

SMT. PRATIBHA DAS

.....Petitioner

.Vs.

THE STATE OF ORISSA

.....Opp.Party

**CODE OF CRIMINAL PROCEDURE, 1973 – Section 482 – Inherent power – Prayer for quashing of the order taking cognizance under sections 309/306/506/34 of the Indian Penal Code – Petitioner, a mother of a child who died during treatment – Petitioner out of stress sat in ‘dharana’ and attempted to commit suicide demanding action against the Doctor – Charges under 306 of IPC is not made out as there is no suicide – Section 115 of the Mental Health Care Act, 2017 pleaded and taken into consideration – Held, for want of criminal intent, the offence alleged cannot be said to have been made out against the petitioner-mother and as such continuance of the proceeding against her is an abuse of the process of the Court – Proceeding quashed.**

**Case Laws Relied on and Referred to :-**

1. (1996) 2 SCC 648 : Lokendra Singh .Vs. State of Madhya Pradesh.

For Petitioner : Mr. Brundaban Rout

For Opp.Party : Mr. J.Katikia, Addl. Govt. Adv.

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**JUDGMENT**

Date of Hearing & Judgment: 25.06.2019

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***DR. A.K.MISHRA, J.***

This is a proceeding under Section 482 Cr.P.C. to quash the cognizance order dated 28.6.2004 passed in G.R. Case No. 1487 of 2002 pending in the court of learned S.D.J.M., Sadar, Cuttack in respect of accused-petitioner Smt. Pratibha Das, who is one of the accused persons.

2. Heard learned counsel for the petitioner and Mr. J.Katikia, learned Addl. Government Advocate for the State.

3. The impugned cognizance order reveals that after taking cognizance under Sections 309/306/506/34 I.P.C., sufficient ground was found to proceed against three accused persons, namely, Sri Ambuja Kumar Das, Sri Ranjit Kumar Banarjee and Smt. Pratibha Das.

4. The F.I.R.(Annexure-1) reveals that the petitioner is the mother of one Abinash Das, child of 3 ½ years old who expired during treatment in S.V.P. Post Graduate Institute of Paediatrics, Cuttack on 5.10.2002. On the allegation made by the father of the child, an enquiry was conducted

regarding negligence of doctor and the enquiry report was submitted to the Director, Medical Education and Training on 18.10.2002. On 28.10.2002, the mother of the deceased sat on hunger-strike in front of the Outdoor, threatening to die, demanding appropriate action. Basing upon the F.I.R. submitted by Superintendent of SVP PG Institute of Paediatrics, after investigation, the police report was submitted and cognizance was taken.

5. Having heard learned counsel for the petitioner and learned Additional Government Advocate, I am of the considered view that the mother whose child died during treatment and allegation of negligence in treatment by the doctor was entertained for enquiry, she could be said under severe stress. Her action cannot be said mala-fide. Due to strike, she could not decide the consequence of demand for action and to go for hunger-strike.

6. As per the prosecution, no person has committed suicide. Hence, the offence of abetment of suicide under Sec.306 I.P.C. is not made out. The section requires that suicide must be committed as a result of the abetment and the deceased must have been abetted by the accused to commit suicide. Abetment may be caused by instigation, conspiracy or intentional aiding as provided by section 107 of the Code.

7. There is no dispute that the constitution Bench of the Hon'ble Supreme Court in the case of **Lokendra Singh Vrs. State of Madhya Pradesh**, reported in (1996) 2 SCC 648 has upheld the vires of Section 309 I.P.C.

7.1 But section 115 of the Mental Health Care Act, 2017 reads as follows:-

*“115. Presumption of severe stress in case of attempt to commit suicide. – (1) Notwithstanding anything contained in section 309 of the Indian Penal Code (45 of 1860) any person who attempts to commit suicide shall be presumed, unless proved otherwise, to have severe stress and shall not be tried and punished under the said Code.*

*(2) The appropriate Government shall have a duty to provide care, treatment and rehabilitation to a person, having severe stress and who attempted to commit suicide, to reduce the risk of recurrence of attempt to commit suicide.”*

8. For want of criminal intent, the offence as alleged cannot be said to have been made out against the petitioner-mother and continuance of the proceeding against her is an abuse of process of the court.

**9.** In the result the proceeding in G.R. Case No. 1487 of 2002 arising out of Lalbag P.S. Case No. 238 of 2002 pending in the court of learned S.D.J.M., Sadar, Cuttack in respect of petitioner Smt. Pratibha Das stands quashed.

**10.** Accordingly, the CRLMC is disposed of.

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