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Crl.O.P.No.20954 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.09.2023

PRONOUNCED ON: 21.09.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.O.P.No.20954 of 2018
and Crl.M.P.No.11351 of 2018

Dr. Vinith

...
/vs/

Petitioner

1.State Rep.by the Inspector of Police,
F3 Police Station, Nungambakkam,
Chennai – 600 034.

2.A.Josebeen

...

Respondents

(R2 Suo-motu impleaded as per
order dated 22.09.2022 in
Crl.O.P.No.20954 of 2018
and Crl.M.P.No.11351 of 2018)

Prayer : Criminal Original Petition has been filed under Section 482 Cr.P.C. to call for the records in P.R.C.No.120 of 2023 on the file of the XIV Metropolitan Magistrate, Egmore, Chennai and quash the proceedings therein.

For Petitioner

... Mr.V.Sairam

For Respondent
No.1

... Mr.L.Baskaran
Govt. Advocate (Crl.side)

For Respondent
No.2

... Mr.V.Sivalingam



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ORDER

Challenging the criminal proceedings in P.R.C.No.120 of 2023 on the file of the XIV Metropolitan Magistrate Court, Egmore, Chennai, the present criminal original petition has been filed.

2.The prosecution case is that the defacto complainant Josebeen's son Santhosh Kumar came to the ARHT Global Clinic for hair transplantation on 15.05.2016, which is owned by the first accused Dr.Santhosh Kumar. Dr.Vinith the petitioner herein (second accused) treated the deceased Santhosh Kumar. After treatment, since his temperature had risen, he was taken to the nearby Guest Hospital, where the treatment was given for fever, thereafter, his mother the defacto complainant took him to C.M.C. Hospital, Vellore and taken for treatment on 16.05.2016, unfortunately, he died on 17.05.2016. In the postmortum report, the Doctor opined that the cause of death is “ ***Refractory shock and metabolic Acidosis Anaphylactic shock, Toxic Shock Syndrome, Septic Shock, Multiorgan Dysfunltion- Acute Renal Failure.***” Further



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the allegation is, if he had not undergone hair transplantation treatment, he would not have died. The cause of death is, the hair transplantation done by untrained petitioner without any basic facilities at ARHT Global Clinic Centre. Since without any required qualification, with the knowledge and if the act is done, it is likely to cause death the petitioner done hair transplantation to the deceased Santhosh Kumar and thereby, committed the offence punishable under Section 304(ii) IPC, which is now under challenge.

3.The learned counsel for the petitioner contended that the treatment was given by the petitioner to the deceased on 15.05.2016 morning and died on 17.05.2016 morning after 48 hours. In this context, as has been held in *Jackob mathew's Case (2005 SCC Cr 1369)*, this is not a case where the death is the direct result of the treatment given by the petitioner. The Courts have held that the death must be the proximate to the treatment given. It must be the Causa Causans. It is pertinent to point out that the complaint in the present case has been given after a long gap of 18 days which clearly reflects that it is an afterthought and ill motivated. As has



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been held in the above supreme Court Judgment, assuming that there is negligence, it should be gross negligence in order to attract section 304A of IPC whereas on a reading of the entire materials, it will be seen that there is no negligence at all in as much as the deceased died of some other ailment absolutely unconnected with the hair treatment.

4.Further, the learned counsel for the petitioner submitted that the Court below erred in taking the cognizance of the case. Because simply a patient has not responded to treatment given by a doctor cannot be held liable for medical negligence much less criminal negligence. As has been held by various settled decisions the essential ingredients of mens rea cannot be excluded from consideration when the charge in the criminal Court consists of criminal negligence which is admittedly absent in this case even taking to entire materials to be true. In fact, it is not the case of the prosecution that there is mens rea attributed to the accused. The learned counsel further submitted that there is no prima facie case made out for the offence under Section 304(ii) IPC, there is no material to show that the act of the accused/petitioner amounted to culpable homicide by implanting



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hair. On this ground also, the proceedings on the court below are liable to be quashed.

5.To support his argument, the learned counsel for the petitioner relied upon the decision of the Hon'ble Supreme Court in **(i) Crl.A.No.770 of 2009 Anjana Agnihotri & Anr. Vs. The State of Haryana & Anr. (ii) Crl.A.No.1389 of 2018 Nitinchandra Somnath Raval Vs. The State of Gujarat & Ors (iii).Jacob Mathew Vs. State of Punjab and another reported in (2005) 6 SCC page 1 (iv)Martin F.D'Souza Vs. Mohd. Ishfaq reported in (2009) 3 SCC page 1 (v) Lakshmi Nursing Home, represented by Dr.C.Jegadeesan Vs. State through the Inspector of Police and another reported in 2019 SCC OnLine Mad 38829.**

6.The learned Government Advocate (Crl.side) appearing for the first respondent and the learned counsel appearing for the defacto complainant submitted that the first accused ARHT Global Clinic Hair Transplant Centre is not fit to do any hair transplant or any other medical procedures. Further submitted that the petitioner is not a competent person for doing hair transplant. The report of the Director of Medical and Rural



