



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.04.2019

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.O.P.(MD)No.4738 of 2019
& Crl.M.P.(MD)Nos.2908 & 2909 of 2019

Mangala S Ravindran,
S/o.Mangala K.Sarangapani

... Petitioner/Sole Accused

Vs.

1.The Inspector of Police,
Palayamkottai Police Station,
Tirunelveli City,
Tirunelveli.
(Crime No.837/2018)

...Respondent/Complainant

2.Jenitta Deva Kirubhavathi,
W/o.Vijay

... Respondent/Defacto Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records from the learned Judicial Magistrate No.I, Tirunelveli, in S.T.C.No.188 of 2019 and quash the same, as it has no prima facie case against the petitioner.

For Petitioner: Mr.M.S.Jawaharlal

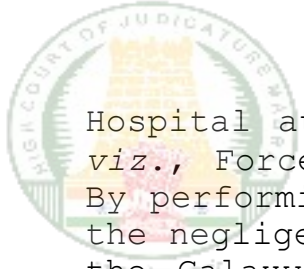
For R1 : Mr.K.Suyambulinga Bharathi
Government Advocate (Criminal side)

For R2 : Mr.R.Maheshwaran

O R D E R

This Criminal Original Petition has been filed to quash the proceedings in S.T.C.No.188 of 2019 on the file of the Judicial Magistrate Court No.I, Tirunelveli.

2.The case of the prosecution is that the second respondent was admitted in Galaxy Hospital at Tirunelveli, for getting treatment for ''Transabdominal Hysterectomy / Umbilical Hernia Repair'' on 24.04.2018. As per the preliminary investigation conducted by the Galaxy Hospital, she was advised to perform the above surgery. Based on the request of the Galaxy Hospital, the petitioner performed the surgery successfully on 25.04.2018. Subsequent to the said treatment, the petitioner was discharged from the Hospital on 02.05.2018. Thereafter, the second respondent suffered pain in the abdomen and therefore, she was again admitted in a different



Hospital at Palayamkottai, where, the Doctors found that an object viz., Forceps in the abdomen and that was the reason for the pain. By performing the second surgery, the said object was removed. For the negligence of the Doctor, a criminal case was registered against the Galaxy Hospital and the petitioner herein in Crime No.837 of 2018 on 22.12.2018. After completion of investigation, the charge sheet was filed only against the petitioner in S.T.C.No.188 of 2019 and the same was taken on file by the learned Judicial Magistrate No.I, Tirunelveli, against which, the present petition has been filed.

3.The learned counsel appearing for the petitioner submitted that the Law Enforcing Agency is not competent to enquire about the offence committed by the petitioner. In respect of medical negligence, the Government of Tamil Nadu issued G.O.(Ms)No.200, Health and Family Welfare (21) Department, dated 04.07.2008, wherein, the Government of Tamil Nadu issued certain guidelines based on the decision of the Hon'ble Apex Court in **Jacob Mathew Vs. State of Punjab and Another, decided on 05.08.2005**, with regard to the arrest of doctors for treatment modalities and therefore, the learned counsel prayed for allowing the present Criminal Original Petition.

4.Per contra, the learned counsel appearing for the second respondent submitted that initially, the second respondent/de-facto complainant was admitted in Galaxy Hospital, Tirunelveli, in which, a surgery was conducted and the petitioner performed the surgery on 25.04.2018. Subsequent to the said surgery, due to pain in the abdomen, the second respondent was again admitted in a different hospital at Palayamkottai, where, an object, viz., Forceps was removed from her abdomen and therefore, the second respondent lodged a complaint before the respondent police and after completion of investigation, a charge sheet has been filed before the Court and there is no need for getting expert opinion from the Board and accordingly, he prayed for dismissal of the Criminal Original Petition.

5.The learned Government Advocate (Criminal side) appearing for the first respondent submitted that all the medical records have been filed along with a report filed under Section 173 Cr.P.C. and it is a matter for trial and therefore, he prayed for dismissal of the Criminal Original Petition.

6.Considering the facts and circumstances of the case, this Court is not inclined to interfere with the charge sheet at this stage. Since the charge framed against the petitioner discloses commission of cognizable offence, the same cannot be quashed in the light of the law laid down by the Hon'ble Apex Court in **State of Haryana Vs. Bhajan Lal** reported in **1992 (1) SCC 335**.

<https://hcservices.ecourts.gov.in/hcservices/> 7.At this juncture, the learned counsel appearing for the petitioner seeks to dispense with the personal appearance of the petitioner, since he is aged about 62 years.



8.Considering the request made by the learned counsel appearing for the petitioner, this Court is of the opinion that the personal appearance of the petitioner is dispensed with. However, the petitioner shall present before the Trial Court for answering charges, for questioning under Section 313 Cr.P.C. and on the date of judgment. For other hearings, if the petitioner files an affidavit under Section 317 Cr.P.C., the same shall be liberally considered. If the accused adopts dilatory tactics, the Trial Court shall insist upon the presence of the accused. If the accused absconds, a fresh FIR shall be registered against them under Section 229-A IPC.

9.With the above direction, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

/ True Copy /

Sub Assistant Registrar(CS)

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To

1.The Judicial Magistrate No.I,
Tirunelveli.

2.The Inspector of Police,
Palayamkottai Police Station,
Tirunelveli City,
Tirunelveli.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.ANANTH.C.RAJESH, Advocate
(SR-61153[F] dated 16/04/2019)

+1 CC to M/s.R.MAHESWARAN, Advocate (SR-61169[F] dated 16/04/2019)

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