

ASOKE KUMAR CHAUDHURI AND OTHERS

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v.

KUNAL SAHA AND ANOTHER

(Criminal Appeal No. 1163 of 2016)

NOVEMBER 29, 2016

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[A. K. SIKRI AND ABHAY MANOHAR SAPRE, JJ.]

Penal Code, 1860 – ss. 201, 120-B and 219 – Death of complainant's wife due to medical negligence – Negligence being of civil nature, award of damages – Criminal complaint against the members of the Inquiry Committee of State Medical Council including the appellants – Allegation that they committed offence u/s 201/120-B by entering into conspiracy to save delinquent doctors – Members of the Committee ignored the report of the experts and helped the delinquent doctors to go scot-free – Petition u/s. 482 by appellants seeking quashing of the proceedings – Dismissed by High Court – On appeal, held: Approach of the High Court was unsustainable – Matter not dealt in proper perspective – Even if the allegations in the complaint are taken as true and at their face value, it would not constitute offence u/s. 201 and s. 120-B – Allegations contained in the complaint do not make out any case u/ s. 201 – Conspiracy, if at all, was to save the delinquent doctors in disciplinary proceedings taken against them, thus, s.120B not applicable – Provisions of s. 219 also does not apply since the departmental proceedings into the report given by the Committee cannot be treated as 'judicial proceedings' – Also in the departmental proceedings, evidence could not be or would not have been taken on oath.

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Allowing the appeal, the Court

HELD: 1.1 The approach of the High Court is unsustainable in law and it has committed grave error in not dealing with the matter in proper perspective. Even if the allegations in the complaint are taken as true and at their face value, it would not constitute offence under section 201 and section 120-B IPC. [Paras 11, 12] [232-H; 233-A-B]

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1.2 An offence under section 201 would be treated to have been committed when a person, knowing or having reason to

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- A believe that an offence has been committed, causes any evidence of the commission of that offence to disappear. What is relevant is that the evidence which is made to disappear relates to the commission of the offence. In the instant case, the allegations against the delinquent doctors of their negligence were of a much prior date. The complainant had sought to make out a case that
- B the opinions of the four experts which were taken by the Committee itself were not reflected in the report that was submitted and it is this 'evidence' which was made to disappear by the members of the Inquiry Committee. Obviously, it is not a kind of evidence that is referred to under Section 201 IPC. Thus,
- C on a plain reading of this provision, the allegations contained in the complaint do not make out any case of committing an offence under Section 201 IPC. [Para 14] [233-G-H; 234-A-C]

- 1.3 There is a charge of conspiracy as well. Criminal conspiracy that is referred to and defined under Section 120A
- D IPC has to be in furtherance of committing an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards etc. The alleged conspiracy even as per the complaint was not to commit any of the offences as mentioned. As per the complainant himself, the so-called conspiracy, if at all, was to save the delinquent doctors in disciplinary proceedings taken against them. This provision also,
- E therefore, has no application. [Paras 15, 16] [234-C, F-G]

- 1.4 The counsel appearing for the complainant submitted that the allegations contained in the complaint would constitute an offence punishable under Section 219 IPC. Though no such
- F provision is mentioned in the complaint, the counsel is right that the allegations made in the complaint may constitute an offence under section 219 and mere non-mentioning of the said provision in the complaint would not make any difference. It cannot be understood as to how even the provisions of Section 219 IPC
- G applies in the instant case. [Para 17] [234-G-H; 235-A-B]

- 1.5 The ingredients of section 219 are: (1) the person charged is a public servant; (2) the said public servant corruptly or maliciously makes or pronounces any report, order, verdict, or decision which he knows to be contrary to law (3) such act is
- H to be done in any stage of a judicial proceedings. The departmental

proceedings into the report given by the Committee cannot be treated as 'judicial proceedings'. It cannot be said that the departmental proceedings, which were initiated against the delinquent doctors and in which five of the appellants constituted Inquiry Committee, evidence could be or would have been taken on oath. [Paras 18, 20] [235-D-E; 236-C]

1.6 Even if, it is presumed that the Members of the Committee had side-tracked and deliberately ignored the report of the experts helping the delinquent doctors to go scot-free, it does not make out any criminal offence said to have been committed by these appellants under the provisions of IPC. If there was any other remedy available to the complainant, he could have availed the said remedy but insofar as the complaint filed by him for initiating proceedings against the appellants under Section 201 read with Section 120B IPC is concerned, it was not clearly maintainable. [Para 21] [236-D-E]

Molay Kumar Ganguly v. Sukumar Mukherjee 2009
(13) SCR 1:2009 (9) SCC 221

Case Law Reference

2009 (13) SCR 1 referred to Para 5

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1163 of 2016.

