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W.P.No.5080 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2023

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.5080 of 2023

and

W.M.P.No.5102 of 2023

R.Nandini

... Petitioner

-VS-

1.State of Tamil Nadu,

Represented by the Principal Secretary,

Home Department,

Fort St.George, Chennai – 600 009.

2.The Director General of Police – Tamil Nadu,

Mylapore, Chennai – 600 004.

3.The Commissioner of Police,

Greater Chennai,

Vepery, Chennai – 600 007.

4.The Inspector of Police, Crime,

H-8, Thiruvottiyur Police Station,

Chennai – 600 019.



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5. Tamil Nadu Medical Council,
Represented by the President,
914, Poonnamallee High Road,
Arumbakkam, Chennai – 600 106.

6. The Dean
Rajiv Gandhi Government General Hospitals,
Chennai – 600 003.

7. Dr. Kirubanandam,
Prasad ENT & Gyne Hospital
Thiruvottiyur, Chennai – 600 019.

... Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India to issue a writ of Mandamus, directing the 1st respondent to take necessary action on petitioner's complaint dated 16.02.2023 by transferring the investigation in C.S.R.No.137 of 2023, pending on the file of the 4th respondent by appointing competent investigating agency and consequently, direct the 2nd to 6th respondents to enquire into the whole incident and take appropriate action against the 7th respondent for their medical negligence.

For Petitioner : Mr.K.M.Ramesh
For R1 to 6 : Mr.E.Raj Thilak,
Additional Public Prosecutor

Mr.V.J.Priyadarsana
Government Advocate (Criminal side)

For R7 : No appearance



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ORDER

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The Writ Petition has been preferred seeking a Writ of Mandamus for directing the 1st respondent to take necessary action on petitioner's complaint dated 16.02.2023 by transferring the investigation in C.S.R.No.137 of 2023, pending on the file of the 4th respondent by appointing a competent investigating agency and consequently, direct the respondents 2 to 6 to enquire into the whole incident and take appropriate action against the 7th respondent for their medical negligence.

2. The Writ Miscellaneous Petition has also been filed for seeking interim direction to the 6th respondent to re-do the Postmortem by competent/qualified doctors, in the presence of a learned Judicial Magistrate with video recording and submit the report and pass such other or further orders deem fit and proper in the circumstances.

3. Heard Mr.K.M.Ramesh, learned senior counsel for the petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor and Mr.V.J.Priyadarsana, learned Government Advocate appearing for the respondents 1 to 6.

4. The gist of the petition is that, the petitioner's daughter Abinaya, who was 15 years old was admitted in a private hospital for her hearing ailment and



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at the advice of the Doctor, she had undergone a surgery on 14.02.2023 in Prasad ENT Hospital. The Doctor, who was consulted at the ENT hospital is the 7th respondent herein, who runs the Prasad ENT & Gynec Hospital at Thiruvottiyur. Abinaya had an issue of getting pus from her ears. As per the advice given by the 7th respondent, the petitioner accepted to do surgery on her. The surgery was performed from 04.15 pm to 07.15 pm on 14.02.2023. At about 07.45 pm, the petitioner's daughter told her that she was having chest pain. Immediately, the petitioner called the Doctors. The Doctors put the said Abinaya on ECG and found that she was having suffocation and administered oxygen. Since pulse rate of Abinaya was found to be high, she was shifted by the 7th respondent to Sugam Hospitals, Thiruvottiyur by an ambulance. The petitioner could not understand what was happening.

5. At about 01.30 am, the petitioner was informed that, Abinaya was shifted to ICU room at the Sugam Hospitals and thereafter, the petitioner was not given any access into the ICU to visit her daughter. On 15.02.2023, early morning around 05.00 am, the petitioner was permitted to see Abinaya at ICU and at that time, Abinaya reported that she was having severe chest pain. When this was informed to the Doctors, Abinaya was given with sedation and thereafter, she was under sedation. The Doctors also gave an injection on the



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neck of Abinaya and thereafter, the petitioner was asked to sign in some papers and they told her that the heart beats of Abinaya was abnormal and hence, she was needed to be immediately shifted to Government Hospital.

6. Thereafter, Abinaya was shifted to the Emergency Ward at Rajiv Gandhi Government General Hospital. Even at that time, Doctors in Rajiv Gandhi Government General Hospital misunderstood that Abinaya was deaf. However, petitioner clarified that Abinaya was just having some issues in the ears, and she was not deaf. When the duty Doctor asked the name of Abinaya, she could hear and respond properly. The discharge summary of Abinaya was not available with the petitioner, in order to furnish them to Doctors of Rajiv Gandhi Government General Hospital for further treatment. Even when the petitioner asked the 7th respondent for discharge summary, they refused to give her the same. Since the condition of the petitioner's daughter was deteriorating, the duty Doctors shifted her to the Coronary Care Unit. However, it was not easy for the petitioner to get the discharge summary from the 7th respondent.

