

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.08.2018
Pronounced on : 14.03.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.21783 of 2009 and
Crl.M.P.No.1 of 2009

1.Dr.Manimekalai
2.Dr.Ranganathan
3.Dr.Poonkodi
4.Dr.Sivasubramaniam ... Petitioners/Accused 1 to 4

Vs.

R.Thirugnanasampath ...Respondent/Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the proceedings in C.C.No.202 of 2007 in the Court of the Judicial Magistrate No.1, Dharmapuri.

For Petitioners : Mr.R.John Sathyan
For R1 : No Appearance

O R D E R

This Criminal Original Petition has been filed by the petitioners to quash the proceedings in C.C.No.202 of 2007 on the file of the Judicial Magistrate Court No.1, Dharmapuri.

2.The petitioners are arrayed as accused Nos.1 to 4, on a private complaint filed by the respondent for the offence under Section 294(b), 304(A), 316, 420, 468 and 506(ii) of IPC before the learned Judicial Magistrate No.I, Dharmapuri.

3.The petitioners are A.1 to A.4. The private complaint was filed by the respondent before the Court below on 23.08.2007. Thereafter, the sworn statement was taken on 17.09.2007 and on the same day 202 Cr.P.C., enquiry was conducted by the Court below. On that enquiry the respondent's brother R.Murali and his father-in-law R.Sundaram were examined and thereafter, on 22.10.2007, the Court below found that a Prima facie case was made out against the petitioners for the offence under Sections 304(A) and 506(i) of IPC. Thereafter, the Court below took the case on file in C.C.No.202 of 2007 and

issued summons to the petitioners, against which the present Criminal Original Petition has been filed.

4. Notice was ordered to the respondent, which was served to him on 27.11.2009. Thereafter, they engaged counsels and entered appearance, who had filed the Vakalath on behalf of the respondent/complainant on 07.12.2009.

5. The case of the respondent/complainant is that the respondent/complainant married one Kokila on 27.08.2004. Since his wife could not get pregnant, the respondent and his wife approached the 1st petitioner and got medical advice at treatment. From 27.10.2005 to 26.05.2007, the complainant's wife consulted the 1st petitioner as out-patient regarding her pregnancy. On 14.09.2006, they had gone to K.B.Hospital of the 1st petitioner and taken ultrasound scan and got result confirming the complainant's wife was pregnant and the 1st petitioner had prescribed certain medicines and advice. Till, 27.05.2007, the complainant's wife got proper treatment from the 1st petitioner. On 23.05.2007, they had gone for the routine medical checkup. The ultrasound scan report revealed that the baby in the womb was in good health and the heart beat was normal. Thereafter, he was advised to bring his wife for next check up during June 2007.

6. On 27.05.2007, his wife suffered bleeding and pain. The complainant rushed to the 1st petitioner's hospital. On her advice, the complainant admitted his wife as inpatient. From the ultra scan, it was found that the baby in the womb died. Hearing the same, the respondent got shocked and pleaded that somehow the dead baby has to be taken out and to save his wife. The 1st petitioner demanded Rs.50,000/- (Rupees fifty thousand only) for the same and with great difficulty the petitioner could arrange Rs.35,000/- also and paid to the hospital. Thereafter only at about 3.30 pm further treatment was given. The 1st petitioner wasted golden hours of treatment, till she received the money.

7. Thereafter, the dead baby was taken out and handed over to the respondent. Due to this, the respondent's wife started profuse bleeding and pain. Alternate blood was sought and 4 units of blood were administered and thereafter, dead baby was taken for burial. In the meanwhile, at about 5.50 pm, the 1st petitioner took the signature from the respondent in printed forms. After that he took his wife from K.B Hospital to Om Sakthi Hospital, which was on the opposite side, where the 1st petitioner introduced two doctors as well educated and well experienced doctors and they are 2nd and 3rd petitioners herein. The respondent's wife was admitted in the intensive care unit. The 4th petitioner, Cardiologist joined them for treatment and Artificial Respiration was administered to his wife and

thereafter, electric shock was also administered. No paramedical staff or nurses were present during that time.

