

**(2004) 09 PAT CK 0159**

**In the Patna High Court**

**Case No :** Criminal Miscellaneous No. 31034 of 2003

Dr. Hemendra Nath Thakur @ Hemendra Nath Thakur and  
Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision :** 17-09-2004

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 304, 34

**Citation :** (2006) 2 PLJR 159

**Hon'ble Judges :** Aftab Alam, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## **Judgement**

Aftab Alam, J.—Heard Mr. Rama Kant Sharma, counsel appearing for the petitioners and Mr. Manoj Kumar Upadhyaya, counsel representing the complainant opp. party No. 2. The petitioner No. 1 is a doctor and petitioners 2 and 3 are compounders attached to his clinic. They seek quashing of an order, dated 12.5.2003 passed by the Judicial Magistrate, 1st Class, Danapur in Complaint Case No. 2450 of 2003. By the impugned order, on the basis of a complaint filed by the complainant opp. party No. 2, the Magistrate took cognizance of an offence under sections 304 / 34 of the Penal Code and summoned the accused petitioners for facing trial.

2. The complainant is the uncle of a boy aged six years who was brought to the clinic of petitioner No. 1 in ailing condition and who died there. According to the complaint, the boy was admitted to the clinic on 14.4.2003 at 9 in the morning. Since there was no improvement in his condition till the afternoon, the complainant and the boy's people wanted to take him to Patna but petitioner No. 1 dissuaded them from doing so and gave them assurance that his condition would soon improve. He asked the complainant to make immediate payment of Rs. 1000/-. It is further stated that the complainant promised to bring the money and requested the doctor to proceed with the treatment of the boy. But the

doctor turned his face away and giving some instructions to the two compounders, petitioners 2 and 3, went away to Patna. It is further alleged that the compounders (petitioners 2 and 3) administered two injections to the boy as a result of which his condition deteriorated and he died in the clinic at about 6 in the evening. In conclusion it is alleged that the boy died due to the carelessness and laxity in his treatment by the doctor and the mistake of the untrained compounders.

3. Alongwith the complaint the prescription of petitioner No. 1 was also enclosed a photostat copy of which is at Annexure 2. The prescription on its right side bottom bears the following endorsement, dated 14.4.2003:

"Referred to Dr. Nigam Prakash Narain, Boring Canal Road, Pranjali Apartment, Patna."

(The last line relating to his address being in Hindi).

4. It seems to belie the allegation that though the boy's people wanted to take him away from the clinic of petitioner No. 1 and to bring him to Patna, they were dissuaded from doing so by the doctor.

5. What is more is that before instituting the complaint a legal notice was given to petitioner No. 1 by one Ramnath Singh Yadav, Advocate on the instructions of the complainant. In the legal notice after making substantially the same allegations as contained in the complaint, a demand for Rs. 200,000/- was made with the threat to take legal action in case of non-compliance with the demand. Para 9 of the legal notice was as follows:

"9. That you are advised (sic advised) to pay Rs. 2 lakhs to my client within 14 days from receipt of this legal notice failing which my client will take shelter of competent court of law."

6. It is evident that it was only on the doctor's refusal to pay the demanded money that the criminal case was instituted.

7. The other allegations in the complaint regarding the compounders being untrained also appears to be incorrect as petitioners 2 and 3 have brought on record their certificates of qualification.

8. It may further be noted that in this case the complainant or the boy's guardian did not insist for a post mortem and, therefore, the cause of death of the boy remains unknown and on the basis of the kind of allegations made in the complaint it would be well nigh impossible to attribute the death of the boy to any negligence, carelessness of the doctor or an error or mistake by the two compounders.

9. On hearing counsel for the parties, I am satisfied that the institution and continuance of this case amounts to an abuse of the process of the court. The order taking cognizance is accordingly set aside. In the result, this quashing application is allowed.