7. On 16.02.2023, the Doctors at Rajiv Gandhi Government General Hospital came to a conclusion that surgery was not done properly and Accident Register (AR) was registered. The petitioner was informed that Abinaya was having multiple organs failure and it is difficult to save her. The Police were



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also not co-operative and they failed to raise up to the occasion. At around, 09.00 am, Abinaya was declared dead by the Rajiv Gandhi Government General Hospital. The 7th respondent Hospital was not equipped to handle medical emergencies and have failed to take preventive measures before carrying out the surgery on Abinaya. The Sugam Hospital had also manipulated the documents and they acted in tandem with the 7th respondent.

8. After the petitioner had given a complaint, she was enquired by Sub Inspector of Police by name K.A.Ramesh, H-8, Thiruvottiyur Police Station and he did not act in a fair manner and asked demeaning and embarrassing questions to the petitioner. Only after the petitioner and her people went and complained to the Deputy Commissioner, Washermenpet and Assistant Commissioner, Thiruvottiyur, they rushed to the H-8, Thiruvottiyur Police Station and only at their instructions, the First Information Report was registered.

9. However, without having informed the petitioner, the postmortem was conducted. The petitioner understood that the postmortem was not done in a proper manner and qualified Doctors did not do the same. The petitioner requested the Doctors to re-do the postmortem by a competent and qualified Doctor but the same was refused. Since the petitioner believed that the Doctors



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at Rajiv Gandhi Government General Hospital acted in support of the 7th respondent and other Doctors at Sugam Hospital, she was reluctant to get the body of her deceased daughter from the mortuary. The petitioner was harassed by police officials and they did not allow her to meet her relatives and Advocates and use her mobile phone freely. If the same investigating agency is allowed to carry out the investigation, the same will not be fair and proper and the real accused will not be brought to book. Hence, the petitioner has filed this Writ Petition seeking for direction to the 1st respondent to take necessary action on petitioner's complaint dated 16.02.2023 by transferring the investigation in C.S.R.No.137 of 2023, pending on the files of the 4th respondent by appointing some other competent investigating agency and consequently, direct the 2nd to 6th respondents to enquire into the whole incident and take appropriate action against the 7th respondent for their medical negligence and Miscellaneous Petition requesting an interim direction for re-doing the postmortem.

10. The learned counsel for the petitioner submitted that, the deceased Abinaya was just 15 years old and she did not have any serious ailment, except a minor issue over her ears. It is not known whether such a small issue needed a surgery at the first instance. The complications that were developed subsequent



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to the surgery would show that something went wrong seriously in the treatment given by the 7th respondent and the Doctors at Sugam Hospital. The petitioner was not properly apprised about the treatment given to Abinaya or the subsequent complications developed. Everything was done in a hurried manner and Abinaya did not have any cardiac issues before the surgery. The petitioner was not given with a proper discharge summary in order to know what kind of treatment was given to her daughter and why such serious complications developed. The postmortem was done without even giving information to the petitioner and in the absence of her representatives. Since everything was done in a mysterious manner, the petitioner has doubts about the proper postmortem. If important details were omitted to be collected, the same will not reveal the actual cause of death of the deceased Abinaya. Since, the 7th respondent has got political influence, the petitioner requests for re-postmortem. The 4th respondent Police through his indifference and roughness has created fear and doubts in her mind about the fair and proper investigation. Hence, a direction of re-postmortem along with other directions is essential.

11. Mr.E.Raj Thilak, learned Additional Public Prosecutor and Mr.V.J.Priyadarsana, learned Government Advocate appearing for respondents 1 to 6, submitted that, the Doctors at Rajiv Gandhi Government General



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Hospital had done their best to do a proper postmortem and three Doctors namely Dr.Angayarkani, Senior Assistant Professor, Madras Medical College, Dr.V.Ashok Raj, Senior Assistant Professor, Madras Medical College and Dr.A.Veera Vijayan, Tutor in Forensic Medicine, Madras Medical College were present during the postmortem and in fact the process of postmortem was also duly recorded in the CCTV, which is placed in the postmortem room. All the cavities were opened, viscera and other organs were also properly collected and preserved for the purpose of sending them to chemical analysis. The qualified Doctors have done the postmortem, as per the mandates required for medico legal cases. Since all essential organs have already been collected from the subject body, re-postmortem will not serve any purpose.

12. It is a very sad case, where a girl of 15 years, who was hale and healthy and who was studying 11 std in St.Anne's Matriculation Higher Secondary School, Royapuram had met an untimely and unfortunate death. The petitioner is the mother of the deceased Abinaya, who already lost her husband. She is a fisher women by occupation and all her endeavours were to see her daughter's future bright and shining. The petitioner's daughter Abinaya had some issues in her ears and she used to have pus over her right ear. Rightly, the petitioner got a consultation from ENT Doctor at the 7th respondent's Hospital



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and after conducting certain tests, she was advised by the 7th respondent to undergo a surgery. Eventhough the discharge summary was not given to the petitioner, at the time of hearing of this petition, the learned Additional Public Prosecutor has produced the discharge summary and the same was also perused by this Court. It is seen from the discharge summary that the Doctors have planned to do a procedure called Mastoidectomy with Tympanoplasty on her right ear. After the operation was done, Abinaya was shifted to Post operation Care Unit. Even according to the reports maintained by the 7th respondent, the deceased Abinaya did not have any other major health issues, at the time when she was admitted in the Hospital and that also forms part of the medical records.

