



2025:DHC:2699



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on: 28th January, 2025***
Pronounced on: 17th April, 2025

+ **CRL.M.C. 3583/2018**

SHASHANK GARG

500, Sector 16, Faridabad

Haryana

.....Petitioner

Through: Mr. Nitin Mehta and Mr. Bhanu
Sanoriya, Advocates.

versus

1. STATE
437, Old Lawyers Chambers Block,
High Court of Delhi
New DelhiRespondent No.1
2. MAX SUPER SPECIALITY HOSPITAL
Through Max India Ltd.
East Block
2, Press Enclave Road, Saket
New Delhi-110017 ...Respondent No.2
3. Mr. SAQIB, DUTY MANAGER
Max Super Speciality Hospital
East Block
2, Press Enclave Road, Saket
New Delhi-110017 ...Respondent No.3
4. YOGESH SAREEN
S/o Late Sh. Rakesh Pal Sareen
R/o 83, Espace Nirvana Country,
Sector-50, GurgaonRespondent No.4

Through: Mr. Shoaib Haider, Ld. APP for the
State. Mr. Anil Bhasin, Advocate for
R-2 and R-3.



CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Petition under Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.P.C.'*), has been filed on behalf of the Petitioner, Mr. Shashank Garg, to challenge common Judgement and Order dated 19.05.2018 *vide* which the Criminal Revision Petitions bearing Criminal Revision bearing CR No. 8450/2016, CR No. 42/2017 and CR No. 79/2017, filed by the three Respondents separately against the Order of Summoning them under Sections 342/406/420/120B, were allowed and they were discharged in Complaint Case bearing CC No. 462884/2016.

Brief Facts

2. *Briefly stated*, the Petitioner (Complainant), an Advocate by profession, was diagnosed with *Cysticercosis* and was recommended removal of the affected area in his right hand by the Consulting doctor at Max Super Speciality Hospital, Saket ('Max Hospital' *hereinafter*). The Petitioner/Complainant was the holder of an Insurance Policy of Max Bupa Health Insurance Company Ltd., a Max India Joint-Venture, which was valid from 28.08.2013 to 28.08.2014. The Policy envisaged cashless settlement of Claims for network Hospitals of which Max Hospital, formed a part. The Petitioner decided to get his surgery performed under the Cashless Scheme, which required pre-authorisation from Insurance Company and the payments were then to be made directly to the Network Hospital on his behalf being the Policy holder.



3. Max Hospital gave estimated cost of Surgery as Rs.1,79,368/- for shared room and Rs.2,20,316/- in case of single occupancy. The Petitioner applied for pre-authorisation from the Insurance Company, which was received on 05.10.2013 to the extent of Rs.75,000/- as the partial amount, assuring the balance authorisation to be given on a later date and that the same shall be paid directly to the Hospital.
4. The Petitioner got admitted in the Max Hospital on 07.10.2013 at 12:47 p.m. and the surgery was scheduled for the following day at 9:00 a.m. Despite the authorisation under the Cashless Policy, the Petitioner was asked to deposit the entire estimated amount before surgery. Despite protest, he was forced to deposit an advance sum of Rs.1,45,000/- (i.e. Rs.50,000/- on 07.10.2013 and Rs.95,000/- on 08.10.2013) and only thereafter, his surgery was conducted on 08.10.2013.
5. *The grievance of the Petitioner* is that after surgery, he was not allowed to be discharged on 09.10.2013, till the entire payment was received from the Insurance Company by the Max Hospital. He was finally discharged at 09:15 p.m., when the balance amount was approved by the Insurance Company confirming that the said amount would be paid to the Max Hospital.
6. At the time of discharge, a bill of Rs.1,73,906.94/- was prepared. Despite being entitled to a discount of Rs.12,495/-, the same was not adjusted in the initial Bill by the Patient Care Co-Ordinator, *Ms. Nancy Chandra Mandal*. It was only on the pointing out by the Petitioner that the discounted amount was added that a fresh Bill was given after making the adjustment of the discounted amount in the sum of Rs. 1,61,412/-.



