

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	23.03.2021
DELIVERED ON	19.04.2021

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THE HONOURABLE MR.JUSTICE G.ILANGO VAN

Crl.O.P. (MD)No.16345 of 2017

and

Crl.MP(MD)No.10842 of 2017

Dr.Rammohanrao

.. Petitioner/Sole Accused

vs.

1. State Through
The Inspector of Police,
Karaikudi North Police Station,
Karaikudi,
Sivagangai District.
Crime No.692 of 2016.

.. 1st Respondent/Complainant

2. Selvam

.. 2nd Respondent/Defacto
Complainant

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in Crime No.692 of 2016, dated 09.12.2016 on the file of the first respondent and to quash the same.

For Petitioner	:	Mr.V.Kathirvelu Senior Counsel for Mr.S.Madhavan
For R1	:	Mr.M.Ganesan Government Advocate (Crl. side)
For R2	:	Mr.S.Bharathy Kannan

ORDER

This petition is filed seeking to quash the First Information Report in Crime No.692 of 2016, dated 09.12.2016 on the file of the first respondent.

2.The second respondent herein has filed a complaint before the first respondent on 09.12.2016 with the following allegations:-



On 06.07.2016, the de-facto complainant's wife, namely, Parvatham was suffering pain in the stomach and kip region. So, she was admitted in Padmini Rammohanrao Hospital, Karaikudi. She was examined by the Chief Doctor, namely, Dr.Rammohanrao and informed him that there was a stone function in the kidney. So, he advised him to deposit Rs.40,000/- for performing the surgery. The amount was deposited and apart from that Rs.30,000/- has also been paid towards medicine and medical examination. On 10.07.2016, because of the deficiency of blood, one unit blood was transfused, which was found to be an old stock. Because of that, on the same day itself, she complained about the loss of vision in the left eye. She was immediately taken to the eye specialist, namely, Dr.Nagappan, who in turn, advised the petitioner to go to Aravind Eye Hospital, Madurai. On examination on 23.07.2016, he was informed that the eye sight on the left eye affected. It came to know that, because of the transfusion of old blood, his wife lost her eye sight. When this was informed to Dr.Rammohanrao, he offered Rs.2,00,000/- as compensation and gave an undertaking that this hospital was not responsible for the loss of the eye vision. But he refused to receive the amount and made an undertaking on 26.08.2016, again he went to Dr.Rammohanrao and requested him to treat his wife for regaining the vision. But verbally admitted. But some four persons joined together and criminally intimidated and tried to assault the de-facto complainant and his relative by name, Manickam. They escaped from the hospital and they lodged a complaint on 30.08.2016. Since no action was taken, a matter was taken to the notice of higher officials. Similarly, on 28.09.2016, his wife was admitted in Apollo Hospital, Managiri and at that time, some four persons came to the hospital and criminally intimidated his wife. It was later informed to him by her. A criminal complaint was registered in Crime No.692 of 2016 for the offence punishable under Sections 269, 270, 294(b), 420 and 506(1) of IPC and Sections 18(B) and 18(c) of the Drugs and Cosmetics Act, 1940, based upon the direction given by the learned Judicial Magistrate, Karaikudi, on the basis of the petition filed by the de-facto complaint under Section 156(3) of Cr.P.C.

3.This petition has been filed seeking quashment of the First Information Report on the following grounds:-

After the surgery undertaken by the Doctors to improve the general condition of the wife of the complainant, three units of blood was transfused, it was procured by the patient's relatives from Government Hospital, Karaikudi. Only after three days, she complained about the blurring of vision, she was immediately referred to the eye specialist on the same day, later to Aravind Eye Hospital. Before registering the case, the respondent police should have followed the guidelines laid down in **Martin F.D' Souza Vs. Mohammed Ishfaq** reported in **2009 (2) RCR Criminal 64**. Moreover, there is no involvement on the part of the hospital authorities. Besides



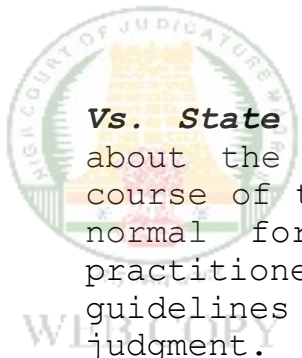
transfusing the blood, none of the allegations mentioned in the First Information Report and any of the ingredients mentioned in the offences are not attracted against the petitioner.

4. Heard both sides.

5. It is the case of medical negligence clubbed with the other offences such as criminal intimidation cheating and abused. This Court, after hearing the parties for a while, on 29.11.2019, directed the parties to appear before the mediation centre for amicable settlement. The mediation report, dated 19.02.2020 was also received stating that mediation could not be conducted since the parties were absent continuously. So, the effort made by this Court failed to settle the issue.

