



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2021

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P.NO.2515 OF 2019

AND

CRL.M.P.NOS.1621, 1623 & 5542 OF 2019

Dr.M.Ilangovan
S/o.Mr.Murugesan

... Petitioner/Accused

.Vs.

1. The State,
Rep. By the Inspector of Police,
C-3, Saibaba Colony Police Station,
Coimbatore.

... 1st Respondent/Complainant

2. Mr.K.Murugan
S/o.Kandha Gounder

... 2nd Respondent/Defacto
Complainant

PRAYER:-

Criminal Original petition has been filed under Section 482 of Cr.P.C, prayed to call for the records in C.C.No.238 of 2018 pending on the file of the Judicial Magistrate - VII, Coimbatore and quash the same as against the Petitioner herein.

For Petitioner : Mr.P.M.Manoj Pandian

For Respondent : Mr.R.Vinothraja
Government Advocate
(Criminal Side) for R1

Mr.R.Sankarasubbu for R2

ORDER

The learned counsel for the Petitioner submitted that the Petitioner is the Accused before the Court of the learned VII Judicial Magistrate, Coimbatore and he had filed this petition seeking to quash the charge sheet in C.C.No.238 of 2018.



2. As per the submission of the learned counsel for the Petitioner that the Petitioner herein was an ENT Specialist who was earlier serving as Professor of ENT Department at Madras Medical College. Subsequently, after his retirement, he had been practising privately at Coimbatore by running a clinic under the name of Pavai Clinic. As per the Prosecution case, the child aged about 4 ½ years was brought to his clinic regarding the pain in his ear and on examination of the child, he had administered Amikacin and Paracetamol ½ cc im. After administering the said injections, the child was not responding. Since the child was not responding, the father was agitated and called the Petitioner. Therefore, the Petitioner/accused examined the child and he found that his tongue turned blue due to lack of oxygen. The Petitioner sent the child with his father along with his driver and nurse in this car to Coimbatore Medical College. Before reaching the Coimbatore Medical College, the child died. Subsequently, the father of the child had registered a complaint with the Police at Coimbatore. Based on the complaint of the father of the child, FIR was registered. Accordingly, the Investigation proceeded and final report of the Investigation was filed in the Court of the Judicial Magistrate.

3. The learned counsel for the Petitioner invited attention of this Court to the contents in the post-mortem report and final report of the post-mortem. Also the learned counsel for the Petitioner relied on the Provision to Sections 88 and 89 of IPC and the reported ruling of the Hon'ble Supreme Court in (2005) 6 SCC 1 in the case of Jacob Mathew Vs. State of Punjab and another at paragraph No.49.

4. As per the submission of the learned counsel for the Petitioner, the Investigation Officer had not followed the guidelines laid down by the Hon'ble Supreme Court. Also the learned counsel for the Petitioner invited attention of this court to the Government Order passed by Tamil Nadu Government regarding Investigation of cases of this nature by the Police.

5. The learned counsel for the Respondent/defacto Complainant, Thiru.Sankara Subbu, had invited attention of this Court on the same ruling cited by the learned counsel for the Petitioner at paragraph No.38 in page No.27.

6. Also the learned counsel for the Respondent/defacto Complainant distinguish the case between the rash and negligent as found in ordinary cases regarding the Motor Accident Cases and the cases of this nature. As per the learned counsel for the Respondent/defacto Complainant, if the Doctor, who is experienced, considering the complaint regarding the child, had administered the injection in right proportion, the defacto Complainant would not have lost his son in the unfortunate



incident. Therefore, he requested this Court not to quash the chargesheet as there are evidence available before the trial Court. The defence of the Petitioner could be taken during the trial before the learned trial Judge. The Investigation Officer, as per the Standard Operating Procedure, examined the team of Doctors including ENT Surgeon which is available in the charge sheet.

7. Heard the rival submissions of the learned Counsel for the Respondent and the Petitioner.

8. The submission of the learned Counsel for the Respondent/De-facto Complainant is found acceptable in the light of the facts and circumstances of this case. As there is an opinion from the competent ENT Doctors by the Investigation Officer, based on which the cause of death was found. The learned counsel for the Respondent/De-facto Complainant also submitted that the Respondent is least bothered about the outcome of the criminal trial. The defence of the Petitioner could be considered by the Court of competent jurisdiction based on the evidence available before the trial court and not by the High Court at the stage of the charge sheet filed, is found acceptable. Therefore, this Criminal Original Petition is dismissed with the direction to the learned Judicial Magistrate - VII, Coimbatore to proceed with the trial. Since the identity of the Accused/Petitioner is not in dispute, the learned Counsel for the Petitioner before trial Court can invoke the Provision of Section 205 of Cr.P.C., seeking exemption from Personal appearance before the trial Court, so as to avoid any embarrassment/inconvenience to the Petitioner considering his age and health.

The learned trial Judge is directed to dispose of the case within a reasonable period of three months from the date of receipt of a copy of this Order. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate - VII,
Coimbatore.



2. The Inspector of Police,
C-3, Saibaba Colony Police Station,
Coimbatore.

3. The Public Prosecutor,
High Court, Chennai.

+1cc to M/s.AAV Partners, Advocate, S.R.No.21253
+1cc to Mr.R.Sankarasubbu, Advocate, S.R.No.21237

CRL.O.P.NO.2515 OF 2019

SKM(CO)
PBS/11/04/2022