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Health Services conducted a detailed investigation in this matter and send a report to the respondent police and opined that in the centre, the procedure performing site was not properly sterile and the centre is licensed by Corporation of Chennai as Hair Cutting Saloon and the sterilisation procedures were not proper and CMC Vellore concluded that the deceased could have died of Toxic Shock Syndrome /Septic shock/Anaphylactic syndrome and it reveals that the prima facie negligence and violation of rules and regulations. Therefore, at this stage, this Court cannot embark upon the appreciation of evidence, while considering the petition filed under Section 482 Cr.P.C. for quashing the criminal proceedings and no merit in the criminal original petition and thus, pleaded to dismiss the criminal original petition.

7.I have considered the matter in the light of the submissions made by the learned counsel for the petitioner as well as the learned Govt. Advocate (Crl.side) appearing for the first respondent and the learned counsel appearing for the second respondent and the materials available on record.



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8. On perusal of the materials, it is seen that the petitioner is the second accused in P.R.C.No.120 of 2023 on the file of the XIV Metropolitan Magistrate Court, Egmore, Chennai and the first accused is one Dr.Santhosh Kumar is running ARHT Global Clinic Hair Transplant, Nungambakkam. Initially, the respondent police filed a final report against the petitioner and other person for the offences under Section 304(A) IPC, it was taken on file as C.C.No.3177 of 2018 subsequently, the respondent police filed supplementary final report, based on that, the case has been altered into 304(ii) IPC and the case has been renumbered as P.R.C.No.120 of 2023 on the file of the XIV Metropolitan Magistrate Court, Egmore, Chennai, which is under challenge.

9. The prosecution case is, one Santhosh Kumar, student of Madras Medical College approached ARHT Global Clinic Hair Transplant for Hair Transplant treatment, for that, surgery was done by the petitioner Dr.Vinith on 15.05.2016. In consequence of the treatment, he suffered fever, therefore, he was admitted CMC Hospital, Vellore, subsequently, he died



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on 17.05.2016. In the Post Mortem report, the cause of death is opined that

Refractory Shock and Metabolic Acidosis Anaphylactic Shock, Toxic Shock Syndrome, Septic Shock, Multiorgan Dysfunltion – Acute Renal Failure.

10.In this regard, Dr.S.Saravan M.D. Assistant Professor, Department of Forensic Medicine, K.A.P.V.Govt. Medical College, Tiruchirappalli, also gave a statement about the cause of death. In his statement, he stated that the deceased would appear to have died due to complications due to cumulative effects of hair transplant procedure and anaesthesia. Further, the record reveals that the Joint Director of Health services visited the ARHT Global Clinic Hair Transplant and conducted an investigation on 31.05.2016 and filed a report. In the report, it is stated that the centre is not fit to do any hair transplant or any other medical procedures and further, stated that the centre is paying the professional Tax as hair implantation and later it is licensed as a hair cutting saloon with the Corporation of Chennai.



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11. In the above fact of the case, the issue raised whether the centre ARHT Global Clinic Hair Transplant is fit to do any hair transplant or any other medical procedures and whether the petitioner is qualified doctor for doing hair transplant. It has to be adjudicated by the trial Court on evidence produced by the prosecution.

12. It is no more res integra that exercise of power under Section 482 Cr.P.C to quash a criminal proceeding is only when an allegation made in the FIR or the charge sheet not constitute the ingredients of the offence alleged. Interference by the High Court under Section 482 Cr.P.C. is to prevent the abuse of process of any Court or otherwise to secure the ends of justice. It is trite law that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under Section 482 Cr.P.C. for quashing the criminal proceedings. It is clear from the fact that there is a question of fact involved whether the centre is fit to do any hair transplant and whether the petitioner is competent to do hair transplant. Therefore, it cannot be adjudicated in this proceedings. The



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decisions relied upon by the learned counsel appearing for the petitioner is not helpful to support the case of the petitioner, since the case involved adjudication of factual dispute. Therefore, it does not meet the parameters laid down by the Hon'ble Supreme Court in *State of Haryana vs. Ch.BhajanLal (AIR 1992 SC 604)*, *M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and others (2021 SCC online 315)* & *PRATIBHA RANI Vs.SURAJ KUMAR & ANR (1985 Crl.L.J.817)*, the matter has to be enquired to find out the truth. Therefore I find no merit in the present criminal original petition.

In the result, the criminal original petition is dismissed. Consequently, the connected miscellaneous petition is closed.

Index : Yes/No

Internet : Yes/No

21.09.2023

sms

To

- 1.The XIV Metropolitan Magistrate,
Egmore, Chennai.
- 2.State Rep.by the Inspector of Police,
F3 Police Station, Nungambakkam,
Chennai – 600 034.
- 3.The Public Prosecutor,
High Court, Madras.



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V.SIVAGNANAM ,J.

sms

Pre-delivery order made in
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