

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.20 OF 2022
WITH
CRIMINAL WRIT PETITION NO.21 OF 2022

CRIMINAL WRIT PETITION NO.20 OF 2022

Rujarita Dcosta

..Petitioner

Versus

Police Inspector, Agacaim Police Station And 2
Ors.

..Respondents

WITH
CRIMINAL WRIT PETITION NO.21 OF 2022

Cecilia Figueira And 3 Ors.

..Petitioners

Versus

Police Inspector, Agacaim Police Station
And 2 Ors.

..Respondents

Mr. Sahil S. Sardesai, Advocate for the Petitioners.

**Mr. Pravin N. Faldessai, Additional Public Prosecutor for the
Respondents No.1 and 2.**

Mr. Ashwin D. Bhobe, Advocate for the Respondent No.3.

**CORAM: DIPANKAR DATTA, CJ &
M. S. SONAK, J.**

DATED: 31st March 2022

P. C.

1. These two writ petitions involve common issues of fact and law; hence, they shall stand disposed of by this common order.

2. Mr. Ajit Gaonkar, respondent no.3 in both these writ petitions (hereafter “the complainant”, for short) lodged a complaint with the Agacaim Police Station against several doctors and nurses attached to the Paediatric department of Goa Medical College. It was alleged therein that because of the negligence of such doctors and nurses in treating the complainant's new born child or for that matter failure to offer proper treatment immediately after birth, the child's right forearm which developed gangrene had to be amputated. Investigations of the complaint, which was registered as FIR No.19/2012 under sections 336 and 337 of the Indian Penal Code (hereafter “the I.P.C.”, for short) and section 8(2)(m)(ii) of the Goa Children's Act, 2003 (hereafter “the 2003 Act”, for short), culminated in submission of a police report under section 173(2) of the Code of Criminal Procedure (hereafter “the Cr. P.C.”, for short) before the President, Children's Court for the State of Goa at Panaji bearing Charge-sheet No.16/2017 dated 24.06.2017 under the aforesaid provisions of the I.P.C. and the 2003 Act. The petitioners in these

two writ petitions figured in such charge-sheet as accused nos. 9, 11, 12, 14 and 15. By an order dated 29.01.2020 passed in Special Case No.120/2017 (**State v/s. Dr. Varun Vijay Kumar & Ors.**), the President of the Children's Court discharged all the 14 accused persons under section 227 of the Cr. P.C. for the offence punishable under section 8(2) of the 2003 Act. Since the Children's Court did not have the jurisdiction to try the offences under sections 336 and 337 of the I.P.C., the matter was transferred to the Judicial Magistrate First Class, Panaji B Court. Close on the heels of such order of discharge, a coordinate Bench of this Court, of which one of us (M. S. Sonak,J) was a member, had occasion to consider Criminal Writ Petition No.160/2018. Such writ petition was at the instance of accused no.3 in the aforesaid charge-sheet, i.e., Ms. Annely D'Lima. For the detailed reasons assigned in the judgment and order dated 27.02.2020, the coordinate Bench quashed the charge-sheet qua the petitioner (Annely D'Lima). The broad reasons for such interference, which can be discerned from such judgment and order, are threefold:

- i) Sanction to prosecute was declined by the State;
- (ii) A Committee which was constituted immediately after the incident of amputation of the right forearm of the child of the complainant had opined that there was no material to suggest medical negligence by the

accused/medical personnel; and

(iii) The Supreme Court in its decision in *Jacob Mathew v/s. State of Punjab And Anr*¹ had laid down that an error of judgment or mere inaction would not be sufficient to prosecute medical professionals and that the ratio decidendi of such a decision would squarely apply to the facts of the case.

3. Such judgment and order came to be delivered by the coordinate Bench upon dealing with the multiple objections that were raised on behalf of the complainant by Mr. Ashwin Bhobe, learned advocate.

4. We had the occasion to consider these two writ petitions on 28.03.2022. None had appeared for the complainant despite notice. We had, accordingly, requested Mr. Ashwin Bhobe to assist us in rendering an appropriate decision by letting us know whether there was any distinctive feature which would warrant a treatment to the petitioners before us different from the one extended to Ms. Annely D'lima. Very fairly, Mr. Ashwin Bhobe has stated before us today that these petitioners stand on the same footing as Ms. Annely D'lima and can claim parity in treatment.

¹ 2005 6 SCC 1

5. Since we find no reason to take a view different from the one taken by the coordinate Bench by its judgment and order dated 27.02.2020 and in view of the fair submission of Mr. Ashwin Bhobe, we quash the impugned police report (charge-sheet bearing No.16/2017) *qua* the petitioners before us in these two writ petitions.

6. The writ petitions stand disposed of with no order for costs.

M. S. SONAK, J.

CHIEF JUSTICE