From the Order dated 01.07.2013 by the High Court of Calcutta in C.R.R. No. 4243 of 2011.

Bikash Ranjan Bhattacharya, Sr. Adv., Rauf Rahim, Ms. Poulami Das Dey, Advs. for the Appellants.

M. N. Krishnamani, Sr. Adv., Abhijat P. Medh, T. V. George, S. Roy, Advs. for the Respondents.

The following Judgment of the Court was delivered

1. Leave granted.

2. We have heard the counsel for the parties finally, with their consent, as the matter was fixed for final arguments by this Court.

3. The issue that is involved in the present appeal does not require stating of the facts in detail. We would, however, recapitulate those facts

A which are absolutely essential for deciding this matter.

4. Wife of respondent No. 1 was under the medical treatment of Dr. B. Halder, Dr. Abani Roychowdhury and Dr. Sukumar Mukherjee (hereinafter referred to as delinquent doctors). She, however, could not survive. Her husband-respondent No. 1 was not satisfied with the manner in which medical treatment was given by the aforesaid doctors, as according to him, their negligence in performance of their duties as doctors led to the death of his wife. He, therefore, lodged a written complaint with the West Bengal Medical Council against those three doctors in the year 1999 alleging negligence and maltreatment of his wife by the said three medical practitioners. On receiving the complaint, the Medical Council referred the same to the Penal and Ethical Cases Committee No. 1 (hereinafter referred to as 'Inquiry Committee') with instructions to conduct an inquiry into the allegations made in the said complaint. This Committee comprised five doctors (other appellants were the members of the West Bengal Medical Council).

5. It appears that this Inquiry Committee took opinion of certain experts in their field and the opinion of the said experts was in favour of the complainant. Notwithstanding the same, the Inquiry Committee submitted its report giving findings that the delinquent doctors were not at fault. On the basis of that report, they were exonerated by the West Bengal Medical Council. However, it may be mentioned that the complainant had also initiated proceedings against the delinquent doctors before the National Consumer Disputes Redressal Commission (NCDRC) alleging deficiency in service against several medical practitioners including the said three delinquent doctors. Though NCDRC rejected the complaint, in the appeal filed against the orders of the NCDRC, this Court held the said delinquent doctors guilty of negligence but at the same time, it was found that their negligence was not of criminal nature but of civil consequence and, therefore, awarded damages in favour of the complainant and against the delinquent doctors. This judgment is reported as '*Molay Kumar Ganguly v. Sukumar Mukherjee*' [2009 (9) SCC 221].

6. It is clear from the above that insofar as the three delinquent doctors were concerned, it has been finally held that they acted with negligence while according medical treatment to the wife of the complainant.

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7. The complainant, after the aforesaid judgment of this Court, filed criminal complaint against the members of the Inquiry Committee of West Bengal Medical Council including the appellants herein alleging that they have committed offence under Section 201 read with Section 120B of the Indian Penal Code(IPC). The complaint is founded on the allegations that even when there were four reports of four different medical experts to the effect that delinquent doctors were guilty of professional misconduct as they had acted with negligence while giving medical treatment to the wife of the complainant, these accused persons entered into conspiracy to save the delinquent doctors. On this basis, culpability which is attributed to these appellants can be traced in paragraph 23 of the complaint which reads as under:

“23. That on the backdrop of what has been canvassed in the foregoing paragraphs, it is most palpable and glaring that the accused persons had entered into a deep-rooted criminal conspiracy amongst themselves to screen the offenders and in pursuance to that, as overt acts, the accused persons knowing fully well that the offending doctors had committed the offence of medical negligence and thereby caused death of the wife of the petitioner, deliberately concealed and withheld the evidences and/or information relating to the said offenders with the intention to save their skin and thereby committed the offence punishable under Section 201 of the Indian Penal Code read with Section 120B of the said Code.”

