



THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
27~01~2022	01~02~2022

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl.O.P.Nos.25958 to 25965 of 2017 and
Crl.M.P.Nos.14964 to 14979 of 2017

Crl.O.P.No.25958 of 2017 to 25965 of 2017:

1. MIOT Hospitals
Rep.by its Founder,
Dr.P.v.A.Mohandas,
No.4/112, Mount Poonamallee Road,
Manapakkam, Chennai 600089.
 2. Dr.P.V.A.Mohandas
founder and Mentor and Chief surgeon
M/s MIOT Hospitals
Chennai 600089.
 3. Mrs. Mallika Mohandas
Chairman
M/s MIOT Hospitals
Chennai 600089.
 4. Dr. Prithvi Mohandas
Managing Director and
Director of Hip Anthroplasty
M/s MIOT Hospitals, Chennai 600089.
- .. Petitioners/Accused [A1 to A4]
in all Crl.OPs

.Vs.

Venkata Ramanaiah
Door No.32/67 Poes Street,
Teynampet, Chennai 600018.

.. Respondent/Complainant in Crl.O.P.No.25958 of 2017



P.Arunachalam
S/O.T.Palanisamy
NO.1075, Brooksdale Apartments,
M.G.Road, Shankar Nagar, Pammal
Chennai 600 075.

.. Respondent/Complainant in Crl.OP.No.25959 of 2017

DR.V.K.Ramesh Kumar
No.40, 8th Street,
Kalapakkam.

.. Respondent/Complainant in Crl.OP.No.25960 of 2017

Sunitha Balaji
W/o.K.Balaji,
Flat C, Mahalakshmi Apartments
NO.25, 11th Avenue,
Ashok Nagar, Chennai-600 083.

.. Respondent/Complainant in Crl.OP.No.25961 of 2017

N.Selvaraj
S/O.Late Natesan,
NO.9 2nd Cross Street,
Dhandeeswaran Nagar,
ChennaiHENNAI-600 042

.. Respondent/Complainant in Crl.OP.No.25962 of 2017

Shanthi Kalaiarasan
W/O.Kalaiarasan (Deceased)
NO 127 1ST STREET,
Antony Nagar, Annanur,
Chennai- 600 109.

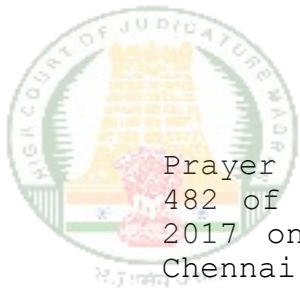
.. Respondent/Complainant in Crl.OP.No.25963 of 2017

C.Senthil Murugan
S/O.Late.A.T.Chokkalingam
NO.151B, PRAKASH NAGAR,
3rd Main Road,
Ponnamman MeduEDU
CHENNAI-600 110

.. Respondent/Complainant in Crl.OP.No.25964 of 2017

Venkatesan
S/O.Late.Perumal,
3/178, Puddar Nagar
Poigai Village,
Satyamangalam Post,
Vellore - 632 114.

.. Respondent/Complainant in Crl.OP.No.25965 of 2017



Prayer in Crl.OP.No.25958 of 2017: Petition filed under Section 482 of Cr.P.C.to call for the records relating to CC No.1008 of 2017 on the file of the learned Judicial Magistrate, Alandur, Chennai and quash the complaint filed against the petitioners.

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Prayer in Crl.OP.No.25959 of 2017 : Petition filed under Section 482 of Criminal Procedure Code to call for the records relating to the C.C.No.1009 of 2017 on the file of the Learned Judicial Magistrate, Alandur, Chennai and quash the complaint filed against the petitioners.

Prayer in Crl.OP.No.25960 of 2017 : Petition filed under Section 482 of Criminal Procedure Code to call for the records relating to the C.C.No.1010 of 2017 on the file of the Learned Judicial Magistrate, Alandur, Chennai and quash the complaint filed against the petitioners.

Prayer in Crl.OP.No.25961 of 2017 : Petition filed under Section 482 of Criminal Procedure Code to call for the records relating to the C.C.No.1011 of 2017 on the file of the Learned Judicial Magistrate, Alandur, Chennai and quash the complaint filed against the petitioners.

Prayer in Crl.OP.No.25962 of 2017 : Petition filed under Section 482 of Criminal Procedure Code to call for the records relating to the C.C.No.1012 of 2017 on the file of the Learned Judicial Magistrate, Alandur, Chennai and quash the complaint filed against the petitioners.