7. The main grievance of the Petitioner was that despite the approval from the Insurance Company of the entire amount of Rs.1,73,907/- received from the Insurance Company on 09.10.2013, the hospital claimed that they had only received an amount of Rs. 1,04,080/- and the Petitioner was forced to pay the difference between the amount of Rs. 1,61,412/- and Rs. 1,04,080/- i.e. an amount of Rs. 57,332/-. However, he had already made to deposit Rs.1,45,000/- even though the total amount after discount was Rs. 1,61,412/-. As per the Final Bill prepared by the Max Hospital, amount of Rs.1,04,080/- stood paid by the Insurance Company and after due adjustments, Rs.87,668/- was refunded to the Complainant.

8. The Petitioner is aggrieved by the fact that despite approval of the entire amount by the Insurance Company, a sum of Rs.57,332/- was unauthorizedly debited by the Hospital from his advance deposit and thereby *cheating him* by unjustly enriched themselves by causing wrongful loss to the Complainant .

9. It was further claimed by the Petitioner that pre-deposit was *entrustment of money* to the Max Hospital, which was misappropriated by the Max Hospital, by failing to refund the entire sum to the Complainant and thereby, offence under Section 406 of IPC was also committed. Furthermore, he had been wrongfully confined in the Hospital and was given a timely discharge despite the fact that he was having a Cashless Policy and had already deposited Rs.1,45,000/- with the Max Hospital. Thereby, the respondents committed an offence of *Wrongful Restraint* punishable under Section 342 IPC.

10. The ***Respondents in their Response*** explained that the Respondent, Max Hospital, owned by Devki Devi Foundation, is a registered Society. It



was submitted that on the request of the Petitioner, he was provided with the estimates pertaining to Standard room (double room) as well as Single room (Delux room). The Petitioner got admitted in Max Hospital on 07.10.2013. Since the Insurance Company gave Pre authorisation only for Rs.75,000/-, he was asked to deposit the balance amount of Rs.1,45,000/-, which he deposited on 07.10.2013 and 08.10.2013, in two instalments.

11. It was further explained that the Max Bupa Health Insurance Company had sent final pre authorisation of Rs.1,73,907/- only on 09.10.2013 and that too just one and a half hours prior to discharge of the Petitioner. As per the norms of the Insurance Regulatory and Development Authority (IRDA), the difference in price approved and the actual charges were required to be taken from the patient before his discharge from the Max Hospital. Considering that pre authorisation was obtained in respect of the *standard Single Room*, while the Petitioner got his treatment done in higher category room, therefore, he was charged the balance difference amount Rs.57,332/-. The balance amount of Rs.1,04,080/- was taken from the Insurance Company while the extra amount was refunded to the Petitioner, at the time of his discharge. It is, therefore, submitted that there has been no offence committed on behalf of the Max Hospital.

12. An Application under Section 156(3) CrPC, was filed on behalf of the Complainant, but the same was dismissed *vide* Order dated 21.03.2014, by the learned Metropolitan Magistrate.

13. Learned Metropolitan Magistrate, after recording the pre-summoning evidence of the Complainant, summoned the Accused Nos. 4-Saqib, Accused No. 5- Nancy Mandal, Accounts officer and Accused No. 7- Yogesh Sareen under Section 342/406/420/120B IPC.



14. Aggrieved, the Max Hospital and Mr. Saqib, Duty Manager *vide* Criminal Revision bearing CR No. 8450/2016 and Ms. Nancy Mandal *vide* Criminal Revision bearing CR No. 42/2017, for challenging the Order of Summoning.

15. Learned ASJ on appreciation of the rival contentions, set-aside the Summoning Order dated 03.10.2016 by observing that it suffered from gross illegality and infirmity and set aside the Summoning Order.

16. Aggrieved by the Order of learned ASJ, present Petition has been preferred by the Petitioner.

17. **The grounds of challenge** essentially are that the Petitioner had been dishonestly and fraudulently induced to deposit Rs.50,000/- on 07.10.2013 by false promise that they would go ahead with the surgery when in fact, they *intended that unless the entire amount was deposited in advance, no surgery would be conducted*. It is also borne out from the record that in fact, no surgery was conducted till the Petitioner was induced to deposit the entire advance amount thereby incurring wrongful gain while causing wrongful loss to the Petitioner, to the extent of pre-deposit of Rs.50,000/-.

