

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :01.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

Writ Petition No.29889 of 2014

&

M.P.No. 1 of 2009

G.Tamilselvi

...Petitioner

-Vs-

1. The Dean,
Government Dharmapuri Medical College and Hospital,
Dharmapuri.
2. The Inspector of Police ,
B1 Policee Station,
Dharmapuri.
3. The Superintendent of Police,
Supperintendent of Police Office,
Dharmapuri.
4. The Director,
State Forensic Science Laboratory,
Mylapore, Chennai.
[R-4 is impleaded as per Order Dated:27.10.2015
by M.M.S.,J. in MP.1/2015 in WP.29889/2014]

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the 2nd and 3rd respondents to investigate into the matter and to find out petitioner's child and direct the 1st respondent to produce the petitioner's child to the petitioner.

For Petitioner : Mrs. V.Kalaivani

For R1 : Mr.E.Sundaram (Government Advocate)

For R2 to R4 : Mr.N.Senthil Selvi
(Government Advocate)

O R D E R

The petitioner has preferred this writ petition for a direction directing the 2nd and 3rd respondents to investigate into the matter of child swapping and for producing her biological child.

2. According to the petitioner, she was admitted to Dharmapuri Government Medical College and Hospital in Ward No. 501 for delivery. On the same day i.e., on 29.07.2014, she delivered a baby at around 4:45 pm. After major operation, she was shifted to another ward in the 4th floor. She gave birth to a male child and after she regained her conscious, she was informed that she has given birth only to a female child. In fact, the ward boy had asked for Rs.500/- from her husband informing that they were blessed with a male child. When she questioned the authorities, they threatened the petitioner and her husband and informed her that she delivered only a female child.

3. On 10.10.2014, she lodged a complaint before B1 Police Station Dharmapuri, about the swapping of male child with female child. But no action was taken. Aggrieved over the same, she preferred the writ petition on 12th of November 2014.

4. Heard the submissions.

5. According to the petitioner, she had undergone a cesarean operation and delivered a child. She was under anesthesia at that point of time. Her husband was informed the gender of the child by a Ward Boy. Her husband was informed that his wife gave birth to a male child. When she regained conscious, she was informed that she has given birth only to a female child and hence, she sought for DNA test but it was not done. Therefore, she seeks deeper investigation into the matter and also to find out the male child.

6. Per contra, the learned Government Pleader contended that she gave birth to female child and prompt action was taken by the authorities of the hospital and it was found that the petitioner delivered only a female child and not a male child. The information given by a Ward Boy is false and the person competent to inform the birth of the child is only the nurse who assisted during delivery of the child. The nurse delivered the baby to the mother of the petitioner, she was readily waiting outside the labour room and since the child developed some breathing problem, she was admitted to Neonatal ICU to provide appropriate health care arrangements. Therefore, there was no opportunity to swap the child.

7. Further in the enquiry conducted by the hospital authorities, the husband of the petitioner himself admitted that he wrongly understood that his wife delivered a male child and accepted that a female child was shown to him after the child was brought out from the labour room. Therefore, the claim of the petitioner is imaginary and not sustainable.

8. On the directions of this Court, the learned Government pleader has produced the medical records including the statement of witnesses examined, pursuant to the complaint given by the petitioner against the hospital. In the medical records, it is seen that the petitioner was admitted on 29.07.2014, and delivered a baby at around 4:45 p.m, it was not a normal delivery but a C-section. Another baby was delivered at 4.35 p.m to another couple by name Mr.&Mrs.Madesh. During enquiry, the Doctor who performed the delivery would state that heartbeat of the child of Mrs.Madesh was very weak and therefore they had to perform the delivery immediately and she delivered a male child at 4.35 p.m on the same day. Thereafter, surgery was conducted to the petitioner and she delivered a female child.

9. Statement of the nurse, who attended the petitioner would show that she has taken the child out of the labour room and handed over to the mother of the petitioner and taken steps for admitting the child in a Neonatal ICU Ward and after the admission process was over, they have taken the child into ICU. The petitioner's mother was very much aware of the fact that the petitioner delivered only a female child.

10. Above all, the petitioner's husband himself would state before the enquiry authorities that a female child was given to him and the statement made by the ward boy is a mistake. From the perusal of all these statements and the delivery mother case sheet of Government Hospital of 29.07.2014, makes it clear that the allegations made by the petitioner is improbable.

