

(2008) 01 KAR CK 0021
In the Karnataka High Court
Case No : Criminal Petition No. 3425 of 2006

Wockhardt Hospital and Heart Institute	APPELLANT
Vs	
Mr. G.R. Parthasarathi	RESPONDENT

Date of Decision : 16-01-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468, 470, 473
Penal Code, 1860 (IPC) — Section 25, 403, 405, 406, 415

Citation : (2008) CriLJ 2198 : (2008) ILR (Kar) 851 : (2008) 2 KarLJ 593 :
(2008) 2 KCCR 807

Hon'ble Judges : K. Bhakthavatsala, J

Bench : Single Bench

Advocate : Padmanabha Mahale and Goutam and Rajeswar, for the Appellant;
Pramila Associates, for the Respondent

Final Decision : Allowed

Judgement

K. Bhakthavatsala, J.—The petitioner/accused in CC No. 14643/2006 on the file of IV Addl. Chief Metropolitan Magistrate, Bangalore, for the offence u/s 406 of IPC, is before this Court u/s 482 of Cr.P.C., praying to quash the order dated 25.5.2006 made in CC No. 14643/2006 and also quash the further proceedings.

2. The petitioner/accused is represented by Sri Padmanabha Mahale, learned Senior Counsel along with the Advocates on record. The respondent/complainant is represented by M/s. Pramila Associates.

3. Heard arguments.

The brief facts of the case leading to the filing of the Petition may be stated as under.

The respondent/complainant, while working as a Chief Telephone Supervisor, Bangalore Telephones, Department of Telecommunication, underwent an emergency, coronary artery bypass grafting surgery on 18.6.1992 in the accused/ Hospital. The accused/hospital, by its letter dated 17.6.1992, had

communicated to the Telecommunication Department that the treatment would approximately cost Rs. 70,000/- (excluding cost of drugs and medicines). The amount was paid by the Department of Telecommunication and while discharging the complainant, the accused Hospital issued a detailed final bill for a sum of Rs. 86,960/-(Rs. 78,825/- towards medical treatment and Rs. 8,135/- towards drugs and medicines) and collected the same from the complainant.

It is the case of the complainant that the accused/hospital was not recognised Hospital under the Central Government Health Scheme and the accused Hospital has charged in all amounting to Rs. 86,960/- as against a sum of Rs. 50,000/- (inclusive of all expenses) as a package deal, applicable to the Hospital recognised by the Central Government for such treatment. Therefore, it is the case of the complainant that the accused/Hospital has dishonestly misappropriated the amount deposited by the Department of Telecommunication and also induced the complainant to pay Rs. 16,960/- and thus caused wrongful loss to the complainant in all amounting to Rs. 36,960/-, Hence, the complainant filed a private complainant on 7.9.2000 u/s 200 of Cr.P.C. against the accused/Hospital alleging that the accused has committed offence under Sections 23, 25, 403, 405, 406, 415 and 420 of IPC.

When the matter was referred for investigation, the Police laid a final "B" report. The complainant filed a protest petition. After recording sworn statement of the complainant, the trial Court by order dated 25.5.2006, held that a prima facie case was made out as against the accused for the offence u/s 406 of IPC and ordered to register the case and issue summons to the accused. This is impugned in this Petition.

4. The learned Senior Counsel for the petitioner submits that the complainant has not made out a prima facie case for the offence u/s 406 of IPC. He also submits that the Learned Magistrate has taken cognizance of the offence, which is barred by limitation u/s 468 of Cr.PC.

5. Learned Senior Counsel for the petitioner relies upon a decision reported in *Jairani Devi Vs. Krishna Kumar Jauhari*, on the point that mere payment of money by one person to another does not amount to entrustment and therefore no prima facie case is made out for the offence u/s 406 of IPC.

6. The learned Counsel for the respondent submits that there is no illegality or infirmity in the impugned order.

7. According to Section 406 of IPC, whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. The pith and marrow of the complaint is that the accused/Hospital has charged excess amount for the medical treatment. Hence, it cannot be said that the accused/Hospital has committed offence u/s 406 of IPC. and on this score alone, the petitioner is entitled to succeed. The another ground contended is that the offence is time barred u/s 468 of Cr.P.C.

8. It is useful to excerpt Section 468 of Cr.P.C., which reads as under:

468. Bar to taking cognizance after (sic) of the period of limitation.-(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in Sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be-

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment

9. According to Clause (c) of Sub-section 2 of Section 468 of Cr. P.C., no Court shall take cognizance of an offence after the expiry of the period of three years, if the offence is punishable with imprisonment for a term exceeding one year, but not exceeding three years.

10. In the instant case, it is alleged that the accused/Hospital has committed an offence u/s 406 of IPC on 18.6.1992. The complainant filed a private complaint on 9.7.2000. The learned Magistrate, by order dated 25.5.2006, has taken cognizance for the offence u/s 406 of IPC after lapse of more than 14 years from the date of alleged commission of offence. At this juncture, it is necessary to state that the complaint is not claiming exclusion of time in computing the period of limitation u/s 470 of Cr.P.C., Further, the trial court has not passed any order u/s 473 Cr.P.C. regarding extension of period of limitation. Under such circumstances taking cognizance for the offence u/s 406 of IPC as against the accused by the Learned Magistrate is bad in law.

11. In the result, the Petition is allowed and the impugned order dated 25.5.2006 passed in CC No. 14643/2006 on the file of IV Addl Chief Metropolitan Magistrate, Bangalore, registering the case against the petitioner/accused for the offence u/s 406 of IPC is quashed.