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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.33552 of 2018 and WMP.No.38938 of 2018
Crl.O.P.No.29881 of 2018 and Crl.M.P.No.17571 of 2018

Dr.C. Kannan
S/o K. Chellappan

...Petitioner in both petition's

Vs.

1.The State,
Represented by Inspector of Police,
Edappadi Police Station,
Edappadi Taluk,
Salem District.

2. The Chief Medical Officer,
Government Hospital,
Edappadi Taluk,
Salem District.

...Respondents in both petition's

Prayer in W.P.No.33552 of 2018:Petition filed under article 226 of the Constitution of India praying to issue a writ of mandamus directing the second respondent to desist the petitioner's hospital namely, Aravind Hospital, Vellandivalasu, Edappadi, Salem District forthwith.

Prayer Crl.O.P.No.29881:This petition is filed under Section 482 of Cr.P.C to call for the records pertaining to Cr.No.446 of 2018 on the file of the 1st respondent and quash the same as illegal incompetent and abuse of process by allowing the present Criminal Original petition.

For Both petitions

For Petitioner : Mr.T. N. Rangesh Kanna
in both petitions

For Respondents 1 to 3 : Mr.A.Gopinath
Government Advocate (Crl.Side)
in both petitions



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O R D E R

(This case has been heard through video conference)

Petitioner in W.P.No.33552 of 2018 has filed this petition to issue a writ of mandamus directing the second respondent to de-seal the petitioner's hospital namely, Aravind Hospital, Vellandivalasu, Edappadi, Salem District forthwith.

2. Petitioner in CrI.O.P.No.29881 has filed this petition to call for the records pertaining to Cr.No.446 of 2018 on the file of the 1st respondent and quash the same as illegal incompetent and abuse of process by allowing the present Criminal Original petition.

3. The allegation made against the petitioner is that he has committed an offence under Section 23(1) of the Pre-conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 21994. The complaint has been given on the ground that the petitioner who is running a hospital, after scanning the pregnant lady, had shared the details about the sex of the child in the womb. Based on the said complainant given by the defacto complainant, the petitioner's hospital was de-sealed by the second respondent. To quash the said complaint given by the defacto complainant, CrI.O.P.No.29881 came to be filed and to de-seal the hospital W.P.No.33552 of 2018 came to be filed.

4. On perusal of the records it is clear that the offence can be taken only on the complaint made bby the appropriate authority before the Magistrate Court. The police cannot register an FIR and conduct an investigation in this regard. Even if investigation is conducted in this case, the police cannot file a final report an in turn it could not be taken cognizance of by the concerned Magistrate Court, in view of the bar under Section 23(1) (a) of the Pre-conception and Pre-Natal Diagnostic Techniques(Prohibition of Sex Selection) Act, 1994.

5. In view of the above it is made clear the first respondent is not the competent authority to either register the complaint or take action in this regard. Accordingly W.P.No.33552 of 2018 is disposed of with a direction to de-seal the premises and the interim order passed by this Court is



extended till the issue is resolved . As the W.P.No.33552 of 2018 itself is disposed of nothing survives in CrI.O.P.No. 29981 of 2018 for further adjudication and the same is closed. Consequently connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

smn

To.

- 1.The Inspector of Police,
Edappadi Police Station,
Edappadi Taluk,
Salem District.
- 2.The Chief Medical Officer,
Government Hospital,
Edappadi Taluk,
Salem District
- 3.The Public Prosecutor,
High Court, Madras.

+2 Ccs to Mr.T.N.Rangesh Kanna, Advocate, Sr.No. 36122 & 36123.

W.P.No.33552 of 2018 and
WMP.No.38938 of 2018
CrI.O.P.No.29881of 2018
and CrI.M.P.No.17571 of 2018

BR(CO)
LS(14/09/2021)