

IN THE HIGH COURT OF ORISSA AT CUTTACK

**W.P.(C) No.16770 of 2018
(Through hybrid mode)**

K. Kumari Patro and others ***Petitioners***
Mr. S. Dash, Advocate

-versus-

State of Odisha and others ***Opposite Parties***
Mr. A. K. Sharma, AGA

CORAM: JUSTICE ARINDAM SINHA

ORDER

22.08.2022

Order No.

06.

1. Mr. Dash, learned advocate appears on behalf of petitioners. On earlier occasion he had submitted, petitioner no.1 is widow of a person, who was arrested on 23rd September, 2015 and died on 25th September, 2015, in custody. His clients contend that death was by negligence. He demonstrated, arrest was in the afternoon, a little after 4:00pm on 23rd September, 2015. Remand order was obtained the next day. He referred to Magisterial Enquiry report dated 31st January, 2016, disclosed in counter dated 2nd January, 2019 of opposite party no.6, saying, inter alia that at around 7:10pm on 24th September, 2015, the prisoner was found to be trembling and having fever. The report goes on to say, at around 8:15pm on the next day, observing critical condition of the prisoner, he was shifted to Community Health Centre (CHC), Kodala. He referred to page 34 in the writ petition to demonstrate that the CHC issued ticket for outdoor patient, bearing

endorsement 8:40pm and, inter alia, referred the patient to hospital. The hospital said the prisoner was brought dead at 10:50pm.

2. Today he draws attention to screening report dated 24th September, 2015 of health screening for prisoners on admission to jail. He points out therefrom, the Medical Officer (MO) had indicated, the deceased was 64cms. in height and allegedly no abnormality was detected. He submits, this report cannot be relied upon as non-application of mind in making it appears on its face. He then refers to counter affidavit dated 20th December, 2018 filed by opposite party nos.3 and 4 to submit, there is omission to mention examination by the MO soon after the arrest was made.

3. He submits, section 54 in Code of Criminal Procedure, 1973 requires examination of arrested person by MO. Sub-section (3) mandates report of such examination to be furnished to the arrested person or person nominated by him. Section 55-A casts duty on the person having custody of an accused, to take reasonable care of his health and safety. He submits, two counters and an additional affidavit have been filed but there is no whisper of medical examination, let alone report thereof. The postmortem said the person died of tuberculosis, attributing it to be natural cause of death. State is seeking to take position that condition of the arrested person could not be

detected to be serious till before 8:15pm on 25th September, 2015, a couple of hours before his death.

4. Mr. Sharma, learned advocate, Additional Government Advocate appears on behalf of State. He relies upon additional affidavit dated 5th August, 2022 filed by Jailor-cum-Superintendent, Sub-Jail, Kodala. He submits, the affidavit discloses report dated 25th November, 2020 on inquiry made under sub-section (1-A) in section 176. He relies upon paragraph 7 in the report to submit, the inquiry revealed the MO had opined no abnormalities were detected. Relying on the report he submits, cause of death was natural. Relied upon passage in said paragraph is reproduced below.

“On the said date Asst. Jailor admitted him to the ward to stay with about 40 other UTPs. As per rule necessary health check up and treatment was provided by jail Medical Officer Dr. Siba Prasad Sahu. The M.O. opined (in Ext.3) no abnormalities detected.”

5. Mr. Dash in reply again disputes there was medical examination of the deceased, neither at instance of the Arresting Officer nor when admitted to the Sub-Jail. He points out from paragraphs 2 and 6 of said report dated 25th November, 2020, his client had deposed in the inquiry that her husband was suffering from fever. On next day of arrest she visited her husband at Excise station during morning hour and informed the Excise Inspector that her husband was

suffering from fever and thus to give appropriate medical care. From paragraph 6 in the report he points out, inquest witness no.4 had also said that on the next day of arrest he visited to the Sub-Jail, met the Under Trial Prisoner (UTP) and had informed jail officials that he had fever.

6. The screening report dated 24th September, 2015, Court has ascertained from Mr. Sharma, was exhibit-3 referred to in the judicial inquiry report. There is no time given in the screening report, on when the medical screening/examination of the UTP was made. Height of the UTP has been stated to be 64cms., i.e., about 2 feet. On query from Court Mr. Dash refers to the postmortem report, which states height of the deceased at 172cms. This is sufficient indication that the screening report was made with total non-application of mind and information contained therein does not relate to the UTP, as can be relied upon. The screening report is also contradictory to the Magisterial Enquiry report dated 31st January, 2016 stating, inter alia, the UTP had been found to be trembling with fever that day. Court finds, therefore, clear violation of requirements under sections 54 and 55-A.

7. Upon reliance in the judicial inquiry report on screening report of the MO found to be unreliable, oral evidence of petitioner and inquest witness no.4, recorded therein to be that both of them had

informed jail authorities of the UTP suffering from fever on following day of his arrest, becomes significant. The judicial inquiry was conducted more than five years after the death. It does not contain any reason as to why it was not made within 24 hours of the death as required to by sub-section(5) in section 176.

8. For aforesaid reasons Court is convinced there was negligence in discharge of duty of the authorities having custody of the UTP, to have taken reasonable care of his health and safety. Thus there was violation by State of his fundamental right to life, guaranteed under article 21 in the Constitution of India. In the circumstances for assessment of compensation payable to petitioner, reliance is placed on **order dated 30th September, 2021** made by the First Division Bench of this Court in **W.P.(C) no.24882 of 2012 (Jambeswar Naik and another vs. State of Odisha and others)**. The Compensation assessed at Rs.10,00,000/-(Rupees ten lakhs only) is to be paid within four weeks of communication, failing which, it will carry interest at the rate of 6% per annum simple calculated on and from 7th September, 2018 (date of presentation of the writ petition) till date of payment.

9. The writ petition is disposed of.

(Arindam Sinha)
Judge