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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2021

CORAM:

THE HON'BLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

CRL.O.P.No.25858 of 2016

and

Crl.M.P.Nos. 12766 & 12767 of 2016

Dr. Mohan

... Petitioner

Versus

1. The State,
rep. by the Inspector of Police,
B1-Thiruvallur Town Police Station,
Thiruvallur.

2 Mr. A.Gopalakrishnan

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records of PRC No.20 of 2015 pending on the file of the Judicial Magistrate-1, Thiruvallur and quash the same as against the petitioner herein.

For Petitioner : Ms. R.Bhavadharani,
for AAV Partners

For Respondents: Mr.E. Raj Thilak,
Gov. Advocate (Crl.Side)
for R1

: Mr.S.Mahaveer Shivaji,
for Mr. V.Thiyagu,
for R2

ORDER

This petition has been filed to quash the PRC No.20 of 2015 on the file of the Judicial Magistrate, No.I, Thiruvallur.

2. The case of the prosecution is that on 21.02.2013 at about 4.45 p.m., one Mrs.Sudha, along with her husband with the complaints of headache, vomiting, giddiness and fever came to the petitioner's clinic, namely, Grace Medical Center. The



petitioner and a nurse, namely Velankanni, administered injections to the said Sudha without taking any test. Thereafter, since the said Sudha became semi-conscious, she was referred to the Government Head Quarters Hospital, Thiruvallur, which is just 5 minutes away from the clinic, where, she was declared dead and the Doctor also told that she would have died half an hour back. Hence, a complaint has been lodged before the first respondent police and a case in Crime No.88 of 2013 has been registered under Section 304(i) IPC and the same has been taken on file as PRC.No.20 of 2015 by the Judicial Magistrate-I, Thiruvallur.

3. The learned counsel for the petitioner would submit that the allegation of the defacto complainant that the nurse had administered injection as per the instruction of the petitioner, without examining the patient, due to which, there was allergic reaction, which resulted death to the patient, are totally false. The petitioner was very much available in the hospital at the time when the deceased came to hospital. With a malafide intention, a false case has been foisted as against this petitioner. She would further submit that a case has been registered against the petitioner under Section 304 (i) of IPC. Section 304(i) IPC is punishable for culpable homicide, which is not amounting to murder. She would further submit that it is not the case of the defacto complainant or the prosecution that the petitioner caused death to the deceased with an intention to cause such act. As a medical practitioner, the petitioner has no intention to cause death to the patient. Hence, the charge under Section 304(i) of IPC does not attract in the present case as against the petitioner. The consequence that ensued in this case was not definitely expected and anticipated by anyone much less the petitioner. In the absence of any ingredients of part I of Section 304 of IPC, the petitioner has been wrongly charged for culpable homicide in the instant case. Neither the petitioner nor the witnesses have stated that the petitioner with an intention or knowledge to cause death or bodily injury to the deceased, had acted upon. Adverse drug reaction causes 10-20% of patients allergic reactions are unpredictable, and adverse effects that are linked immunological mechanisms. Hypersensitive drug reactions also suggest involvement of genetic factors, which are not in the hands of the physicians. Hence, on that ground the complaint deserves to be quashed. The chemical analysis report categorically states that the deceased appeared to have died due to acute hypersensitive drug reaction. To support his contention, she has also relied upon a judgment of the Hon'ble Supreme Court of India in the case of Jacob Mathew /vs/ State of Punjab reported in 2005 (6) SCC, in which, it has been categorically stated that 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. But, in the present case, the above procedure was not followed by the Investigating Authority and no expert opinion was obtained, before filing report. Hence, he prayed to quash the same.

4. The learned Government Advocate (crl. side) appearing for the respondent police would submit that the doctor was not available at the time of the admission of the deceased into the hospital. The petitioner was working in the Government Hospital and he was on duty when the deceased was admitted in the hospital. Hence, he gave instruction to one Velankanni, who was working as a nurse in his hospital and administered injection to the victim, which was not known to the victim's relatives. After administering the injections only, the deceased became unconscious and her pulse rate went down and hence, she was shifted to the Government Hospital, where she was declared dead. The medical officer, who has conducted postmortem on the body of the victim, stated that the deceased appeared to have died due to acute hypersensitive drug reaction.

5. He would further submit that the said Sudha was affected by fever and headache, she went with her husband Rajeevan to the Grace Clinic on 21.02.2013 at 5.00 p.m., and already she had taken medicine for 4 days. At that time, Doctor was not available in the hospital and one nurse, Velankanni was available, who administered injections to the deceased Sudha and it was enquired by the victim's relatives. The said Velankanni contacted the doctor over phone and he advised her to give two injections. Thereafter, at 5.30 p.m., the petitioner came there and without examining the patient, he told with the nurse to provide IV fluid to the victim. Thereafter, at 7.30 p.m., suddenly the victim had become unconscious. Then only, the doctor informed that the patient is in a very serious condition and advised them to take her to the Government Hospital, Thiruvallur, where, the Doctor examined the victim and informed that before 30 minutes, she died. Hence, through complaint dated 22.02.2013 requested them for post mortem and the case was registered under Section 304 (i) IPC. Since without doing checkup, the petitioner advised the nurse to administer injection, the deceased died due to acute hypersensitive drug reaction.