6. The main allegation levelled by the second respondent is that due to defective or infected transfusion blood to his wife caused the loss of left eye sight. Whether there was any negligence on the part of the hospital administration or whether a defective or infected blood was transfused and whether because of the medical negligence, the eye sight of the victim was affected cannot be a matter of discussion in this petition. It requires a thorough investigation by both of scientific process and forensic process. So, the arguments advanced by the learned Senior Counsel for the petitioner that no medical negligence can be attributed to the facts of the case cannot be accepted at this stage. The learned counsel for the petitioner would submit that absolutely with the *bona fide* intention to cure the disease, operation was undertaken and blood was transfused, which was purchased by the *de-facto* complainant himself. In this regard, he would refer to page No.1(A) of the typed set of papers, wherein a request had been made for supply of 'B' positive blood. After receiving the blood on 07.07.2016, cross matching was done and it was found compatible. Similarly, on 16.07.2016 two units of 'B' positive blood were received and were also found compatible. So, the question of defective or infected blood does not arise. But according to the learned counsel for the second respondent, the blood was received on 16.07.2016 and it was kept without fridge, which caused the infection. But according to the learned counsel for the petitioner, there is no mention in the complaint that due to repair of the fridge, the blood was not properly stored and infection occurred. So, according to the learned counsel for the petitioner, in the absence of such allegations, the question of offence under Section 269 IPC are not attracted and for that purpose, he would rely upon the Judgment of the Allahabad High Court in the case of **Dr. Smt. Prabha Malhotra and others Vs. State** reported in **2000 CRL. L.J. 549**.

7. No doubt that the Doctor profession is a noble profession and every efforts are being made by them by utmost care, caution and sincerity to cure the disease of the patients. It has also been

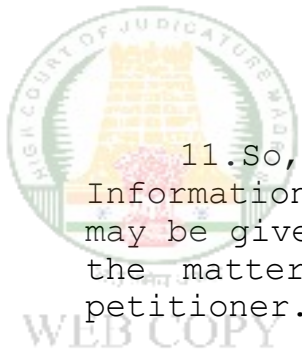


Vs. State of Punjab and Another reported in **2005 SCC (Cr1.) 1369** about the problems uncounted by the medical practitioners in the course of their profession. If any problem caused, it is useful and normal for the public to make allegation against the medical practitioners. Noticing such baseless allegations, series of guidelines have been issued by the Hon'ble Supreme Court in that judgment. So, no doubt that in the medical profession, the practitioner must be protected from unscrupulous ailments making baseless allegations. But at the same time, this particular case does not raise entirely upon the medical negligence. Reading of the complaint would show that the victim was also criminally intimidated by unknown persons to withdraw their complaint. When such serious allegation has been levelled, the contention on the part of the petitioner that it is the purely case of the alleged medical negligence, cannot be accepted.

8. Similarly, the arguments that the offences under Sections 18 (b) and 18(c) of Drugs and Cosmetics Act, 1940, is a non-cognizable offence and as per the Section 32, the cognizance is bared and the alleged offence cannot be clubbed along with other offences and it cannot be taken into account at this stage. It is also a settled proposition of law that there is no bar for the police to investigate the non-cognizable offence when they are clubbed with cognizable offence. Moreover, it is the main contention that these offences are not attracted against the petitioner and it will lie only against the supplier of the blood. But, for the abovesaid reasons, this contention cannot be considered at this stage.

9. The next contention is that three occurrences are clubbed together in a common or single complaint, which is not permissible under law and for each and separate occurrence, separate charges must be laid and the First Information Report cannot be clubbed together and for the purpose, he relied upon Section 218 of Cr.P.C. No doubt, for each and every offence, separate charge must be laid. But for investigation purpose, separate offences, which are alleged to have committed in the same course of action, cannot be treated as a single occurrence and the investigation is not barred as against earlier reading of the complaint. It shows that the offences appears to be committed in the same course of transactions. So, this arguments also cannot be accepted at this stage.

10. The second respondent would rely upon the judgment of this Court in the case of ***Dr. Karpagaselvi Vs. The Inspector of Police, Tiruchengode Town and Anr. in Crl.O.P.No22759 of 2016***. In that case, a medical practitioner faced a charge under Section 304 IPC, which arose due to a treatment of a patient. This Court observed that the First Information Report cannot be quashed at the threshold but however gave a direction to the Investigation Officer to follow the guidelines issued in the case of ***Jacob Mathew Vs. State of Punjab*** reported in **2005 (6) SCC 1** by the Hon'ble Supreme Court.



11.So, from the above discussion, it is clear that the First Information Report cannot be quashed at this stage and a direction may be given to the first respondent police to thoroughly investigate the matter and drop the case if no negligence is seen by the petitioner.

12.With this above direction, this Criminal Original Petition stands disposed of. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T & P)

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/ /2021

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Inspector of Police,
Karaikudi North Police Station,
Karaikudi,
Sivagangai District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

JA-04.05.2021-5P-3C

Pre-Delivery Order Made
in
Crl.O.P.(MD)No.16345 of 2017

19.04.2021