8. The concerned Magistrate took cognizance of the said complaint and issued process. On receipt of the notice, the appellants challenged the proceedings arising out of the said complaint by filing petition under Section 482 of the Code of Criminal Procedure (Cr.P.C.) in the High Court of Calcutta being C.R.R. No. 4243 of 2011 submitting that no case of conspiracy was made out in the complaint and the ‘complaint was malicious and untenable’ and it could not be said that any offence by the appellants was committed under Section 201 read with Section 120B of the IPC. The High Court, after hearing the parties, dismissed the said petition vide impugned judgment dated 01.07.2013 and it is this judgment which is impugned in the present proceedings.

9. A perusal of the judgment of the High Court would disclose that the High Court has discussed the matter in detail as to whether prior sanction of the Medical Council was required in view of the provisions

- A of Section 197 of the Cr.P.C., inasmuch as one of the submissions of the appellants was that no such complaint could be filed without such a permission in view of the provisions of Section 27 of the Bengal Medical Act, 1914, which bars suit or other legal proceedings in respect of any act done in exercise of any power conferred by the said Act on the State Government or the Council or any Committee of the Council or the Registrar. We are not advertng to that discussion as we would be dealing with the matter on merits.

- C 10. Insofar as the contention of the appellants herein on the maintainability of the case filed by the complainant is concerned, it was argued that even after reading the petition as a whole, it would be seen that it does not disclose commission of any offence much less offence under Section 201 IPC or Section 120B IPC. The High Court has noted this contention as well as judgments which were applied by the appellants in support of this contention. However, when dealing with these contentions on merit, the High Court has dismissed the petition simply on the ground that the jurisdiction of the High Court under Section 482 Cr.P.C. to quash a proceeding is required to be sparingly used. After elaborately quoting from judgments in support of the aforesaid principle, the High Court has applied the same to the facts of this case in the following manner:

- E “17. In the instant case, the complaint of Dr. Saha relates to nondisclosure or non-consideration of the four expert reports. This, he alleges, is deliberate suppression to screen the offenders, and causing disappearance of evidence of offence. By the term offender, he implies the doctors against whom he brought the actions before the Council, Court of the Chief Judicial Magistrate, Alipore and the NCDRC. As regards the case brought by Dr. Saha in the Court of the Chief Judicial Magistrate, Alipore, there has been final acquittal of the accused doctors in the Hon’ble Supreme Court. Thus, suppression of such reports could not constitute disappearance of evidence respecting a penal offence or screening the offender, even if the allegations of deliberate suppression are assumed to be correct. Nor can such suppression sustain the charge of screening an offender, the Hon’ble Supreme Court having acquitted the accused doctors.”

- H 11. After hearing the counsel for parties, we are of the opinion that the aforesaid approach of the High Court is unsustainable in law

and it has committed grave error in not dealing with the matter in proper perspective. A

12. We have already stated in brief the allegations which are made by the complainant in the said complaint in an attempt to rope in the appellants for offence under Section 201 and Section 120B IPC. We are of the opinion that even if the allegations in the complaint are taken as true and at their face value, it would not constitute offence under the aforesaid provisions. B

13. We first take note of provisions of Section 201 IPC which reads as under: -

201. Causing disappearance of evidence of offence, or giving false information to screen offender.—Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false; C D

if a capital offence.—shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; E

if punishable with imprisonment for life.—and if the offence is punishable with 1[imprisonment for life], or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; F

if punishable with less than ten years' imprisonment.—and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.” G

14. As is clear from the bare reading of the provisions of the aforesaid Section, an offence under the said section would be treated to have been committed when a person, knowing or having reason to believe that an offence has been committed, causes any evidence of the H

A commission of that offence to disappear. What is relevant is that the evidence which is made to disappear relates to the commission of the offence. In the present case, the allegations against the delinquent doctors of their negligence were of a much prior date. The complainant had sought to make out a case that the opinions of the four experts which were taken by the Committee itself were not reflected in the report that was submitted and it is this 'evidence' which was made to disappear by the members of the Inquiry Committee. Obviously, it is not a kind of evidence that is referred to under Section 201 IPC. Thus, on a plain reading of this provision, the allegations contained in the complaint do not make out any case of committing an offence under Section 201 IPC.

