



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.NO.3314 OF 2017

AND

CRL.M.P.NOS.2411 AND 2412 OF 2017
& 14263 OF 2018

Velankanni

... Petitioner/Accused 2

Versus

1. The State Rep. by
The Inspector of Police,
B1 Tiruvallur Town Police Station,
Tiruvallur. ... 1st Respondent/Complainant

2. K.Gopalakrishnan ... 2nd Respondent/Defacto
Complainant

PRAYER:-

Criminal Original Petition filed under Section 482 Cr.P.C.,
to call for the records in P.R.C. No.20 of 2015, on the file of
the Judicial Magistrate-I, Tiruvallur and quash the same.

For Petitioner : Mr.C.M.Mohanasundaram

For Respondents : Mr.S.Vinoth Kumar
Government Advocate (Crl. Side)
For R1

No appearance for R2

ORDER

This Criminal Original Petition has been filed under Section
482 Cr.P.C., to quash the final report in P.R.C. No.20 of 2015,
filed against the petitioner/A-2 for the offence under Section
304(1) IPC, on the file of the Judicial Magistrate-I,
Tiruvallur.



2. The case of the prosecution in nutshell is as follows:

On 02.02.2013, the de facto complainant, one Sudha has admitted in Grace Hospital, Thiruvallur due to fever and severe headache. In the said hospital, the petitioner was working as Staff Nurse. On the advice given by the Doctor, the petitioner administered an injection without testing the same. As a result of which, the patient's pulse gone down and subsequently, she was referred to Thiruvallur Government Hospital. However, on the way to the Government Hospital, she succumbed to injuries. Therefore, a case has been registered against the Doctor, who is arrayed as A-1 and the present petitioner, who is arrayed as A-2 for an offence under Section 304(1) IPC. The entire prosecution proceeded as if the accused has committed culpable homicide not amounting to murder.

3. The learned counsel appearing for the petitioner submitted that in the prosecution case itself, it is alleged that only on the instruction given by the Doctor, the petitioner herein has administered the injection and drops and therefore, at no stretch of imagination, it could be termed as an offence. At the most, any death is occurred due to negligence, that too, gross negligence, an offence under Section 304 (A) IPC would have normally be filed, whereas, in this case, the prosecution has filed the final report under Section 304 IPC, which is against the fundamental principle of law.

4. It is his further contention that even the entire prosecution taken as true, the only allegation against the present petitioner is with regard to administering the drops and injuction as per the advice of the Doctor, who was arrayed as A-1. It is also submitted that no expert opinion was obtained by the prosecution agency prior to prosecuting the Doctor and the present petitioner, as per the direction of the Apex Court in various occasions. It is therefore submitted that the continuation of the prosecution is nothing but an abuse of process of law.

5. The learned Government Advocate (Crl. Side) appearing for the State submitted that though the investigation officer has not obtained any expert opinion or report from the team of Doctors, the postmortem report indicates that the deceased died due to hypersensitivity due to drug reaction.

6. Heard the learned counsel on both sides and perused the entire materials available on record.

7. Normally, when the materials indicate any prima facie allegations against the accused, the Court would not interfere with the final report. It is relevant to note that the



prosecution has slapped a charge under Section 304 IPC - the culpable Homicide against the petitioner herein. To attract the offence of culpable homicide, the death should have been caused with an intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause a death. Therefore, only on these three ingredients enumerated under Section 299 IPC, the charge under Section 304 could be slapped.

8. It is not the case of the prosecution that the accused herein with an intention of causing death has administered the medicine. In fact, the de facto complainant's daughter deceased Sudha has been admitted in the hospital with fever and severe headache. Only on the instruction of the Doctor, the present petitioner has administered injection and drops, except that accused has not done anything. Therefore, to attract the offence under Section 304 IPC, there is no materials available on record. Even assuming that there was negligence in administering the injection before prosecuting the medical professionals, the prosecution ought to have obtained opinion from the team of Doctors, which has not been done in this case. Postmortem report indicates that the deceased died due to hypersensitivity due to drug reaction. The drug reaction depends upon the individual body. Therefore, without obtaining any opinion from the team of Doctors or Experts in this field to show that either Doctor or Staff Nurse act negligently or with an intention to cause death, the charge slapped against the accused is not maintainable.

9. It is relevant to note that even for prosecuting the medical professionals for negligence, the prosecution should establish higher degree of negligence.

10. In Jacob Mathew Vs. State of Punjab reported in AIR 2005 Supreme Court 3180(1), the Apex Court, considering the increase in prosecution, has given several directions and held that hazard taken by the accused Doctor should of such a nature that the injury which resulted was most likely imminent.

11. The above judgment was subsequently followed by the Apex Court in Martin F.D'Souza v. Mohammed Ishfaq in 2009 (3) Supreme Court Cases 1, wherein also several directions were issued by the Apex Court. The Apex Court has held that whenever a complaint is received against the Doctor or Hospital by the Consumer Fora or by the Criminal Court, before issuing notice to the Doctor or hospital, against whom the complaint was made, the Consumer forum or the criminal Court should first refer the matter to a competent Doctor or Committee of Doctors specialized in the field relating to which the medical negligence is attributed and only after the report of the competent Doctor or committee, if there is a prima facie case of medical negligence,



notice be then issued to the Doctor or hospital concerned. Such a direction was issued only to avoid harassment to Doctors, who may not be ultimately found to be negligent. Further, the police officers are warned not to arrest or harass the Doctors, unless the facts clearly come within the parameters laid down in Jacob Mathew's case, otherwise, the police will themselves will face legal action.

12. Subsequently, in V.Krishan Rao vs. Nikhil Super Speciality Hospital also reported in (2010) 5 Supreme Court Cases 513, the Apex Court held that the directions given in Martin's case with regard to the prosecution of the criminal cases is confirmed.

13. It is not the case of the prosecution that the accused with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause a death, however, they mechanically filed a final report under Section 304 IPC. In the absence of any materials to conclude that the accused has committed a culpable homicide and without any opinion from the experts, the prosecution has failed to establish any case against the petitioner and even the facts of the present case, the very materials collected by the prosecution itself indicate that A-2 has administered injection and drops to the patient only on the instructions given by the Doctor. Therefore, it cannot be said that the present petitioner has acted with the intention of causing death. As a staff nurse, she has acted as per the instruction of Doctor. At any event without there being any evidence to establish, even the gross negligence to bring the act of the accused within the purview of Section 304 (A) IPC also, the prosecution cannot succeed to maintain the final report. In such view of the matter, it is a fit case to exercise power under Section 482 Cr.P.C., to quash the final report as against the present petitioner.

14. Accordingly, this Criminal Original Petition is allowed and the proceedings in the final report in P.R.C. No.20 of 2015, on the file of the Judicial Magistrate-I, Tiruvallur is quashed. Consequently, the connected Criminal Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

psa/RR



To

1. The Judicial Magistrate-I,
Tiruvallur.
2. The Inspector of Police,
B1 Tiruvallur Town Police Station,
Tiruvallur.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.C.M.Mohanasundaram, Advocate, S.R.No.68030

CRL.O.P.NO.3314 OF 2017

RR (CO)
PBS/06/01/2022