Prayer in Crl.OP.No.25963 of 2017 : Petition filed under Section 482 of Criminal Procedure Code to call for the records relating to the C.C.No.1013 of 2017 on the file of the Learned Judicial Magistrate, Alandur, Chennai and quash the complaint filed against the petitioners.

Prayer in Crl.OP.No.25964 of 2017 : Petition filed under Section 482 of Criminal Procedure Code to call for the records relating to the C.C.No.1014of 2017 on the file of the Learned Judicial Magistrate, Alandur, Chennai and quash the complaint filed against the petitioners.

Prayer in Crl.OP.No.25965 of 2017 : Petition filed under Section 482 of Criminal Procedure Code to call for the records relating to the C.C.No.1022 of 2017 on the file of the Learned Judicial Magistrate, Alandur, Chennai and quash the complaint filed against the petitioners.



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For Petitioners : Mr. N.R. Elango
Senior counsel for
Mr.S. Manuraj
in all petitions

For Respondents : Mr. R. Karthikeyan
in all petitions

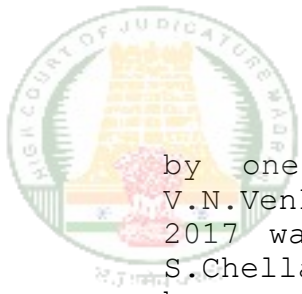
C O M M O N O R D E R

These Criminal Original Petitions have been filed to quash the criminal proceedings initiated by the Respondent in C.C.Nos.1088 to 1014 and 1022 of 2017 for the offence under Section 304-A of IPC, pending on the file of the learned Judicial Magistrate, Alandur.

2. The brief back grounds of the private complaints are as follows:

2.a. Around November 2015 several patients were admitted in the ICU which was in the lower elevation of the Respondents hospital premises. On 01.12.2015 due to heavy rain fall and release of water in Adyar River the compound wall behind the International Block was collapsed and the water entered into the hospital premises by flooding the E.B.Main Room which was abetting the river bank, Generator Room, Oxygen Cylinder Storage Room and the Medical Block which was also in the basement area. As a result, 18 of the patients admitted in the hospital died due to lack of ventilation, suffocation, lack of oxygen etc., Originally the FIRs have been filed by the hospital authorities on 04.12.2014 indicating the name of the death persons and it is stated that due to heavy water inundation and flooding of power panel rooms inside the hospital, which lead to power failure forcing their life support system to fail. Despite their efforts to save the patients by manual ventilation for a prolonged period, 18 patients died. The FIR was registered under Section 174 Cr.P.C. Thereafter it appears that the same has been referred as "Mistake of fact". Out of 18 patients died relatives of the 8 patients preferred individual private complaint. Based on the private complaint the learned Magistrate following the procedure took cognizance for the offence under Section 304-A of IPC on each complaint.

2.b. Private Complaint in C.C.No.1008 of 2017 filed by one Venkata Ramaiah for the death of one Sagi Ragupathi Rao, his father in law. Similarly, Private Complaint in CC.No.1009 of 2017 was filed by one P. Arunachalam for the death of his mother P. Subbu Lakshmi. Private Complaint in C.C.No.1010 of 2017 was filed by one Dr.V.K. Ramesh Kumar for the death of his wife R. Premalatha. Private Complaint in C.C.No.1011 of 2017 was filed

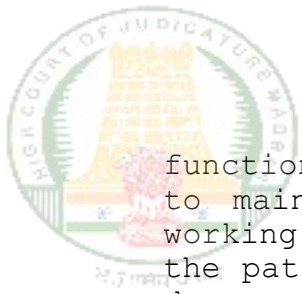


by one Mrs. Sunitha Balaji for the death of her father V.N.Venkata Subramanian. Private Complaint in C.C.No.1012 of 2017 was filed by one N. Selvaraj for the death of his wife S.Chellammal. Private Complaint in C.C.No.1013 of 2017 was filed by one Mrs.Shanthi Kalaiarasan for the death of her husband C.Kalaiarasan. Private Complaint in C.C.No.1014 of 2017 was filed by one C.Senthil Murugan for the death of his father A.T. Chokkalingam. Private Complaint in C.C.No.1022 of 2017 was filed by one Venkatesan for the death of his brother-in-law Bakthavachalam.