C 15. As mentioned above, there is a charge of conspiracy as well and, for this purpose, provisions of Section 120B IPC are invoked. It makes the following reading :

D 120B. Punishment of criminal conspiracy.—(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

E (2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

F 16. Here again, criminal conspiracy that is referred to and defined under Section 120A IPC has to be in furtherance of committing an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards etc. The alleged conspiracy even as per the complaint was not to commit any of the offences as mentioned above. As per the complainant himself, the so-called conspiracy, if at all, was to save the delinquent doctors in disciplinary proceedings taken against them. This provision also, therefore, has no application.

G 17. Faced with the aforesaid situation, Mr. M. N. Krishnamani, learned senior counsel appearing for the complainant, submitted that the allegations contained in the complaint would constitute an offence punishable under Section 219 IPC. Though no such provision is mentioned in the complaint, Mr. Krishnamani is right that the allegations made in

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the complaint may constitute an offence under the aforesaid provision and mere non-mentioning of the said provision in the complaint would not make any difference. For this reason, we have considered the argument predicated on this provision as well. We fail to understand as to how even the provisions of Section 219 IPC applies in the instant case.

Section 219 IPC reads as follows:

219. Public servant in judicial proceeding corruptly making report, etc., contrary to law.—Whoever, being a public servant, corruptly or maliciously makes or pronounces in any stage of a judicial proceeding, any report, order, verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

18. The ingredients of the aforesaid section are: (1) the person charged is a public servant; (2) the said public servant corruptly or maliciously makes or pronounces any report, order, verdict, or decision which he knows to be contrary to law (3) such act is to be done in any stage of a judicial proceedings. Without going into the controversy whether the appellants would be treated as public servant or not, it is sufficient to state that the departmental proceedings into the report given by the Committee cannot be treated as 'judicial proceedings'.

19. Judicial proceedings are defined in Section 2(i) of Cr.P.C. to include any proceedings in the course of which evidence is or may be legally taken on oath.

Section 3 of the Oaths Act, 1969 reads as under:

"3. Power to administer oaths.—(1) The following courts and persons shall have power to administer, by themselves, or subject to the provisions of sub-section (2) of section 6, by an officer empowered by them in this behalf, oaths and affirmations in discharge of the duties imposed or in exercise of the powers conferred upon them by law, namely:—

(a) all courts and persons having by law or consent of parties authority to receive evidence;

(b) the commanding officer of any military, naval, or air force station or ship occupied by the Armed Forces of the Union,

A provided that the oath or affirmation is administered within the limits of the station.

(2) Without prejudice to the powers conferred by sub-section (1) or by or under any other law for the time being in force, any court, Judge, Magistrate or person may administer oaths and affirmations for the purpose of affidavits, if empowered in this behalf—

B (a) by the High Court, in respect of affidavits for the purpose of judicial proceedings, or

(b) by the State Government, in respect of other affidavits.”

C 20. It cannot be said that the departmental proceedings, which were initiated against the delinquent doctors and in which five of the appellants constituted Inquiry Committee, evidence could be or would have been taken on oath.

D 21. Thus, even if, for the sake of argument, we presume that the Members of the Committee had side-tracked and deliberately ignored the report of the experts helping the delinquent doctors to go scot-free, it does not make out any criminal offence said to have been committed by these appellants under the provisions of IPC. If there was any other remedy available to the complainant, he could have availed the said remedy but insofar as the complaint filed by him for initiating proceedings against the appellants under Section 201 read with Section 120B IPC is concerned, it was not clearly maintainable.

E 22. The result of the aforesaid discussion is to allow this appeal and quash the complaint filed by the respondent against the appellants.

F 23. No costs.

Nidhi Jain

Appeal allowed.