



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.03.2022

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WEB COPY

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P(MD)No.9498 of 2021

K.Chellasamy

... Petitioner/Petitioner

Vs.

1. The District Collector,
O/o. the District Collector,
Kanyakumari District.
2. The Superintendent of Police,
O/o. the Superintendent of Police,
Kanyakumari District.
3. The Superintendent of Police (South Zone),
O/o. the Superintendent of Police (South Zone),
CBCID, Madurai.
4. The Tahsildar,
Vilavancode Taluk,
Kanyakumari District.
5. The Inspector of Police,
Pudukadai Police Station,
Kanyakumari District.
(Crime No.33 of 2020) ... Respondents/Respondents

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to the Final Report in FR.181/2020 dated 22.09.2020 on the file of the fourth respondent and set aside the same as illegal and consequently, direct the second respondent to withdraw the case in Crime No.33 of 2020 dated 07.02.2020 registered under Section 174 of Cr.P.C on the file of fifth respondent and entrust the same to the third respondent for investigation of the case by a Competent Officer and file a final report before the Jurisdictional Magistrate within the time stipulated by this Court.

For Petitioner : Mr.J.Pandi Dorai
For Respondents : Mr.B.Thanga Aravindh
Government Advocate (Criminal Side)



ORDER

This Criminal Original Petition has been filed to call for the records pertaining to the Final Report in FR.181/2020 dated 22.09.2020 on the file of the fourth respondent and set aside the same as illegal and consequently, direct the second respondent to withdraw the case in Crime No.33 of 2020 dated 07.02.2020 registered under Section 174 Cr.P.C on the file of fifth respondent and entrust the same to the third respondent for an investigation of the case by a Competent Officer and file a final report before the Jurisdictional Magistrate.

2. On the complaint lodged, the fifth respondent registered a case in Crime No.33 of 2020 under Section 174 Cr.P.C., alleging that the petitioner's daughter suffered Pre-natal death on 06.02.2020 due to medical negligence, while she was admitted at P.P.K.Hospital, Marthandam, Nagercoil.

3. The learned counsel for the petitioner would submit that the fifth respondent did not conduct enquiry properly and he filed the final report before the fourth respondent, which is not permissible at law. As per the opinion given by the Doctors, his daughter is alleged to have developed HELLP syndrome. The Doctors have failed to diagnose Pre-eclampsia and this had led to HELLP syndrome. The incorrect treatment and diagnosis has led to her death. The Post Mortem Certificate also does not speak about the Chemical Report and Blood Report. Therefore, the petitioner sought for re-investigation.

4. A perusal of the counter filed by the fifth respondent revealed that on the complaint lodged by the petitioner, a case has been registered in Crime No.33 of 2020 under Section 174 Cr.P.C. The body of the deceased was sent to autopsy. After completion of autopsy, the body was handed over to the petitioner. After examination of Doctor who gave treatment to the deceased, statements were obtained under Section 161(3) Cr.P.C and it revealed that the cause of death was due to combined effects of intracranial and abdominal bleeding following delivery. Therefore, there are no circumstances of death. In fact, the mother and husband of the deceased did not raise any suspicious circumstances of death. Therefore, no averments are made out as against the hospital authorities and the FIR registered in Crime No.33 of 2020 was closed and closure report was filed before the fourth respondent. It is not permissible under law, since the police, on completion of the investigation, shall file the final report as contemplated under Section 173 (2) Cr.P.C, only before the learned Judicial Magistrate or Executive Magistrate. That apart, if there is any deficiency while treating the patient, the petitioner can very well move before the Consumer Court for appropriate relief. No averments are made out as against the Doctors.



5. In view of the above, this Criminal Original Petition is dismissed. However, the fifth respondent is directed to file the final report in Crime No. Crime No.33 of 2020 before the learned Judicial Magistrate, concerned within a period of two weeks from the date of receipt of copy of this order after serving the copy of the same to the petitioner herein. On receipt of the same, the petitioner is at liberty to file a protest petition in the manner known to law.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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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 District Collector,
O/o. the District Collector,
Kanyakumari District.
2. The Superintendent of Police,
O/o. the Superintendent of Police,
Kanyakumari District.
3. The Superintendent of Police (South Zone),
O/o. the Superintendent of Police (South Zone),
CBCID, Madurai.
4. The Tahsildar,
Vilavancode Taluk,
Kanyakumari District.
5. The Inspector of Police,
Pudukadai Police Station,
Kanyakumari District.



6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.J.PANDI DORAI, Advocate (SR-13313[F] dated
21/03/2022)

Crl.O.P(MD)No.9498 of 2021
21.03.2022

ss (CO)
TR(05.05.2022) 4P 8C