

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.937 of 2022

Madan Mohan Kar

Petitioner

Mr. Devashis Panda, Advocate

-Versus-

State of Odisha

.... Opposite Party

Mr. T.K. Praharaj, SC

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

03.11.2022

Order
No.
06.

1. Heard Mr. Panda, learned counsel for the petitioner and Mr. Praharaj, learned counsel for the State.

2. The petitioner approached this Court assailing the impugned order under Annexure-3 whereby the learned Additional Sessions Judge, Bhadrak in connection with S.T. Case No.02 of 2022 framed charges against him under Sections 419 and 304 IPC on the grounds inter alia that no any case for the alleged offences is made out even by considering the materials on record.

3. The informant lodged the FIR on the death of his minor son with the allegations entirely directed against the petitioner, on receipt of which, Bansada P.S. Case No.280 dated 29th November, 2019 was registered under Sections 419 and 304 IPC and finally, on completion of investigation, chargesheet was submitted under the alleged offences against him.

4. Copies of the FIR and of the chargesheet are at Annexures-1&2 respectively and the Court perused the same.

5. Mr. Panda, learned counsel for the petitioner submits that the learned court below in absence of definite opinion in the PM report

and CE report vis-à-vis viscera could not have framed the charges under Sections 419 or 304 IPC and that apart, the allegations in Annexure-1 do not prove and establish the offence of impersonation or cheating, or having intentionally administered any substance with an intention to cause death of the deceased so as to constitute an offence under Section 304 IPC and for the above reasons, impugned order under Annexure-3 framing charge against the petitioner, if allowed to stand, would amount to abuse of process of law.

6. Mr. Praharaj, learned SC for the State, however, referring to the statements of the witnesses recorded under Section 161 Cr.P.C. submitted that the learned court below rightly framed the charge. It is admitted by Mr. Praharaj that the CE report received from the SFSL, Rasulgarh, Bhubaneswar reveals absence of any foreign substance in the viscera of the deceased.

7. A copy of the CE report in respect of the viscera is produced before the Court and the same is also perused.

8. Admittedly as per the CE report, no any drug or poison could be detected in the viscera of the deceased. As mentioned in the PM report, after collection of viscera, the cause of death and opinion in respect thereof was reserved. Mr. Panda, learned counsel for the petitioner submits that the CE report does not support the death of the deceased to be unusual on account of any foreign substance and besides that role of the petitioner is not revealed and the allegation is only to the extent that the deceased had been brought before him for treatment. In reply Mr. Praharaj, learned SC submits that the petitioner is not a qualified medical practitioner rather a quack and the allegation is that after his treatment and him of having administered an injection, the deceased died.

9. The learned court below considering the chargesheet and connected materials framed the charge under Sections 419 and 304

IPC. Whether the petitioner impersonated as a doctor and offered the treatment to the deceased is a matter to be examined considering the evidence collected during investigation. As far as the involvement of the petitioner in the treatment of the deceased is concerned, it is not known whether any evidence collected the I.O. along with the chargesheet was ever placed for the consideration of the court below. By looking at the case diary produced by Mr. Praharaj, the learned SC, the Court finds that the I.O. did collect and made seizure of sample of medicine and also verified the medicine given to the deceased, however, the line of treatment whether led to the latter's death is not discernable from the chargesheet. The Court does not have the benefit of the evidence collected by the I.O. during investigation in that respect. No doubt the CE report does not support the death of the deceased to be unnatural. What was administered to the deceased is also not revealed from the record though the I.O. claimed to have seized some medicines during investigation. In view of the above, the Court is of the considered view that the learned court below needs to have a relook for the purpose of framing of charge and the specific role played by the petitioner during the incident with reference to the line of treatment adopted by him which is alleged to be the cause of death of the deceased and for that purpose, it shall have to freshly examine all the materials brought on to record including the CE report.

10. Accordingly, it is ordered.

11. In the result, CRLMC stands allowed. As a necessary corollary, the impugned order dated 11th March, 2022 passed in S.T. Case No.02 of 2022 by the learned Additional Sessions Judge, Bhadrak is hereby set aside. Consequently, the learned court below is directed to reconsider the framing of charge vis-à-vis the petitioner after taking into account all the materials including the medical evidence

and then to pass appropriate order after providing opportunity of hearing to the parties involved.

12. Urgent certified copy of this order be granted as per rules.

(R.K. Pattanaik)
Judge

TUDU