13. Post operation Abinaya developed chest pain and she reported it to her mother. Immediately, the Doctors put her on ECG and found that her cardiac functions were not normal. She also experienced difficulty in breathing. Even according to the discharge summary produced before me, “*clinical features suggestive of Acute Pulmonary edema*” is seen to be present and hence Abinaya was shifted to Sugam Hospital for acute care. But, things did not develop from bad to better and the condition of Abinaya went worse. Thereafter, she was shifted to Rajiv Gandhi Government General Hospital.



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When she was brought to Rajiv Gandhi Government General Hospital, her condition deteriorated further and it did not improve thereafter. The petitioner does not have any grievance against the Doctors at Rajiv Gandhi Government General Hospital and any of their treatment. But her only suspicion is that the Doctors of Rajiv Gandhi Government General Hospital without informing the petitioner hurriedly done the postmortem. The officials at the spot were in a mood to remove the petitioner and her relatives from the spot as early as possible. Hence, the petitioner has serious doubts about the fairness of the postmortem conducted on the body of the deceased.

14. The petitioner was present at the time of the hearing. For the sake of clarity, this Court connected a call to Dr.Angaiyarkani, who was a part of the team which conducted the postmortem, in the presence of the petitioner and her counsels. The call was made through Mr.V.J.Priyadarsana's phone (learned Government Advocate) from No.9444910130 to Dr.Angaiyarkani's (Senior Assistant Professor, Madras Medical College) phone No.8667677714 and the Doctor was asked to tell about the manner in which the postmortem was conducted.

15. Dr.Angaiyarkani shared all the relevant information and the manner, in which the postmortem was conducted. She has stated that all the body



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cavities of the subject body were opened and important organs like viscera collected and preserved. Taking into consideration of the young age of the deceased Abinaya whole of her heart was taken and preserved in order to send it for chemical analysis. The Doctors apprised about certain condition that was present at the brain and lungs of the deceased. She also stated that the whole of postmortem process was recorded in the CCTV and that herself and other Doctors of her team have done their best to save the essential evidence for the purpose of giving a genuine opinion about the cause of death of the deceased. After hearing her conversation, the petitioner and her counsels understood and got satisfied that the postmortem had been conducted fairly. The petitioner realised that re-postmortem will not serve any purpose and that too after the essential organs have already been removed, collected and preserved for chemical analysis.

16. In these circumstances, if re-postmortem is ordered, that will not serve any purpose except removal of the stitches once again, but to explore nothing. In view of the above stated reasons, I feel, it is absolutely not essential to order for a re-postmortem.

17. However, the grievance of the petitioner that she was not treated fairly and comfortably by the investigating agency can not be overlooked.



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The unnecessary and demeaning questions put to the petitioner by the police is like adding fuel to the fire. During the hearing of this case. Mr.Mohammed Nasser, Assistant Commissioner, Thiruvottiyur was also present and he assured that the investigation can be shifted to some other police station within his jurisdiction and he will see to that the investigation is done in a fair and proper manner. Hence I feel the grievance of the petitioner can be redressed by passing an order to shift the investigation to be done by the Inspector of Police, H5, New Washermenpet Police Station. When the said proposal was suggested, it was readily accepted by the petitioner and the Assistant Commissioner, Thiruvottiyur.

18. The learned Additional Public Prosecutor has expressed the difficulty in handing over the body due to protest and that the body is kept in the mortuary even after the postmortem was over. The learned counsel for the petitioner submitted that he would do the needful and the body of the deceased will be received by her relatives in a peaceful manner in order to perform her last rites by the petitioner and her relatives.

In the result, this Writ Petition is **partly allowed** and the investigation of this case is ordered to be transferred from the file of the 4th respondent to the file of the Inspector of Police, H5, New Washermenpet Police Station for



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further investigation. The Assistant Commissioner of Police, Thiruvottiyur shall monitor the investigation. The investigation shall be completed and the final report shall be filed within a period of three months time from the date of receipt of a copy of this order. Writ Miscellaneous Petition in W.M.P.No.5102 of 2023 filed along with this petition for seeking re-post-mortem is dismissed. No costs.

The Director of Tamil Nadu Forensic Department, Chennai is also directed to give priority to do the chemical analysis on the specimen sent to them in this case in Crime No.122 of 2023 and to send the report at the earliest.

Since the Hon'ble Supreme Court of India, in the case of ***Jacob Mathew Vs. State of Pubjab and another*** reported in [2005 6 SCC 1] has already set out guidelines for conducting investigation in medical negligence cases, the Investigating Officer shall follow the same without any lapse.

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Index: Yes/No
Speaking/Non-speaking order
Neutral Citation Case: Yes/No
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To
1. The Principal Secretary,
Home Department,
Fort St. George, Chennai – 600 009.



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