



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **28.11.2019**

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH
Crl.O.P.[MD].No.9380 of 2017
and
Crl.M.P.[MD]No.6376 of 2017

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Lakshmi Nursing Home,
Thiruppathur
Represented by
Dr.C.Jegadeesan

: Petitioner/Accused No.2

Vs.

1.The State through
The Inspector of Police,
Thiruppathur Town Police Station,
Thiruppathur, Sivagangai District.
(Crime No.162 of 2017)

: 1st Respondent/Complainant

2.V.Malar

: 2nd Respondent/Defacto Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the records in FIR in Crime No.162 of 2017, dated 08.05.2017, on the file of the first respondent and to quash the same.

For Petitioner	: Mr.S.Madhavan
For R-1	: Mr.S.Chandrasekar
	Additional Public Prosecutor
For R-2	: No Appearance

ORDER

This Criminal Original Petition has been filed seeking to quash the First Information Report in Crime No.162 of 2017, pending investigation before the first respondent police.

2.The de-facto complainant has given a complaint to the respondent police on the ground that the daughter of the de-facto complainant was admitted in the petitioner hospital and blood transfusion was done on 16.12.2015. The deceased developed certain complications and thereafter, she was admitted at Meenakshi Mission Medical Hospital, Madurai. She is said to have died on 20.12.2015. The present complaint came to be given before the respondent police on 08.05.2017. The crux of the complaint is that the petitioner hospital had committed criminal negligence by using contaminated blood, while the blood transfusion was done to the daughter of the



de-facto complainant. The respondent police based on the complaint, have registered an FIR on the same day for an offence under Section 304(A) of IPC.

3.The learned counsel for the petitioner submitted that the respondent police ought not to have registered an FIR without satisfying the mandatory directions given by the Hon'ble Supreme Court in **Jacob Mathew Vs. State of Punjab** reported in **(2005) 6 SCC 1**. The learned counsel submitted that the police have registered an FIR without satisfying themselves that the hospital has committed a criminal negligence and no report has been received from the committee before the First Information Report was registered.

4.The learned Additional Public Prosecutor appearing on behalf of the respondent police submitted that the District Collector had enquired into this issue and there is a report to the effect that the death has occurred due to transfusion of contaminated blood. The learned counsel submitted that the death has occurred due to criminal negligence on the part of the petitioner hospital and therefore, there is a clear offence made out under Section 304(A) of IPC.

5.The second respondent has been served with notice and her name has also been printed in the cause list and there is no representation on behalf of the second respondent.

6.The only issue that requires consideration in this petition is as to whether the respondent police can sustain the prosecution against the petitioner hospital without complying with the mandatory directions issued by the Hon'ble Supreme Court in **Jacob Mathew Vs. State of Punjab**.

7.The direction that has been issued by the Hon'ble Supreme Court is extracted hereunder:-

"..50.As we have noticed hereinabove that the cases of doctors (surgeons and physicians) being subjected to criminal prosecution are on an increase. Sometimes such prosecutions are filed by private complainants and sometimes by the police on an FIR being lodged and cognizance taken. The investigating officer and the private complainant cannot always be supposed to have knowledge of medical science so as to determine whether the act of the accused medical professional amounts to a rash or negligent act within the domain of criminal law under Section 304-A IPC. The criminal process once initiated subjects the medical professional to serious embarrassment and sometimes harassment. He has to seek bail to escape arrest, which may or may not be granted to him. At the end he may be exonerated by acquittal or



discharge but the loss which he has suffered to his reputation cannot be compensated by any standards.

51. We may not be understood as holding that doctors can never be prosecuted for an offence of which rashness or negligence is an essential ingredient. All that we are doing is to emphasise the need for care and caution in the interest of society; for, the service which the medical profession renders to human beings is probably the noblest of all, and hence there is a need for protecting doctors from frivolous or unjust prosecutions. Many a complainant prefer recourse to criminal process as a tool for pressurizing the medical professional for extracting uncalled for or unjust compensation. Such malicious proceedings have to be guarded against.

52. Statutory rules or executive instructions incorporating certain guidelines need to be framed and issued by the Government of India and/or the State Governments in consultation with the Medical Council of India. So long as it is not done, we propose to lay down certain guidelines for the future which should govern the prosecution of doctors for offences of which criminal rashness or criminal negligence is an ingredient. A private complaint may not be entertained unless the complainant has produced prima facie evidence before the Court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor. The investigating officer should, before proceeding against the doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion preferably from a doctor in government service, qualified in that branch of medical practice who can normally be expected to give an impartial and unbiased opinion applying the Bolam test to the facts collected in the investigation. A doctor accused of rashness or negligence, may not be arrested in a routine manner (simply because a charge has been levelled against him). Unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the investigating officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld..."

8. This Judgment has subsequently been reiterated by the Hon'ble Supreme Court in **M.K.Vaidyanathan Vs. State, Rep. by The Inspector**
<https://hcservices.ecourts.gov.in/hcservices/>



of Police and another reported in (2007) 2 CTC 497 and in **Martin F. D' Souza Vs. Mohd. Ishfaq** reported in (2009) 2 CTC 252.

9.It is clear from the above Judgments that the Investigating Officer before proceedings against the doctor or a hospital will have to necessarily follow the guidelines. The Investigating Officer before proceeding against the doctor or a hospital which is accused of rash or negligent act or omission, should obtain an independent and competent medical opinion preferably from doctors in Government service. The opinion of the doctor should also satisfy the Bolam test to the facts collected in the investigation. This safeguard was given by the Hon'ble Supreme Court in order to ensure that the doctors and hospital are not put to unnecessary criminal prosecution.

10.In the present case, the Investigation Officer has not followed this mandatory requirement. That apart, the complaint itself has been given after nearly two years from the date of incident. There is absolutely no explanation as to why the de-facto complainant waited for two years to give the complaint. One more important factor is that the deceased was discharged from the hospital and she was readmitted in Meenakshi Mission Medical Hospital and she took treatment for nearly four days and ultimately died on 20.12.2015. It is not known as to the treatment that was given by Meenakshi Mission Medical Hospital to the deceased. It seems that the prosecution was taken up due to the pressure exerted by the de-facto complainant and the police are proceeding further with the prosecution without even having the basic facts in their hands and even without taking an independent opinion as required in **Jacob Mathew Vs. State of Punjab** case.

11.The continuation of the prosecution against the petitioner is an abuse of process of law and the same requires the interference of this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

12.In the result, the First Information Report in Crime No. 162 of 2017, is hereby quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (records)

// True Copy //

Sub Assistant Registrar(CS)

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To

1. The Inspector of Police,
Thiruppathur Town Police Station,
Thiruppathur, Sivagangai District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.S.MADHAVAN, Advocate (SR-102695[F] dated 29/11/2019)

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28.11.2019

MK (31.12.2019) 5P 4C