

IN THE HIGH COURT OF ORISSA AT CUTTACK
CRLMC No. 1088 of 2012

Dr. Sunil Kumar Padhy

....

Petitioner

Mr. Anirudha Das, Advocate

-versus-

State of Odisha and another

....

Opposite Parties

Mr. P. K. Muduli, AGA

CORAM:
THE CHIEF JUSTICE

Order No.

ORDER
13.05.2022

16. 1. This is a petition filed challenging the order dated 18th February, 2012 passed by the learned Chief Judicial Magistrate, Bolangir in G.R. Case No.508 of 2003 declining the Petitioner's prayer for a discharge. This Court had on 24th April, 2012 directed that the further proceeding in G.R. Case No.508 of 2003 shall remain stayed. That interim order has since continued.
2. The background facts are that the Petitioner was at the relevant time an orthopaedic doctor at the Sub-Divisional Hospital, Titilagarh. The patient, Sachin Kumar Roy, the son of Opposite Party No.2-Informant, was undergoing treatment for fracture of the right wrist under one Dr. B. B. Naik. On 30th November 2003, in view of the severe pain on his fractured hand, he was advised by the Petitioner, whom they consulted, to take NAC injection. Later on 2nd December 2003, the patient was seen as an outdoor patient by Dr. B. B. Naik and then referred to the District Headquarters Hospital at Bolangir where he apparently died due to 'gas gangrene'.

3. From the impugned order of the learned CJM, it appears that the plea for discharge was based on the above report of the CDMO and yet the CJM declined the prayer because by then 12 out of 18 witnesses cited in the charge-sheet had already been examined. A comment has been made in the impugned order by the learned CJM that “the evidence available in the record prima facie bears merit and no materials to discharge the accused”.

4. The Court has been shown the deposition of Ms. Anupama Kerketta, the nurse, who supposed to have administered the NAC injection. It appears that she did not support the case of the prosecution at all. She was first examined on 10th June, 2009 and then recalled for a further cross-examination on 26th March, 2010. She denied having administered the injection as under:

“It is not a fact that I have stated to IO that on 30.12.2003 I was in the duty in the evening and on the prescription of Dr. Sunil Padhi I gave injection to the patient. While gave on the buttock I have not seen any injury or swelling.”

5. She also denied that she had not sterilized syringe while giving such injection. The long and short of the deposition of Ms. Kerketta, one of the key witnesses for the prosecution, was that the Petitioner was not involved in the actual administering of the NAC injection to the patient.

6. In the enquiry conducted subsequently on 4th May, 2011 by the Chief District Medical Officer (CDMO)-cum-Enquiring Officer, Bolangir, it transpired that according to the Dr. B. B. Naik, who was a specialist in Surgery, the Petitioner had given the right treatment for the orthopedic complaint of the patient.

7. Ms. Anupama Kerketta who again deposed during the enquiry claimed that she did not remember administering the NAC injection to the patient since more than seven years had elapsed. The conclusion in the Inquiry was that there had been no medical negligence during the treatment by the present Petitioner.

8. An affidavit has been filed on 8th July, 2015 in the present case by the Opposite Party No.1 enclosing the expert opinion of the FMT Department, VSS Medical College, Burla, which categorically states that “drug NAC is not responsible for the death of the deceased.”

9. The above evidence and the materials do not support the case of the prosecution. The remark to the contrary by the CJM in the impugned order, therefore, appears to be erroneous. Continuing the prosecution against the Petitioner in the circumstances appears not to be justified at all.

10. For the aforementioned reasons, the impugned order of the CJM, Bolangir in G.R. Case No.508 of 2003 is hereby set aside. The Petitioner shall stand discharged in the said case.

11. The petition is disposed of in the above terms. Issue an urgent certified copy of this order as per rules.

12. A copy of this order be sent to the CJM, Bolangir forthwith.

(Dr. S. Muralidhar)
Chief Justice

M. Panda