18. Furthermore, the dishonest intention and to have wrongful gain for themselves, the Max Hospital unauthorisedly debited an amount of Rs.57,332/- from the advance payment made by the Petitioner, which again reflects that an offence of cheating punishable under Section 420 IPC, had been committed.

19. Moreover, the entire amount had not been refunded to the Petitioner even though the Insurance Company had fully authorised coverage in payment of the entire bill. The Max Hospital thus, misappropriated the amount and offence under Section 406 IPC, was committed.



20. Also, the petitioner was wrongfully restrained from leaving the Hospital on 09.10.2013 and was permitted to leave only later in the Night and therefore committed the offence under S.342 IPC.

21. It is submitted that there was a larger conspiracy at the Max Hospital to defraud the patients and such a decision had been taken at the highest level of the Management. They all are therefore, equal contributors to the commission of the offences, which could not have been acted alone. It is asserted that the *learned ASJ did not appreciate that the Respondents had acted in connivance with each other and thus, all of them committed the offence under Section 120B IPC.*

22. They were all beneficiaries of the commission of the offences as they were all having the knowledge that their acts and commissions are wrongful in nature despite which, they went ahead in the commission of the offences thereby causing wrongful loss in furtherance of common intention as contemplated under Section 34 of IPC.

23. The Respondents have wilfully and intentionally aided each other in their acts with respect to the offences and also by their omission and commission, abetted the offences within the meaning of Section 107 IPC and have committed the offence punishable under Section 109 IPC.

24. Furthermore, it was not considered that the Petitioner had availed a Gold Policy from the Insurance Company for a sum insured of Rs.5,00,000/-. Accordingly, any differential in room charges, was only a matter of nomenclature and all the claims of the Max Hospital as to the pre-payment under a Cashless Policy, are vague and concocted. The Petitioner had been caused unjust harassment by the Respondents and was confined to his room despite having made all the payments, as per the directions of the officials of



the Max Hospital. Furthermore, despite having received a communication from the Insurance Company that the entire Max Hospital expenditure would be covered by them, they did not return the excess amount to the Petitioner promptly.

25. The Max Hospital has thus, acted in an illegal and unjust manner in order to wrongfully extort money from the Petitioner, which is the regular practice of the Max Hospital.

26. Furthermore, it has not been considered that at the stage of Section 203 CrPC, wherein only *prima facie* sufficient grounds for summoning and not for conviction, have to be made out.

27. Reliance has been placed on Bhushan Kumar & Anr. vs. State & Anr., (2012) 5 SCC 424 wherein it has been observed that the Magistrate need not state the reasons for the issuance of summons. Reliance has also been placed on Kanti Bhadra Shah vs. State of W.B. (2000) 1 SCC 722 wherein the Apex Court observed that if a Magistrate is to write detailed Orders at different stages merely because the counsel would address arguments at all stages, the snail-paced progress of proceedings in trial courts would further be slowed down. It is quite unnecessary to write detailed Orders at a stage such as issuing process, remanding the accused to custody, framing of Charges and that the Court should avoid expressing one way or other, on the contentious issues at this stage.

28. In Nupur Talwar vs. C.B.I., (2012) 2 SCC 188, the Apex Court observed that where cognizance of an offence has been taken by the Magistrate, the correctness of the Order must be sparingly interfered only if it is shown to be perverse or based on no material. Similarly, U.P. Pollution Control Board vs. Bhupendra Kumar Modi, (2009) 2 SCC 147, it was