8.The respondent came to know that due to wrong treatment given by 2nd and 3rd petitioners, the respondent's wife passed away. This information was passed on to the respondent by his brother Murali at about 7.20 pm. The death of his wife occurred due to negligence of the petitioners 1 to 4. Thereafter, the petitioners 1 to 4 threatened the respondent to take away the body of the respondent's wife. Further, they brought some muscle men and threatened them. Fearing for his life, he took the body of his wife to his native place for cremation. To preserve the body from decomposition, the body was kept in coffin filled with salt and buried. Thereafter, on 15.06.2007 the respondent gave a petition to the District Collector, Dharmapuri and the Superintendent of Police, Dharmapuri to conduct Postmortem. After one week, the respondent gave a petition before the Tahsildar, Pappireddipatti, a RDO team consisting of Forensic experts and Doctors have come to exhume the body and conduct Postmortem.

9.The respondent felt that the doctors from Dharmapuri had no sufficient experience and the same was objected and thereafter. The Doctors from Mohan Kumaramangalam Hospital, Salem conducted Postmortem on 06.07.2007 and took the vital parts for viscera test. The postmortem report was yet to be received despite several request. The death certificate given by the 1st petitioner opines that due profuse bleeding and to pregnancy complication, the respondent's wife died. Thereafter, it was corrected as profuse bleeding. Hence, the respondent had preferred a complaint before the learned Judicial Magistrate, Dharmapuri.

10.The contention of the petitioners is that the 1st petitioner is a Gynecologist, who served in Government Medical Service for 25 years. After her retirement, she have been carrying on Private Medical practice in the locality. The 2nd petitioner is a General Surgeon in Masters degree and he had undergone Special Training at Ramachandra Medical College Hospital for emergency Medical care and owns a 50 bed hospital. The 3rd petitioner is the wife of the 2nd petitioner Senior Doctor. The 4th petitioner is a qualified Cardiologist in the Districts of Dharmapuri and Krishnagiri.

11.It is submitted that, due care was taken, while treating the deceased Kokila and she started to develop labor pain and bleeding as early as 11 p.m on the night of 26.05.2007 and due to the lethargy of the respondent, she was not immediately brought to the hospital and she was brought to hospital only on 27.05.2007 at about 9.30 a.m. The previous day whole night, she had profuse bleeding, which affected the life of the child. Due

to this condition, the child died in Medical term, the condition known as Abruptio Placenta. Due to which, the Placenta gets disconnected from the uterine wall, so the child is in lack of essential supplies which is a recognized complication of pregnancy and further the mother died, due to owning Disseminated Intravascular Coagulopathy. The Doctors having requisite knowledge and experience and could not save the deceased Kokila.

12.The 1st petitioner treated Kokila for infertility for a long time of her pregnancy, she got pregnant and hence, there could be no complaint on the competency of the 1st petitioner. As it could be seen from the discharge summary, it is seen that the deceased Kokila was treated for infertility for one year and she had been examined regularly by the 1st petitioner on regular intervals. The case history shows that, she had developed abdomen pain and bleeding from 11 p.m onwards from 26.05.2007, but, she was admitted in the hospital only on 27.05.2007 at 9.30 a.m. The necessary treatments have been done and the same have been properly recorded and the Patient has been constantly monitored, while she was in treatment. It is found that the patient vaginal delivery was at 2.25 p.m. where, she delivered a dead male child. Blood transfusion was given at 3.30 p.m., the patient developed mild Retroflexion Discomfort and developed complications.

13.The patient's general cardiac condition did not improve and she was admitted to Elective Ventilation. The Cardiologist and Anaestiasist and Surgeon opinion was also called for and thereafter, two more blood units were administered to her. Despite all resussitable measures, the patient's condition did not improve and the eletric shock became irreversible and died of Cardio respiratory arrest. Hence, the cause of death was pregnancy abortion and profuse bleeding.

