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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2019

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THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

CrI.O.P No.18733 of 2019

Kunjammal

... Petitioner/Complainant

Vs.

1.D.Niramal, D.G.O

Register No.43769

Chief Civil Surgeon,

Government Hospital

Bhavani.

2.The Inspector of Police,

B-Komarapalayam Police Station,

Namakkal District-638 183.

... Respondents/Respondents

Prayer :Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to direct the learned Judicial Magistrate, Thiruchengode, to take cognizance of Private Complaint filed by the petitioner in C.F.R. No.7459 of 2017 in Unnumbered C.C No. of 2017 and dispose the same in the manner known to law by appreciating the above stated facts and circumstances.

For Petitioners : Mr. Shase.R for Mr.M.Guruprasad

For Respondent : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

This petition has been filed against the return of the complaint filed by the petitioner against the first respondent, on the ground of criminal negligence while performing the operation of the petitioner.

2. The case of the petitioner is that the first respondent performed a surgery in her stomach and with gross negligence, left the cloth used during the surgery inside the stomach and stitched. Later, the petitioner faced abnormal pain which resulted in complications and she was again admitted in a



hospital. The petitioner was operated and the cloth that was kept inside the stomach was removed. As a result of this, the petitioner faced several complications and she is yet to recover.

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3. In view of the above, the petitioner filed a complaint before the Court below on the ground that the first respondent had committed an offence under Section 337 and 338 of IPC. The Court below had returned the complaint on the ground that the petitioner will have to get sanction against the first respondent before the complaint is taken cognizance. For this purpose, the Court below relied upon the judgment of the Hon'ble Supreme Court in Jacob Mathew vs. State of Punjab and another reported in (2005) 6 Supreme Court Cases I.

4. The learned counsel for the petitioner submitted that the Court below went wrong in returning the complaint. The learned Counsel submitted that where the rash and negligent act of the accused person was apparent and was the proximate and direct cause for the complications suffered by the petitioner, no such sanction is required to be obtained. The learned counsel submitted that the judgment which has been relied upon the Court below will only apply in case, where the Doctor has acted bonafide and there is no apparent negligence on the part of the Doctor. In the present case, the recklessness with which the operation was performed by the first respondent, clearly constitutes mensrea and that is enough for the Court below to take cognizance of the complaint filed by the petitioner. The learned counsel submitted that this position has been made clear even in the very judgment relied upon by the Court below.

5. The learned counsel for the petitioner also brought to the notice of this Court, the judgment of the Hon'ble Supreme Court in Dr.P.B.Desai vs. State of Maharashtra and Another reported in (2013) 4 MLJ (Crl) 259, where the Hon'ble Supreme Court discussed the entire law on the criminal liability / medical negligence of a Doctor which will attract offence under Section 338 of IPC.

6. The learned counsel for the petitioner, by relying upon the above judgment, submitted that the recklessness exhibited by the Doctor while performing the surgery clearly makes out an offence of criminal negligence and therefore, the above judgment will squarely apply to the facts of the present case.

7. The learned counsel concluded her arguments by submitting that the Court below ought to have taken into consideration the above two judgments of the Hon'ble Supreme Court and proceeded further in accordance with law.



8. This Court, is in complete agreement with the submissions made by the learned counsel for the petitioner. The Court below did not properly appreciate the scope and ambit of the judgment of the Hon'ble Supreme Court in Jacob Mathew, referred supra. The Court below also did not take into consideration the subsequent judgment of the Hon'ble Supreme Court in Dr.P.B.Desai, referred supra. This Court, therefore does not have any hesitation in setting aside the return made by the Court below.

9. This Criminal Original Petition is disposed of by giving liberty to the petitioner to represent the complaint with all relevant documents before the Court below and the Court below shall entertain the same in accordance with the principles of law enunciated in Jacob Mathew vs. State of Punjab and another reported in (2005) 6 Supreme Court Cases I and Dr.P.B.Desai vs. State of Maharashtra and Another reported in (2013) 4 MLJ (Crl) 259 and proceed further in accordance with law.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate,
Thiruchengode.
- 2.The Chief Judicial Magistrate,
Namakkal.
3. The Inspector of Police,
B-Komarapalayam Police Station,
Namakkal District-638 183.
4. The Public Prosecutor
High Court of Madras.

+1cc to Mr.M.Guruprasad, Advocate Sr.61007

Crl.O.P No.18733 of 2019

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srg 28/08/2019