observed that Magistrate at the stage of issuing of process, is mainly concerned with the allegations made in the complaint or the evidence led in support there of and he is only to be *prima facie* satisfied whether sufficient grounds for proceeding against the accused, are made out. Similar observations have been made in Chief Enforcement Officer vs. Videocon International Limited and Ors., (2008) 2 SCC 492; Jagdish Ram vs. State of Rajasthan and Anr., (2004) 4 SCC 432; Dy. Chief Controller of Imports & Exports vs. Roshanlal Agarwal, (2003) 4 SCC 139; UP Pollution Control Board vs. M/s Mohan Meakins Ltd. & Ors., (2000) 3 SCC 745; Mehmood UI Rehman vs. Khazir Mohammad Tunda & Ors., (2015) 12 SCC 420; Aneeta Hada vs. Godfather Travels & Tours (P) Ltd., (2012) 5 SCC 661; Standard Chartered Bank vs. Directorate of Enforcement, (2005) 4 SCC 530 and Sunil Bharti Mittal vs. Central Bureau of Investigation, (2015) 4 SCC 609.

29. **The Respondent Nos. 2 Max Super Speciality Hospital, Saket and and Respondent No 3 Mr. Saqib, Duty Manager, in their Reply**, have taken a *preliminary objection* that the Respondent No. 2 is a unit of Devki Devi Foundation Registered Society but in the Revision Petition before the learned ASJ, it has been summoned through Max India Ltd.; the nomenclature thus used by the Petitioner, is bad in law.

30. **On merits**, all the averments claimed are denied. It is explained that the deposit of balance amount of Rs.1,45,000/- was asked to be made by the Petitioner as the approval of the Insurance Company was only for Rs.75,000/- while the estimated amount of treatment was Rs.2,20,316/-. Though, the agreed discount of Rs. Rs.12,495/- was inadvertently not reflected in the final Bill, but it was rectified when the error was pointed out



by the Petitioner. Furthermore, Rs.57,332/- was the differential amount charged as the Petitioner had availed treatment in a higher category room. All other averments made on behalf of the Petitioner, have been denied. It is asserted that the Max Hospital has been unnecessarily dragged into this litigation by the Petitioner even though no offences as alleged, have been made out from the Complaint. It is submitted that the learned ASJ has passed a reasoned Order and the impugned Order does not merit any interference.

31. Submissions heard and the record perused.

32. Pertinently, the learned Metropolitan Magistrate after recording of the Statement of CW-1, Mr. Shashank Garg, observed in the Summoning Order dated 03.10.2016 that *prima facie* from the pre-summoning evidence offences under Section 342/406/420/120B IPC, were made out against the Respondents and accordingly, summoned them. Though, it is a cryptic Order wherein the entire details have not been specified, but as has been observed in the Case of Kanti Bhadra Shah (supra), it is not the length of the Order but the content which is relevant and material. The *main factor* to be considered is whether the Summoning Order when considered in the context of the averments made in the Complaint, discloses a *prima facie* commission of a cognizable offence.

33. Therefore, what needs to be considered is whether from the Complaint and the testimony of the Petitioner as CW-1, *prima facie* offence is disclosed to have been committed.

34. *In the present case*, admittedly, the Petitioner, who was diagnosed with *Cysticercosis of right hand*, chose to get himself operated at the Max Hospital. He was holding a Cashless Insurance Policy from Max Bupa



Health Insurance Company Ltd. and which was covering Max Hospital as one of its Network Hospitals.

35. Consequently, on 07.10.2013, when the Petitioner approached Max Hospital, the charges were stated to be Rs.2,20,316/- for a single occupancy room while the cost of a shared room was Rs.1,79,368/-. The Petitioner chose to avail the higher room (Deluxe room facility) for which the charges were Rs.2,20,316/-.

36. The Petitioner himself has submitted that the *Pre authorisation* from the Insurance company, was received for Rs.75,000/- while they assured that the further amount would be approved subsequently. Consequently, the Max Hospital made the Petitioner deposit the remaining balance of Rs.1,45,000/- since on the date of admission there was no approval for the balance amount of Rs.1,45,000/-. It may seem to be an onerous condition, but definitely cannot be stated to be extraction of money nor can any dishonesty or fraudulent intention be attached to the Max Hospital, in this regard. The Petitioner had been informed in advance about the payment schedule and the amounts which would be required to be deposited.

