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CrI.R.C.No.1196 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.11.2023
PRONOUNCED ON : 20.11.2023

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No.1196 of 2023

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... Petitioner

Vs.

The State, represented by
Inspector of Police,
Panruti Police Station,
Cuddalore District.

... Respondent

PRAYER: Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the connected records made in CrI.M.P.No.773 of 2023 in Cr.M.P.No.260 of 2020 dated 13.3.2023 on the file of Judicial Magistrate, I, Panruti and set aside the same as illegal.

For Petitioner : Mr.R.Sankarasubbu
For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor

ORDER

The petitioner initially filed a petition under Section 173(8) Cr.P.C., in CrI.M.P.No.260 of 2020 before the learned Judicial Magistrate No.I, Panruti seeking direction directing the respondent Police to submit a final report along with documents and refer notice to



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the petitioner. Thereafter, the petitioner filed similar petition under Section 173(8) Cr.P.C., in CrI.M.P.No.773 of 2023 in CrI.M.P.No.260 of 2020 to direct the respondent Police to submit the final report along with documents and refer notice to the petitioner. The learned Judicial Magistrate No.I, Panruti, *vide* order, dated 13.03.2023 dismissed the same. Aggrieved over the same, the present Criminal Revision Case is filed.

2.The contention of the petitioner is that the petitioner's son Bhavan Shankar aged about nine years while studying 1st std in St.Anne's Matriculation Higher Secondary School, Thattanchavadi, Panruti, Cuddalore District, he was administered DTP and TD (Diphtheria, Tetanus and Pertussis (DIAP)) vaccine in the school on 28.08.2019 under the supervision of the Principal of the School, Nurse from the Primary Health Centre, but due to gross negligence, the son of the petitioner had become immobilized, bedridden and he is in dying condition. The petitioner preferred a complaint to the respondent Police and the same referred as Mistake of Fact, against the refusal, the petitioner preferred a protest petition before the learned Judicial Magistrate No.I, Panruti. He



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further contented that the petitioner hails from poor Scheduled Caste community, Hindu, Adi Dravidar, she admitted her son under 25% quota under Right of Children to Free and Compulsory Education Act, 2009. Since the complaint is based on medical negligence, the respondent Police ought to have constituted a medical board of highly placed experts to ascertain the medical condition of the child Bhavan Sankar and collect scientific evidence, but the respondent Police failed to do so, which the Court below failed to consider. Added to it, the Court below without proper expert opinion, passed the impugned order which is incomplete and illogical.

3.The learned counsel for the petitioner submitted that the petitioner filed a petition under Section 156(3) Cr.P.C., but no FIR was registered. Though a direction was issued to the respondent Police to conduct investigation following the principles laid down by the Hon'ble Supreme Court in the case of “*Lalita Kumari Versus Government of Uttar Pradesh* reported in (2014) 4 SCC 1” the respondent Police filed a report on 26.07.2021 along with documents to show that the petitioner's son was administered vaccine on 30.08.2019, after vaccination, the



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petitioner's son on 20.09.2019 suffered with brain fever and illness, due to which, he was treated at Institute of Child Health at Egmore for acute encephalitis. Earlier, the petitioner took her son to Dr.Velumani in Cuddalore, then Jipmer Hospital, Puducherry, Institute of Child Health and Hospital, Egmore, Chennai, Kanchi Kamakoti Childs Trust Hospital, Nungambakkam, Chennai, NIMHANS Hospital at Bangalore and she was informed that the vaccination administered to her son was with negligence, without proper care. Due to which, her son suffered illness. Now, the petitioner's son is in coma stage and the reason is only due to medical negligence of the District Health Officials and the school authorities. The learned counsel further submitted that in the school diary, she had written that the petitioner's son was suffering from wheezing. Not considering the same, the vaccine was administered, due to which, the petitioner's son is now in a Coma stage. When the petitioner, her husband, her father-in-law and others on 04.06.2019 approached the school authorities to find out the reason, they were abused, chased out from the school and they were also threatened not to come to school and make such objection. Thereafter, they approached Dr.Ramsundar, who also threatened and abused them. Hence, the



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petitioner lodged a complaint to the respondent Police, but no action taken. The Court below not considering these aspects, had dismissed the petitioner's petition for further investigation and protest for closing the complaint as Mistake of Fact.

