

**(2014) 08 CAL CK 0059**

**Calcutta High Court**

**Case No:** C.R.R. 803 of 2014 with CRAN 1571 and 2756 of 2014

Arpita Mukherjee

APPELLANT

Vs

The State of West Bengal

RESPONDENT

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**Date of Decision:** Aug. 26, 2014

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 417

**Hon'ble Judges:** Joymalya Bagchi, J

**Bench:** Single Bench

**Advocate:** Syed Shahid Imam, Debabrata Roy, Debasish Sinha, Sharmistha Dhar and Shaika Ali, Advocate for the Appellant; Ayan Bhattacharyya, Tirthankar Ghosh, Siladitya Sanyal and Arindam Jana, Advocate for the Respondent

**Final Decision:** Disposed Off

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### **Judgement**

Joymalya Bagchi, J.

Quashing of proceeding in Lake police station case No. 276 of 2013 u/s 417 of the Indian Penal Code has been prayed.

2. The uncontroverted allegations in the first information report are as follows:

The father of the petitioner was in her custody and that she prevented the de facto complainant (her brother in law) and his wife (sister of the petitioner) from meeting their father while he was admitted at K.P.C. Hospital. Pursuant to the order passed by the learned Additional Sessions Judge, 3rd Court, South 24 Parganas at Alipur, the de facto complainant and his wife saw the patient at the hospital on 4th April, 2013 in the presence of Special Officer appointed by the Court and the report of such Special Officer was filed before the said Court. During such interview, Madhumita found her father to be highly emotional. The Additional District and Sessions Judge by an order dated 12th April, 2013 accepted the status report filed by the special officer and directed as follows:

" .... In the event of any eventuality regarding her father's condition she would inform the matter to the petitioner's wife (who is also the daughter of Mr. P.K. Chatterjee) by sending messages through the learned advocate of the petitioner or by any other means...."

3. Admittedly the father of the petitioner expired on 19th May, 2013. In spite of such direction, the petitioner did not intimate the learned counsel of the de facto complainant and his wife by sending message or by any other means. On the other hand she cremated the dead body of their father and thereafter on the next day intimated the factum of demise of their father to the de facto complainant and his wife by filing a petition before the learned Magistrate. Such facts were brought to the notice of the learned Additional Sessions Judge and by order dated 12th June, 2013 the learned Judge observed that prima facie offence by way of dishonest concealment of factum of death was disclosed. Accordingly, the first information report was registered in the instant case.

4. Mr. Imam, learned advocate appearing for the petitioner submitted that the ingredients of the offence punishable u/s 417 of the Indian Penal Code are not disclosed as the factum of death was communicated on the very next date before the Court of the learned Judicial Magistrate. He has submitted that there was no dishonest intention on the part of the petitioner to withhold the information of death and such fact is evident as no articles of the deceased were removed. He accordingly prayed for quashing of the impugned proceeding.

5. Mr. Ghosh, appearing for the informant submitted that the information of death was intentionally suppressed so that the wife of the de facto complainant could not be present during the cremation of her father. He submitted that the ingredients of the offence punishable u/s 417 of the Indian Penal Code were disclosed.

6. Mr. Bhattacharyya, learned counsel appearing for the State supported Mr. Ghosh and submitted that the statement of Madhumita has been recorded in course of investigation.

7. Ordinarily an heir of a deceased has no legal duty to intimate another heir as to the factum of death. However, in the instant case there was dispute between the petitioner and the de facto complainant and his wife resulting in lack of access of the latter to their father and also lack of information relating to the state of health of the father.

8. Mr. Imam has strenuously argued that the de facto complainant and his wife are to be blamed for such circumstances. The deceased himself was unwilling to meet them and during his life time had made repeated complaints against their conduct to various authorities. In fact an affidavit was also filed in court by the petitioner purportedly sworn by the deceased that the latter did not want the de facto complainant and his wife to come to his house after his death.

9. I find that the Learned Additional Sessions Judge by order dated 12th May, 2013 had directed the petitioner to intimate the lawyer of the de facto complainant through message or any other means in the event any eventuality arose with regard to the father's condition. Such order was in the knowledge of the petitioner. Admittedly, the petitioner did not act in terms of the order and cremated her father prior to intimating lawyer of de facto complainant as to his death. Therefore, in the factual matrix of the case, I am constrained to hold that there was a legal duty cast on the petitioner to promptly intimate the factum of death of her father to the learned advocate of the de facto complainant or his wife. The petitioner failed to do so and concealed the factum of death of the father from the de facto complainant and his wife. Prior to such intimation, she cremated the body of their father. As a consequence of omission to intimate the de facto complainant and his wife promptly as to the factum of death in terms of the order of the Court, Madhumita (the wife of the de facto complainant) was unable to see her dead father or be present during cremation. It is alleged that such omission has caused grave injury to the mind of the de facto complainant and his wife, Madhumita.. Prima facie, the ingredients of the offence u/s 417 of the Indian Penal Code are disclosed. It has been argued on behalf of the petitioner that the cremation was done not with the dishonest intention to avoid the presence of de facto complainant or his wife but due to non-availability of requisite facility for preservation of the dead body. I am of the opinion that such issue is a matter of defence which the petitioner is entitled to ventilate at the proper stage of proceeding, if so advised. However in view of the uncontroverted allegations in the factual matrix of the case, I am of the opinion that registration of first information report and the ensuing investigation cannot be said to be without jurisdiction or illegal. Hence, I am not inclined in interfering with the registration of the first information report and the investigation that has commenced in pursuance thereof.

10. I am informed by the learned counsel for the State that investigation is virtually complete and police report has not been filed due to pendency of the instant proceeding. Liberty is given to the Investigating Officer to file police report before the learned Magistrate in accordance with law. The petitioner would be at liberty to raise all issues available to him before the learned Magistrate in accordance with law.

11. With the aforesaid observations, the revisional application is disposed of.

12. In view of the disposal of the revisional application, the connected applications being CRAN 1571 of 2014 and CRAN 2756 of 2014 stand disposed of.

13. Photostat certified copy of the order, if applied for, be given to the parties on priority basis.