2.c. Each of the above private complaints taken on file for the offence under Section 304-A against the Hospitals as 1st accused, Founder and Mentor & Chief Surgeon as 2nd accused; Chairman as 3rd accused and Managing Director as 4th Accused and summons were issued to all the accused. Now, the the same have been sought to be quashed by way of these Petitions.

3.a. The crux of the allegations in the Private Complaints is that all the patients were admitted in various dates in the month of November 2015 for the various ailments. It is also stated that among the 18 patients who died in the MIOT Hospitals the majority of the patients come under the different health care schemes, such as Central Government Health Scheme, Ex-Servicemen Health Scheme, etc., In all the schemes consideration is paid by the Government because of their service rendered in the respective departments. It is also alleged that all international patients and high class patients were accommodated in the 8th Floor and the majority of the patients died were covered under the Health Care extended by the respective Government and there is a discrimination also in accommodating. It is stated that all the death were occurred between 01.12.2015 and 04.12.2015 in the hospital. It is stated that the ICU was in the lower elevation of the hospital premises. The same was flooded on 08.11.2015 and some of the patients were shifted to the international ICU which was located in the 8th Floor of the hospital premises and again shifted to the basement which is in the lower elevation of the hospital. It is also alleged that the death of the 18 patients were due to the sluggish attitude on the part of the Respondent not on the natural disaster.

3.b. In the month of November 2015 itself, the hospital faced major crisis where the Guest House, Medical Block and the Out Patient Block at the back side of the hospital was flooded upto the first Floor of the hospital. Subsequent to that all patients in the out patient block was shifted to the 6th Floor of the International Block. However, these patients were not shifted immediately on entering into flood waters on 01.12.2015 in the hospital premises. Though electricity supply was shut down on 01.12.2015 in the hospital back-up generator was not



functioning in the hospital. The hospital authorities neglected to maintain emergent equipments such as generators in proper working order. The hospital did not take any steps in shifting the patients to other hospitals immediately after the power shut down and failure of power back up, rather they had abandoned their patients when the water started entering into the hospital premises. They failed to observe their medial oath and also the very basic principle of medical profession that the doctor as a whole ought to attend the patient whenever required and make best possible efforts for the treatment of their patients. Though it is stated by the hospital authorities that the cause of death of all the patients was only due to the flooding of power panel rooms, the cause of death is only because of non-supply of oxygen and not otherwise. The post mortem report gives a different reasons for the death of each patient. Hence it is the contention that the hospital authorities have knowledge that when the water enters into the generator room and oxygen cylinder storage room placed in the basement area eventually the necessary supply of oxygen could be curtailed.

3.c. Moreover when the hospital is situated near Adyar River the respondent hospital ought to have taken necessary action but it has failed to take necessary precaution or timely action which shows the deliberate inaction on the part of the Respondent. Moreover, the Respondent Hospital is also responsible for constructing or setting up the backup room at the basement of hospital which led to easy flooding of the water into the backup room which ultimately ended in non-utilization of back up power during the time of blackout. It is further submitted that the patient's safety and security extends beyond medical error i.e., administrative carelessness. The Respondent Hospital being a multi-speciality hospital must have taken time bound action in transferring the patients to other hospitals, when the hospital itself could not manage the patients in ICU during emergency situations. On the other hand, they began to evacuate the patients only from evening of 3rd December 2015 even though the first warning of "heavy and very heavy rain" had been issued on 28th November 2015 itself and the flood occurred on 1st December 2015 itself. Only because of delay in administrative decision making in the Respondent Hospital the mishap has happened as such it has caused the death 18 patients which would amount to administrative negligence on the part of the Respondent. Further the Respondent Hospital has deliberately undertaken the risk involved in not transferring the patients even after the power shutdown and failure of proper supply of oxygen. The hospital failed to take reasonable decree care and caution and diligence in transferring the patiesnt when the Respondent hospital was flooded. Therefore, the failure on the part of the hospital authorities holds the existence of the criminal rashness and criminal negligence.