37. The Petitioner was accordingly operated on 08.10.2013 and was scheduled to be discharged on the next day i.e. 09.10.2013. Evidently, as has been brought out from the averments made in the Complaint which is corroborated by the testimony of the Petitioner as CW-1, there was delay in discharge from the Max Hospital on account of the requisite approvals to come from the Insurance Company. The Petitioner was availing a Cashless Policy under which the Insurance Company was to make the payments directly to the Max Hospital. The approvals took some time and admittedly, they came only on 09.10.2013 at about 7:10 PM. After the approvals were



received, the final Bills were drawn and the excess amount of Rs.1,08,000/-, which had been deposited by the Petitioner as an advance, was accordingly refunded to the Petitioner.

38. Furthermore, there was an error in preparing the final Bill in not giving him credit of Rs.12,495/-, which was agreed by the Customer Care Unit to be given as a discount, but as soon as this error was pointed out by the Petitioner, *the error was rectified and the corrected final Bill was issued.*

39. It has been further explained that because the Insurance Policy was only in regard to the Standard Room but the facilities availed by the Petitioner, was for a Deluxe Room, there was a balance of Rs.57,332/- which was payable and was accordingly adjusted from the amount deposited by him. It has thus, been explained that there was no excessive billing by the Petitioner. *No offense of Cheating is prima facie disclosed.*

40. From the aforesaid discussion, it is evident that there was neither any fraudulent or dishonest intention on the part of the Max Hospital in making the Petitioner deposit the entire charges of the surgery in advance since under the Insurance Policy an advance approval of only Rs.75,000/- was received. *There is no offence of cheating made out from the aforesaid facts.*

41. For the same reasons, it cannot be said that there was any entrustment with the Max Hospital or that there was any breach thereof. Whatever was the amount deposited in the Max Hospital as advance, was understood to be adjusted at the time of final Bill, which had been done. *There is no misappropriation of funds by the Max Hospital and no offence under Section 406 IPC, is made out.*

42. Further averment had been made by the Petitioner that while he should have been discharged in the morning of 09.10.2013, his discharge



was delayed and he was allowed to leave the Max Hospital only at 09:15 p.m. Though there was a palpable delay of few hours in drawing the Discharge papers, but it was on account of completion of formalities. Admittedly, the final approval of the payments to be made by the Insurance Company came at 7: 10 p.m. and thereafter, the Discharge papers were prepared and the Petitioner finally left at 09:15 p.m. The circumstances do not establish that there was any intentional wrongful restraint but it was only the procedural delay and *no offence under Section 342 IPC is prima facie made out.*

43. Before parting, it would be pertinent to record that such incidents of alleged harassment felt by the patients in settling their Final Bills, is not an untold story but is frequently suffered by the patients. Their harassment gets compounded by the fact that they come out of a trauma of an ailment under treatment but even for discharge, there are long drawn procedures for settling the bills with the Insurance Company. This harassment and mental trauma by the patients and their family members who are pushed to follow the matter with the Insurance Company for getting the requisite approvals which is riddled with delays at the end of the Insurance Companies, is well understandable. Much angst has been expressed on this system of getting the approvals from the Insurance Company at many forums and by the Courts, but such situation may be a ground for seeking compensation for mental harassment, but does not tantamount to any criminal offence. Though many a times, many Courts have recommended that there may be some Regulatory Policy and even a *Charter of Patients Rights*, has been proposed by NHRC but unfortunately, no final redressal to this aspect, has been worked out till date. It is a matter which must be taken up at the level of State



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Government/Central Government in consultation with IRDA and the Medical Council of Delhi and India, to work out some mechanism to smoothen the discharge process and settling of the medical Bills.

44. With these observations, it is held that there is no merit in the Petition and the learned ASJ in his well detailed Order, has rightly observed that no criminal offence under Section 342/420/406//34/120B IPC, is made out.

45. The present Petition is accordingly dismissed and disposed of accordingly along with the pending Application(s).

(NEENA BANSAL KRISHNA)
JUDGE

APRIL 17, 2025/RS