S. No .	IP No.	Name	Sex	Age	Date of Admission	Time	Date of Deliveries	Time	Date of Discharge	Time	M	F	Normal	Cesarean
1	34891	Mrs.Govindammal	F	29	27.07.2014	11.22 PM	29.07.2014	12.50 PM	31.07.2014	7.00 PM	-	F	Normal	-
2	34926	Mrs.Rajeswari	F	25	28.07.2014	9.32 AM	29.07.2014	6.45 AM	07.08.2014	3.30 PM	-	F	-	LSCS
3	34987	Mrs.Lakshmi	F	22	28.07.2014	12.21 PM	29.07.2014	11.45 AM	05.08.2014	7.00 PM	M	-	-	LSCS
4	34992	Mrs.Dhanalakshmi	F	24	28.07.2014	12.27 PM	29.07.2014	3.42 PM	31.07.2014	7.00 PM	*	F	Normal	-
5	35034	Mrs.Muthulakshmi	F	27	28.07.2014	4.50 PM	29.07.2014	12.22 PM	05.08.2014	7.00 PM	M	-	-	Cesarean

S. No.	IP No.	Name	Sex	Age	Date of Admission	Time	Date of Deliveries	Time	Date of Discharge	Time	M	F	Normal	Cesarean
6	35084	Mrs.Merunisha	F	22	29.07.2014	2.00 AM	29.07.2014	1.30 AM	02.08.2014	7.00 PM	-	F	Normal	-
7	35086	Mrs.Meena	F	19	29.07.2014	2.45 AM	29.07.2014	4.05 AM	31.07.2014	7.00 PM	-	F	Normal	-
8	35106	Mrs.Suganthi	F	19	29.07.2014	9.45 AM	29.07.2014	6.10 PM	05.08.2014	7.00 PM	M	-	-	Cesarean
9	35128	Mrs.Madesh	F	30	29.07.2014	12.25 PM	29.07.2014	4.35 PM	05.08.2014	7.00 PM	M	-	-	Cesarean
10	35131	Mrs.Saranya	F	25	29.07.2014	12.42 PM	29.07.2014	8.01 PM	31.07.2014	7.00 PM	-	F	Normal	-
11	35136	Mrs.Madammal	F	20	29.07.2014	1.22 PM	29.07.2014	1.50 PM	31.07.2014	7.00 PM	-	F	Normal	-
12	35157	Mrs.Devi	F	23	29.07.2014	3.49 PM	29.07.2014	10.30 PM	02.08.2014	7.00 PM	-	F	Normal	-
13	35162	Mrs.Sumathi	F	21	29.07.2014	4.47 PM	29.07.2014	5.16 PM	06.08.2014	7.00 PM	M	-	Normal	-
14	35197	Mrs.Kundiammal	F	32	29.07.2014	8.20 PM	29.07.2014	9.21 PM	02.08.2014	7.00 PM	-	F	Normal	-
15	35125	Mrs.Tamilselvi	F	22	29.07.2014	7.58 AM	29.07.2014	4.45 PM	07.08.2014	7.00 PM	-	F	-	Cesarean

11. It is also brought to note that all the women who were appointed for delivery are doing cooli work and there is no chance for the hospital authorities indulging in child swapping for money. Therefore, also the probability of child swapping is remote.

12. Apart from that, the other records would go to show that the Police and hospital authorities have taken prompt action for conducting DNA test. The Dean of Dharmapuri Government medical college has written a letter dated 10.12.2014 to the Inspector of Police that DNA profiling and matching is not done in the Government medical College Hospital, Dharmapuri and it shall be conducted only in Forensic Science Laboratory at Chennai and it should be done through the Court's Order. This letter elicits that the authorities of the hospital as well as the police were ready to conduct the DNA profiling and matching but for want of facilities, it was not performed. Therefore, I do not find any reason to disbelieve the valid statements given by the doctor, nurse and husband of the petitioner that petitioner has given birth to a female child only. Other than this, the petitioner does not come out with any supporting statement of any other persons who were admitted on that date for delivery, much less, the mother who was the attender of the petitioner who first received the child in her hands from the nurse. In the absence of any prima facie material to presume that there was child

swapping and it was probable, the vague statement of the petitioner cannot be relied on. Even assuming that she delivered a male child, it could have been swapped with the child of Mr. Madesh but the medical records, statement of doctors shows that the child was having problem in heart beat. If that be so, the female child which is brought up by the petitioner should be having hear problem, but there is no complaint on this aspect by the petitioner and after a lapse of about 8 years, the petitioner who has developed emotional bondage with the child may not be in a position to part away from her, most importantly the child would be psychologically affected if she is informed that she belongs to different parents.

13. Considering the totality of circumstances, this Court is of the considered opinion that the claim of the petitioner is not supported by probable material evidence and it is based on presumption and assumption and hence does not merit any consideration. Accordingly, this writ petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

14. Considering the incident, this Court is of the opinion that it is always better for hospital administration to maintain separate register for admission and separate register for child birth with specific timings and if possible an individual booklets with signatures of the attenders of the patient, immediately after the child was born. We hope that the respondents will take appropriate action in this direction.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

sha/kpr
To

1. The Dean,
Government Dharmapuri Medical College and Hospital,
Dharmapuri.
2. The Inspector of Police ,
B1 Policee Station,
Dharmapuri.

3. The Superintendent of Police,
Supperintendent of Police Office,
Dharmapuri.
4. The Director,
State Forensic Science Laboratory,
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+1cc to Government Pleader SR. Nos. 14150, 14123

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&

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KV (CO)
PR (01/06/2022)