3.d. Even on 28th November 2015 because of heavy rain MIOT hospital was in a bad shape as water flooded inside the building upto ground floor and as such the Respondent had sufficient knowledge of facts that if further rain occurs it would be disastrous to life and safety of the patients. It is further submitted that even after many warnings given by the State Government through their respective District Collectors and further through the Tahsildar and other officials MIOT Hospitals did not make any whisper about the flood which they faced during the month of November itself. They did not even ask their patients to be shifted to some other hospitals to save their life instead they allowed admission of new patients also during such time just for the sake of money which shows the guilty intention on the part of the Respondent hospital. The respondent hospital tend to render international safety standards only to the overseas patients and for the domestic patients. The Respondent Hospital has practiced discrimination in respect of the nationality or status or fee imposed on the patients as the case may be. They also failed to maintain necessary disaster management tools, strategy, devices and techniques in their institution. It is also negligence on the part of the respondents in not maintaining the necessary disaster management system despite managing the so called prestigious international multi-speciality hospital. Therefore, the death occurred in the hospital has direct nexus and casual connection with the act of negligence and it cannot be attributed with the rain or flooding of Adyar river or otherwise. The Respondent Hospital has a non-delegable duty to render competent service which also includes safety of the patients at the time of emergencies. They failed to use a reasonable care in the maintenance of the safe and adequate facilities and necessary equipment i.e., ventilator facility which was not available during the time of blackout due to the failure of the backup power.

4. On the above allegations, the trial Court took cognizance. The same sought to be quashed by the hospital/the petitioners herein mainly on the ground that the entire death was due to heavy flooding of water and excessive release of water in the Adyar River. Hence it is the contention that they have not acted in any manner to attract the criminal case. The entire act is result of heavy flooding and nothing but the 'Act of God'.

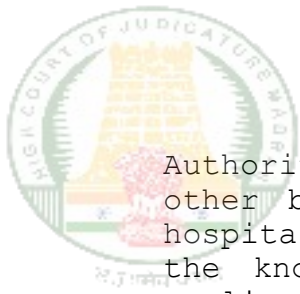
5. a. The learned Senior Counsel placed much reliance on the Report of the Comptroller and Audit General of India and submitted that the Government of Tamil Nadu failed not only to create new reservoirs and check dams to mitigate the flood hazard due to monsoon rains, but also did not take any action to



divert flood water from Adyar River despite recommendation by Nucleus Cell and Expert committee resulting in inundations due to floods during December 2015 rains. Failure of WRD in acquiring the meagre area of land by way of paying compensation had led to non-creation of important component of river improvement work by constructing flood protection wall. This was one of the failures, which contributed to inundation in the adjoining areas. The issue of failure of WRD in acquiring meager area of land requires to be investigated by Tamilnadu Government.

5.b. The above report itself hold that flood water entered into hospital premises due to non-creation of important component of river improvement work by constructing flood protection wall. Hence it is his contention that merely because the flood water entered in the generator room and power failure happened which resulted in death of patients who were in ICU, the hospital cannot be prosecuted for the offence under Section 304-A of IPC. It is his contention that FIR registered in this regard has already closed by the Investigating Agency. Writ Petition filed for demolition of unauthorised constructions was also dismissed by this Court on 31.03.2016. Hence submitted that to prosecute the person for the offence under Section 304-A of IPC, high degree of negligence must be there. Mere simple, lack of care which incurring the civil liability will not sufficient to prosecute the persons for the offence under Section 304-A of IPC. It is his contention that similar set of allegations consumer complaint is also filed for compensation on the ground of deficiency in service by the hospital authorities. Therefore, learned counsel submitted that the prosecution is not maintainable for the offence under Section 304-A IPC. In support of his contention the learned senior counsel relied upon the judgment in Jacob Mathew vs. State of Punjab and Ors. [(2005) 6 SCC 1].

6.a. Whereas learned Counsel Mr.R. Karthikeyan appearing for the Respondent vehemently contend that it is the case where the hospital authorities has not even taken a reasonable care and acted recklessly as far as the patients are concerned who died in the unfortunate mishap. If the patients have been shifted to other floors by the hospital authorities promptly the death would have been prevented. In the ICU itself is in the lower elevation and generator room and back up room are in the basement. Even in the month of November 2015 because of heavy rain water flooded inside the the building upto first floor. Several patients who were in the outpatient are were already shifted to the 6th Floor and other floors. Hospital authorities had clear knowledge about the water inundation in the basement area and lower level. Despite the warning given by the State Government in the last week of November 2015, the Hospital



Authorities have not taken any steps to shift the patients to other blocks. Therefore, it is his submission that when the hospital authorities have compromised in safety measures with the knowledge, such an act is certainly amounts to criminal negligence and submitted that it is a gross and culpable neglect and submitted that failure to exercise reasonable and proper care to precaution guard against injury to the patients in general the hospital authorities certainly liable to be proceeded under section 304-A of IPC.