14.It is further submitted that the Court below erred in taking cognizance in a case of Medical negligence, which is against the well settled principles of the Hon'ble Apex Court. There is no contra opinion, by way of examination of Specialist Medical report and came to conclusion that the death of Kokila was due to rashness and negligence of the petitioners in absence of contra opinion by an expert. The learned Judicial Magistrate, Dharmapuri ought not to have taken cognizance of the complaint. Further, the Hon'ble Apex Court had held that before issuance of notice to the Doctors or Hospitals against whom the complaint is made, the Court should first refer the matter to a competent Doctor or committee specialized in the field of Medical negligence and if it is attributed after obtaining such a report, the Court shall further proceed and thereafter is it finds a prima facie of Medical negligence, notice to be issued to the concerned doctors. The Court below was well aware that

the Doctors from Mohan Kumaramangalam Hospital, Salem had conducted postmortem and the RDO of Pappireddipatty had conducted an inquest, but the Court below no efforts had taken to obtain Postmortem report and RDO report from the concern before arriving at a satisfaction before taking cognizance of the case.

15.Further, it has been held that a private complaint should not to be entertained, unless, the complainant produces Prima facie evidence, by way of credible opinion given by another competent Doctor to support the charge of rashness or negligence on the part of the accused Doctor.

16.In this case, there is no such opinion is available. Therefore, the lower Court in a routine manner has taken cognizance of the case and issued summons to the petitioners/accused, who are all Doctors of repute and have considerable years of service in the field of Medicine. Further, the evidence of PW.2, Murali, brother of the complainant and PW.3 Sundaram, father of deceased Kokila is of no consequences.

17.The learned counsel for the petitioners relied upon the following Citations, in the case of Jacob Mathew's Versus State of Punjab and anothe reported in 2005 (6) SCC and in the case of Martin F. D'Souza Versus Mohd. Ishfaq reported in 2009(1) SCC (Cr1.) 958.

18.As already submitted, despite notice being received by the respondent and entering appearance through his counsel and thereafter, neither this counsel nor the respondent had appeared before this Court. As, it could be seen from the adjudication, this court had also called for the lower Court records.

19.Considering the rival submissions and on perusal of the lower Court records and materials, it is seen that the respondent and his wife has taken regular treatment for the past several years for the problem of infertility and Gynaecology. Even, according to his sworn statement from the year 2005 upto 27.05.2007, they have been regularly consulting the 1st petitioner and they are very much satisfied with the treatment and admits that the deceased became pregnant only after four years of the marriage. Only on the death of Kokila and her infant, the above case was filed by the respondent.

20.On perusal of the "Discharge Summary" which is found in the lower Court records, it is found that from the time of her admission on 27.05.2007 at 9.30 a.m till she died on 27.05.2007 at 7.20 p.m., the various stages of treatment given and the same is recorded.

21.It is an admitted case that the "Discharge Summary" was handed over along with the dead body of the respondent's wife, and there is no reason to doubt the same. The "Discharge Summary" is nothing but an reproduction of the case sheet of the patient. All the Doctors, who have treated the respondent's wife are well experienced and elderly Doctors who have put in sufficient number of years in Medical Practice and acquired necessary expertise and knowledge in their respective fields. It is admitted by the respondent/complainant that from 11 p.m., on 26.05.2007, the deceased Kokila had profuse bleeding and pregnancy pain and she was brought to the hospital only at 9.30 a.m., on 27.5.2007. Hence, this delay in admitting the respondent's wife, is the primary cause of death of the child.

22.The demand of money for removing the dead baby from Kokila is not sustainable, for the reason, that the delivery of the dead male child at about 2.25 p.m. is a progressed Vaginal delivery and the health condition of the Kokila deteriorated, thereafter, such delivery is not possible. Further, due to the trauma of the still born child and profuse bleeding and the deterioration of the Kokila's health and for restructuring the same, an immediate remedial rescue actions have been taken. But, the fate was otherwise despite best efforts have been taken and she could not be saved.

23.The lower court without getting Medical expert opinion from the concerned authorities had taken cognizance against the petitioners, who are all doctors. Hence, it is against the dictum of the Apex Court.

24.In view of the same, this court finds that the continuation of the proceedings against the petitioners, who are all doctors would amount to abuse of process of law. In the result, the proceedings in C.C.No.202 of 2007 pending on the file of Judicial Magistrate-I, Dharmapuri as against the petitioners is hereby quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

s/d-

Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

1.The Judicial Magistrate,
Dharmapuri.

2.The Public Prosecutor,
High Court, Madras.

Cr1.O.P.No.21783 of 2009

NMI (CO)
SP(10/04/2019)



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