



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.03.2020

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P(MD)No.16491 of 2018

and

Crl.M.P.(MD) No.7301 of 2018

and

Crl.M.P.(MD)No.1748 of 2019

Santha ... Petitioner/Sole Accused

Vs.

1.The State rep by
The Inspector of Police,
South Police Station,
Tuticorin,
Tuticorin District. ... 1st Respondent/Complainant

2.Murugan ... 2nd Respondent/Defacto Complainant

Prayer: This Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records of the Final Report in C.C.No.41 of 2018 pending trial on the file of the Judicial Magistrate No.I, Thoothukudi and quash the same.

For Petitioner : Mr.K.Elangovan

For Respondents : Mr.A.Robinson
Govt. Advocate (Crl. Side) for R1

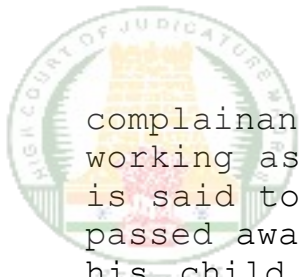
Mr.S.T.Sasidharan Tamilkani for R2

O R D E R

The petitioner is facing trial in C.C.No.41 of 2018 on the file of the learned Judicial Magistrate No.I, Thoothukudi, for the offences under Section 304(A) of I.P.C.

2.The second respondent Murugan is the defacto complainant. Today he is present in person along with his wife/Kantha.

3.The case of the prosecution is that the child of the defacto



complainant fell ill on 04.04.2013, the petitioner herein was working as a staff nurse in the local primary health centre. She is said to have administered an injection to the child. The child passed away on the next day. The defacto complainant alleges that his child died due to the negligence on part of the petitioner herein. To this effect, a complaint was lodged before the first respondent. An FIR in Crime No.178 of 2013 was registered and after investigation, the final report was filed before the Jurisdictional Magistrate who took cognizance of the offence under Section 304(A) of I.P.C. To quash the same, this criminal original petition has been filed.

4.The learned counsel appearing for the petitioner submitted that irrespective of the outcome of this proceeding, the petitioner would pay a sum of Rs.1,00,000/- to the mother of the deceased child. Infact such undertaking has already been honoured by the petitioner herein.

5.I carefully went through the materials on record. The postmortem doctor had given his final opinion to the effect no definite opinion could be given regarding the cause of death. No poison was detected in the viscera analysis. No fatal internal or external injury was noted in the body. Therefore there is absolutely nothing to indicate that the administration of injection by the petitioner herein was responsible for the death of the child. In fact, there is no link at all between the two. There is no material whatsoever to fasten any penal liability on the petitioner herein. As rightly contended by the petitioner's counsel the Hon'ble Supreme Court in the decision reported in **(2005) 6 SCC 2 (Dr.Jacob Mathew vs. State of Punjab)** to attract Section 304(A) of I.P.C., it should be necessary that the direct result of a rash and negligent act on the part of the accused must be the proximate and efficient cause without the intervention of any other act. In this case, there is no material to sustain the prosecution charge. It is case of zero material. The elementary ingredients of the offence under Section 304(A) of I.P.C., are not present in this case.

6.In this view of the matter, the impugned proceedings stand quashed and the criminal original petition stands allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



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To:

1.The Judicial Magistrate No.I,
Thoothukudi.

2. The Chief Judicial Magistrate, Thoothukudi.

3.The Inspector of Police,
South Police Station,
Tuticorin,
Tuticorin District.

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

+6 CC to M/s.K.ILANGO VAN, Advocate (SR-11665[F] dated
13/03/2020)

Cr1.O.P(MD)No.16491 of 2018

NS(CO)

TR(17.03.2020) 3P 11C