6.b. It is his further contention that it is not that the hospital authorities was not aware of the factual situation about the floods which has already inundated several parts of the building in the month of November 2015. Still without taking any care and admitting the patients in the lower elevation and accommodating the generator in the basement is nothing but gross negligence which attracts penal provisions. He has also submitted that when the hospital admitting the patients it is the duty of the hospital to take reasonable care to prevent any untoward mishap which has not been done by the hospital authorities. Hence it is his contention that sufficient averments made in the complaint, on that basis cognizance was taken by the trial Court. As to the higher decree of negligence on the part of the hospital, the court cannot while exercising the power under section 482 Cr.P.C. make a roving enquiry to test the veracity of the statements at this stage. Hence it is his submission that whether the negligence is gross or a simple lack of care is a matter of evidence and the same has to be tested only in the trial. When the Hospital authorities found in the administrative negligence and negligence of not providing basic infrastructure which result harm to aggrieved persons, the hospital also held liable. Hence opposed quashment of the proceedings.

6.c. Learned Counsel also placed much reliance of the following judgments:

1. Sushil Ansal and Ors. vs. state through CBI and others. [2014 (6) SCJ 418]
2. Indrepastha Medical Corp. Ltd., vs. State NCT of Delhi & others [MANU/DE./1995/2010]
3. Prashanth Bharathi vs. State of Gujarat [MANU/SC/0063/2013]
4. Parbhatbhai Aahir vs. State of Gujarat [MANU / SC/1241/2017]
5. Reena vs. State of U.P. and Another [MANU/UP/0126/2021]



7. It is well settled that while exercising power under Section 482 of Cr.P.C., the Court cannot make roving enquiry to test the validity of any statements and evidence. When the prima facie materials available on record indicate that it requires a further trial, the Court normally would not embark upon the roving enquiry. It is rightly pointed out by the learned Senior Counsel for petitioner that mere simple lack of care not sufficient to proceed for criminal offence unless there is very high degree of negligence present. At the same time whether the act of the authorities are simple lack of care or high degree of negligence is the matter of evidence. Similarly the criminal negligence is a gross and culpable neglect when accused failed to take reasonable and proper care and precaution to guard against either to the public in generally or to individual in particular. Therefore, this Court is of the view that though unfortunate death have been occurred due to inundation which led to the power failure in the hospital. The allegation in the private complaint itself indicate that the hospital authorities have knowledge about the flood water entering into the premises and already the area had been inundated in the month of November 2015 itself. At that relevant time also the patients in the basement and lower elevation building were shifted to 6th floor and 8th floor respectively. They have clear knowledge that the generator room was placed in the basement area which is prone for inundation. The other allegation clearly shows that they have not taken any safety measures immediately even after several warning given by the Government authorities in respect of excessive flood in the Adyar River. Therefore, whether such negligence or failure take reasonable care is amounts to high level of negligence or simple lack of care can be tested only after appreciation of evidence. Several allegations have been pressed into services against the hospital authorities for not taking safety measure and not acting promptly despite their knowledge etc.,

8. It is relevant to note that in the judgment of the Apex Court in Sushil Ansal and Ors. Case (supra) the Apex Court has held as follows:

"47. Section 304A of the IPC makes any act causing death by a rash or negligent act not amounting to culpable homicide, punishable with imprisonment of either description for a term which may extend to two years or with fine or with both. It reads:

"304A. Causing death by negligence.--
Whoever causes the death of any person



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by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

48. The terms 'rash' or 'negligent' appearing in Section 304A extracted above have not been defined in the Code. Judicial pronouncements have all the same given a meaning which has been long accepted as the true purport of the two expressions appearing in the provisions. One of the earliest of these pronouncements was in *Empress of India v. Idu Beg* ILR (1881) 3 All 776, where Straight J. explained that in the case of a rash act, the criminality lies in running the risk of doing an act with recklessness or indifference as to consequences. A similar meaning was given to the term 'rash' by the High Court of Madras in *In Re: Nidamarti Negaghushanam* 7 Mad HCR 119, where the Court held that culpable rashness meant acting with the consciousness that a mischievous and illegal consequence may follow, but hoping that it will not. Culpability in the case of rashness arises out of the person concerned acting despite the consciousness. These meanings given to the expression 'rash', have broadly met the approval of this Court also as is evident from a conspectus of decisions delivered from time to time, to which we shall presently advert. But before we do so, we may refer to the following passage from "A Textbook of Jurisprudence" by George Whitecross Paton reliance whereupon was placed by Mr. Jethmalani in support of his submission. Rashness according to Paton means "where the actor foresees possible consequences, but foolishly thinks they will not occur as a result of his act".