4.In support of his submissions, the learned counsel for the petitioner produced the medical records of the petitioner's son Bhavan Sankar from the NIMHANS Bangalore, Indira Gandhi Institute of Child Health, Bangalore, VRR Diagnostics Report, Scan Report, Kanchi Kamakoti Childs Trust Hospital discharge summary, lab reports and other documents. Hence, he prayed for setting aside the impugned order, dated 13.03.2023.

5.The learned Additional Public Prosecutor opposed the petitioner's contention stating that on 30.08.2019, on the directions of the District Health Officials, 1050 students were administered vaccine. There was no complaint of any illness from any students. The petitioner's son Bhavan Sankar attended the school for three weeks after the vaccination, only on 20.09.2019, he suffered brain fever and illness.



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During enquiry, the attendance register of the students verified and confirmed that he attended the school without any complaint. Further, the parents of Bhavan Sankar gave consent for vaccination not only to him, but also for her two daughters viz., S.Sabarna and S.Malarvizhi who are also studying in the same school administered with vaccine and they are fine with good health. Before vaccination, the petitioner gave consent for vaccination for her three children. The vaccination had been carried out as per the directions of the District Health Officials under medical care and supervision. The Deputy Director, Health Service, Cuddalore confirmed the vaccination administered to the petitioner's son, and he was in good condition for more than a month, he attended the school without any complaint, one month thereafter, for other reasons, he had health complications, for which, the vaccination cannot be a reason.

6.He further submitted that on the complaint of the petitioner, enquiry conducted, the District Health Officials, School Principal, Class Teacher of Bhavan Sankar examined, documents collected from the School and Health Department. All confirmed that proper protocol followed while administering vaccine to the students. Further, the



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petitioner's son health record from the Civil Assistant Surgeon, Institute of Child Health and Hospital for Children, Egmore collected and verified. The opinion from the expert Doctors also obtained. After thorough investigation, it is found that the complaint of the petitioner that the vaccination is the immediate cause for his son health condition is not sustainable. Hence, the respondent Police closed the complaint as Mistake of Fact and filed the report. It is seen that one Selvam, Venkatasamy and Palani had gone to the school, made objection for the treatment, created nuisance and also threatened the school authorities, for which, the school authorities lodged the complaint on 21.10.2019 and C.S.R.No.1736 of 2019 registered.

7.In support of his submissions, the learned Additional Public Prosecutor produced the report of the respondent Police along with the school attendance sheet, medical records, report from the Education Department, Deputy Director, Health Service, Cuddalore, the School Headmistress, Class Teacher, consent form and other relevant documents and the complaint of the petitioner, dated 04.01.2020 submitted to the Superintendent of Police. The Court below considering the students



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explanations and documents submitted and found the petitioner's objection not sustainable, finding no reason to direct further investigation, dismissed the petitioner's petition. The order of the Court below is a well reasoned one, hence, prayed for dismissal of the present criminal revision case.

8.Considering the submissions and on perusal of the materials, it is seen that after the vaccination on 30.08.2019, till third week of September, 2019, the petitioner's son was normal attending the school without any medical complications. The petitioner gave consent not only to her son Bhavan Sankar, she had also given consent for her two daughters viz., S.Sabarna and S.Malarvizhi. It is also seen that totally, 1050 students administered vaccine, no complaint from any of the child. Though this Court feels pity for the petitioner's son health condition, but it cannot be attributed to the vaccination. The statement of Doctor from the Primary Health Centre, Panruti is that the petitioner's son Bhavan Sankar was treated for brain fever.



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M.NIRMAL KUMAR, J.
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To

- 1.The Judicial Magistrate Court No.I,
Panruti.
- 2.The Inspector of Police,
Panruti Police Station,
Cuddalore District.
- 3.The Public Prosecutor,
High Court, Madras.

PRE-DELIVERY ORDER IN
CrI.R.C.No.1196 of 2023

20.11.2023