

(2002) 02 OHC CK 0005

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 1082 of 1997

Ramesh Chandra Mohapatra and Another

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 27-02-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 482
Penal Code, 1860 (IPC) — Section 304(2), 304A, 317

Citation : (2002) CriLJ 3453 : (2002) 1 OLR 408

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : A.K. Mishra, S.K. Mishra and K.C. Khuntia, for the Appellant; K.C. Kanungo, B.D. Rout, S. Behera, P.K. Patnaik, K.M. Behera, B.S. Tripathy and M.K. Rath, for the Respondent

Final Decision : Allowed

Judgement

L. Mohapatra, J.—This application u/s 482 of the Criminal Procedure Code has been filed challenging the order dated 12.2.1997 passed by the learned S.D.J.M., Bhubaneswar in I.C.C. No. 860/96 taking cognizance of offence alleged to have committed under Sections 304-I/307/304-A of the Penal Code and issuing N.B.W. against the petitioners and opp. party No. 3.

2. Opposite party No. 2 is the complainant who in her complaint alleged that her son Rakesh Kumar Mishra was a student of Class-VI in Demonstration Multipurpose School, Bhubaneswar where the petitioners were working as Headmaster and Assistant Teachers respectively. On 27.9.1996 at about 3 p.m. during the school hour it was reported that deceased Rakesh Kumar Mishra sustained severe head injury while getting down the stairs with his class mates. The child was shifted to the school dispensary at about 3.30 p.m. where the opposite party No. 3 who was working as Pharmacist without diagnosing the injury administered some ointments to the injury sustained by the child. After receipt of telephone message from the office of the petitioner No. 1 the

complainant contacted the petitioner No. 1 to find out the conditions of the child and it is alleged that the petitioner No. 1 intimated that she should not be worried as the injury sustained is minor one and some scratch marks appear only on his head. Thereafter, after receiving the child from school bus at about 5.30 p.m. she found that the child was in a precarious condition and she immediately shifted the child to a Nursing Home, thereafter to Capital Hospital and then to S.C.B. Medical College, Cuttack where he succumbed to death. Allegation in the complaint is that due to negligence of Class Teacher, Headmaster as well as Pharmacist of the dispensary located in the school, the child succumbed to death. Had proper care been taken the child could have been saved.

3. After the complaint was filed on such allegations, the learned Magistrate took up enquiry u/s 202, Cr.P.C. and in the said enquiry five witnesses were examined on behalf of the complainant. On consideration of the materials available from the statements of these witnesses, the learned Magistrate was of the view that prima facie case for offence u/s 304(II)/317/304-A of the Penal Code had been made out and accordingly took cognizance. The said order is the subject-matter of challenge in this application.

4. Shri Mishra, learned counsel for the petitioners has drawn attention of this Court, to the evidence collected during enquiry u/s 202, Cr.P.C. and submitted that no prima facie case is made out so far as the present petitioners are concerned. According to him, there is no dispute that child sustained injuries while coming down the stairs, but he was immediately taken to the dispensary located within the school premises and looking at the external injuries sustained by the child the Pharmacist applied some ointments and thereafter the child also never complained any problem till he was put in the school bus. He further submits that if without diagnosing properly the Pharmacist wrongly treated the child neither the Headmaster nor the Class Teacher can be held responsible for the wrong diagnosis by the Pharmacist.

5. In the light of the arguments advanced by the learned counsel for the petitioner I proceed with to examine evidence collected during enquiry. Witness No. 1 Miss Priyadarsani Ipsikamayee Mishra is the sister of the deceased child. She in her deposition has stated that after she was informed about the incident she immediately ran to the spot and found her brother having bleeding injury on the left side forehead and his shirt was blood stained. Thereafter her brother was taken to dispensary where Pharmacist applied ice and ointment on the injuries and it was informed by the Pharmacist that nothing will happen and accordingly instructed her to take away the child. Thereafter the child was brought to the Headmaster (petitioner No. 1) and the child was given a stool to sit. She found that her brother was unable to talk she immediately reported the matter to the teachers and she accordingly was advised to take her brother to the house in the school bus. Thereafter, the child was brought to the house in the school bus. Similar is the statement of other witnesses including the complainant.?

On the basis of such evidence question arises as to whether the petitioners were

negligent or responsible for death of the child. Admittedly, the petitioner No. 1 is the Headmaster of the School and petitioner No. 2 is the class teacher and also admittedly the child fell down in the stairs and sustained injuries on his forehead. The child was taken to the school dispensary where treatment was given. Obviously when the child was taken to the dispensary it was the duty of the Pharmacist to either diagnose the injury correctly or advise for immediate check up by an expert or doctor. In absence of such advice by Pharmacist the Headmaster or the Class Teacher could not have realised the gravity of the injury. As it appears from the materials the child was brought to the Headmaster who offered him a stool to sit. The complainant was informed over phone about the incident and on her query the Headmaster also intimated that there is nothing to worry about and since no such apprehension was ever expressed by Pharmacist and when the child was found deteriorating he was immediately sent back in the school bus.

6. On consideration of the aforesaid materials I am of the considered view that the petitioners cannot be held responsible either for negligence or for death of child. I, therefore, do not find any prima facie case to be established against the petitioners for any of the offences mentioned in the impugned order. Accordingly, the impugned order is quashed so far as it relates to the present petitioners. The Criminal Misc. Case is accordingly allowed.