49. In the case of 'negligence' the Courts have favoured a meaning which implies a gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual which having regard to all the circumstances out of which



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the charge arises, it may be the imperative duty of the accused to have adopted. Negligence has been understood to be an omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable person would not do. Unlike rashness, where the imputability arises from acting despite the consciousness, negligence implies acting without such consciousness, but in circumstances which show that the actor has not exercised the caution incumbent upon him. The imputability in the case of negligence arises from the neglect of the civil duty of circumspection.

9. The Honourable Apex Court in paras 57 and 60 of the above judgment has held as follows:

57. To the same effect is the decision in *Hartwell v. Grayson Rollo and Clover Docks Limited and Others* (1947) KB 901 where the duty of an occupier who invites people to a premises, to take reasonable care that the place does not contain any danger or to inform those coming to the premises of the hidden dangers, if any, was explained thus:

"In my opinion the true view is that when a person invites another to a place where they both have business, the invitation creates a duty on the part of the invitor to take reasonable care that the place does not contain or to give warning of hidden dangers, no matter whether the place belongs to the invitor or is in his exclusive occupation."

60. The Supreme Court of Wyoming in *Mostert v. CBL & Associates, et. Al.*, 741 P.2d 1090 (Wyo. 1987) held that the owner of a theatre, AMC owed an affirmative duty to patrons as "business visitor invitees" to inform them of off-premises dangers (in that case a flash flood) which were reasonably



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was either rash or grossly negligent but also that such rashness or gross negligence was the causa causans that resulted in the death of the victim. As to what is meant by causa causans we may gainfully refer to Black's Law Dictionary (Fifth Edition) which defines that expression as under:

"The immediate cause; the last link in the chain of causation.""

11. Considering the above position of law whether the death of the deceased patients are due to the 'Act of God' or simple lack of care or mere negligence or high degree of negligence or recklessness are to be seen only in the trial on the basis of the evidence adduced before the trial Court. The Court after evidence come on record, "after considering the matter before it" has to decide the issue whether the facts placed before it are proved or not. The expression 'matters before it' contain Section 3 of the Evidence Act includes the matters which do not fall within the definition of evidence. The expression matters also includes and takes within its fold presumptions, inferences and admissions etc., When the court finds a particular fact is to be proved, it has to take all relevant materials, legal presumptions and inferences into account. Whether high degree of negligence has been proved or not has to be seen only in the trial. This court cannot enter upon to the discussion merely on the basis of the submissions which required proof. In such a view of the matter, considering the allegations as against the petitioners, this Court is of the view that it has to be tested only in the trial Court.

12. In Jacob Mathew's case (supra) the Honourable Apex Court has quashed the proceedings against a doctor for non-availability of the oxygen cylinder in the hospital. Above case relates to the medical negligence. The same is not applicable to the fact of the present case. The question is here whether the petitioners act will constitute high decree of negligence or not, is not a mere medical negligence. It pertains to taking safety measures of reasonable care to shift the patients to some other hospital or some other floor. Therefore the above judgment is not applicable to the fact of this case.

13. Considering the nature of the allegations which requires proof, this Court is of the view that it is premature



for this Court to hold that there is no criminal case is made out. In view of the same, all the petitions are liable to be dismissed.

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14. Accordingly, the Crl.O.P.Nos.25958 to 25965 of 2017 are dismissed. Consequently connected Miscellaneous Petitions are closed.

Sd/-
Deputy Registrar(CS)

//True copy//

Sub Assistant Registrar

ggs

To

1. The Judicial Magistrate,
Alandur, Chennai.

+1cc to Mr.S. Manuraj, Advocate SR.No.6568

+2ccs to Mr.R. Karthikeyan, Advocate SR.No.6918
Crl.O.P.Nos.25958 to 25965 of 2017 and
Crl.M.P.Nos.14964 to 14979 of 2017

KV(CO)
GMY(24/02/2022)