6. I have considered submissions made on either side and perused the materials available on records carefully.

7. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in CrI.A.No.579 of 2019 dated 02.04.2019 in the case of Devendra Prasad Singh Vs. State of Bihar & Anr., as follows:-

" 12. So far as the second ground is concerned, we are of the view that the High Court while hearing the



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application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law."

8. Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in CrI.A.No.1572 of 2019 dated 17.10.2019 in the case of Central Bureau of Investigation Vs. Arvind Khanna, wherein, it has been held as follows :

"19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

9. Further the Hon'ble Supreme Court of India also held in the order dated 02.12.2019 in CrI.A.No.1817 of 2019 in the case of M.Jayanthi Vs. K.R.Meenakshi & anr, as follows:



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"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

The above judgments are squarely applicable to this case and as such, the points raised by the petitioner cannot be considered by this Court under Section 482 Cr.P.C.

10. Considering the submissions, and from the perusal of the records, it is seen that there is no mens rea for causing any injury to the deceased is accepted. But, there was no evidence to show that the said doctor was available when the deceased was admitted in the hospital. It is the case of the prosecution that the petitioner was not available at the time of admission of the victim and only over phone, he has instructed the staff nurse to administer injections. The main issue is whether the petitioner was available at the time of the admission of the victim or not and also whether due to the allergy reaction of the injection, the deceased died, which has to be decided at the time of trial. It is the duty of the petitioner to put forth his evidence before the Court below to prove his case. The Doctor, who conducted postmortem of the Victim stated that the deceased appears to have died due to acute hypersensitive drug reaction. That being the case, whether victim died due to acute hypersensitive drug reaction or not can be decided at the time of trial. Moreover, the petitioner, being a Doctor has come before this Court on quashing the said First Information Report under Section 304

(i) IPC by filing petition under Section 482 Cr.P.C. It is for the petitioner to give evidence and prove his case at the



time of trial and it cannot be decided at this stage by way of filing petition under Section 482 Cr.P.C. The petitioner can raise all the disputable grounds, which are raised by the petitioner before this Court, very much before the trial Court and it is for the trial Court to decide the case on merits.

11. In the case of Prabhat Kumar Singh /vs/ The State of Bihar and others, etc., in Spl. Leave Petition (crl.) Nos.2395-2396 of 2021, the Hon'ble Supreme Court has held that the High Court completely glossed over the reasons which had weighted with the trial Court, as noted in order dated 24.12.2016, but was impressed by the fact there was no evidence regarding mens rea, to show malicious or bad intent. Further the Hon'ble Supreme Court observed that this view taken by the High Court is erroneous. For, when it is a case of medical negligence, it need not be because of mens rea as intent. Sans mens rea in the above sense also it would still constitute offence of medical negligence.

12. Be that as it may, whether there was medical negligence or not has to be decided by the trial Court and while considering the said dispute, the Hon'ble Supreme Court, in the afore mentioned case had remanded the matter back to the trial Court for further evidence and for reconsidering the issue afresh, directed the trial Court to first examine the witnesses in respect of the case to see whether the complaint has been made out and to proceed further in accordance with law. This Court being bound by the judgment of Hon'ble Supreme Court mentioned supra is inclined to direct the trial Court to proceed with the matter on its own merits without being influenced by any of the observation made by this Court.

13. The counsel appearing for the petitioner also prayed that the petitioner is a senior citizen, and sought for dispense with the petitioner's personal appearance before the trial Court.

14. Considering the facts and circumstances of the case, this Court is not inclined to quash the proceedings in P.R.C.No.30 of 2015 on the file of the Judicial Magistrate No.I, Thiruvallur. The petitioner is at liberty to raise all the grounds before the trial Court. Considering the age of the petitioner, the personal appearance of the petitioner is dispensed with and he shall be represented by a counsel after filing appropriate application. However, the petitioner shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of pronouncing the judgment.



15. Accordingly, this criminal original petition is dismissed. Consequently, connected miscellaneous petitions are also closed.

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Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

mrp

To

1. The Judicial Magistrate-1,
Thiruvallur.
2. D- Through The Chief Judicial Magistrate,
Thiruvallur.
3. The Inspector of Police,
B1-Thiruvallur Town Police Station,
Thiruvallur.
4. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.V.Thiyagu, Advocate SR.No.39997

CRL.O.P.No.25858 of 2016

KK(CO)
GMY(27/10/2021)