basis of any complaint since it is inconsistent and contrary to the guidelines of the Hon"ble Apex Court. Moreover, admittedly complainant did not ask for acknowledgement of payment of advance professional charges of Rs. 25,000/- in cash on 02.11.2005 as he "got

confidence over the accused" referred to in paragraph 10 of the complaint. Therefore, prima facie there are no element of fraud, misrepresentation etc. in the alleged transaction. The learned Chief Metropolitan Magistrate has omitted to take note of this aspect as well as mandate at the time of taking cognizance which is accordingly not sustainable in law.

9. So far as other accused petitioners are concerned allegation against them is that they had common intention to cheat the complainant and so taking advantage of their close acquaintance as neighbour accused No. 3 took advance of Rs. 50,000/- to prosecute her studies in November, 2005 but did not refund the same on repeated request. Such allegations made in paragraph 8 of the complaint prima facie shows a loan transaction or accommodation loan on verbal contract without stipulation of any period or time of refund. Complainant has identified such transaction as advance payment. But in the complaint there is no whisper of remuneration of accused No. 3 for working as part-time computer operator as stated in paragraph 6 of the complaint for the period from July, 2005 to 03.12.2005. Nonpayment of such advance is purely a dispute for which Money Suit may be filed before appropriate Court. So it appears that in this case civil dispute is raised in criminal outfit which is not sustainable in law and an abuse of the process of law.

10. Considering all these aspects I hold that there are sufficient merits in this revisional application which should be allowed to prevent abuse of the process of law.

11. In the result the application is allowed and instant proceeding being complaint case No. 6384 of 2007 u/s 420/406/506/120B IPC now pending before the IXth Court of the learned Metropolitan Magistrate, Calcutta and orders dated 03.04.2007 and 05.04.2007 passed therein are quashed and all the petitioners are discharged and released from their respective bail bonds.

12. It is made clear that observation and findings of this case shall have no bearing upon the pending complaint made by the complainant before the West Bengal Medical Council.

13. There shall be no order as to costs. Urgent certified photocopies of this order, if applied for, be supplied to the parties, on compliance of all requisite formalities.