



Crl.O.P.Nos.17552 of 2014 and 8755 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2023

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Orders Reserved On 08.11.2022	Orders Pronounced On 30.08.2023
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Crl.O.P.Nos.17552 of 2014 and 8755 of 2017

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M.P.No.1 of 2014 in Crl.O.P.No.17552 of 2014

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Crl.M.P.Nos.6251 and 6252 of 2017 in Crl.O.P.No.8755 of 2017

1.Dr.K.Mani,
Proprietor,
Aravind Hospital,
No.17, Rangar Sannsthi Street,
Sendhamangalam Road,
Namakkal.

2.Dr.M.R.S.Dhanabagiyam, M.B.B.S.,
Aravind Hospital,
No.17, Rangar Sannsthi Street,
Sendhamangalam Road,
Namakkal.

... Petitioners in both the Crl.O.Ps./A1 & A2

Vs.

K.Govindaraju

... Respondent in both the Crl.O.Ps./Complainant



Crl.O.P.Nos.17552 of 2014 and 8755 of 2017

Prayer in Crl.O.P.No.17552 of 2014:- Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.164 of 2014, on the file of the Judicial Magistrate Court No.I, Namakkal, and quash the same insofar as the petitioners are concerned.

Prayer in Crl.O.P.No.8755 of 2017:- Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.376 of 2016, on the file of the Judicial Magistrate Court No.I, Namakkal, and quash the same insofar as the petitioners are concerned.

For Petitioners : Mr.K.Sukumaran
in both the Crl.O.Ps.

For Respondent : Mr.A.Aswin Kumar
in both the Crl.O.Ps. Legal Aid Counsel

COMMON ORDER

Since the issues involved in both the Criminal Original Petitions are one and same, they are heard together and disposed of by this common order.

2. Crl.O.P.No.17552 of 2014 is filed to quash the proceedings, relating to C.C.No.164 of 2014, on the file of the Judicial Magistrate Court



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No.I, Namakkal.

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3. Crl.O.P.No.8755 of 2017 is filed to quash the proceedings, relating to C.C.No.376 of 2016, on the file of the Judicial Magistrate Court No.I, Namakkal.

4. The case of the respondent/complainant is that, the petitioners are Doctors, running a hospital, Arvinth Hospital at Namakkal. The respondent sustained injury in an accident and got admitted in the hospital on 18.06.1999. After thorough examination, it was found that the respondent had fracture on both tibia and fibula in the left leg. Further, there was tense swelling, diminished distal pulse of left lower leg and therefore, an emergency surgery was conducted. Thereafter, to prevent infection, another surgery was performed on 26.07.1999 and an imported Orthofix Fixator was fixed. Subsequently, on 07.08.1999, third surgery (Corticotomy) was performed in the upper portion of the left leg. Thereafter, due to bad condition of tissues, on 23.12.1999 another surgery was performed on the left leg. The respondent continuously took treatment in the petitioners' hospital from 18.06.1999 to 10.04.2000. However, the petitioners did not provide any documents related to the treatment and gave false information



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by hiding the treatment details and thereby, committed breach of trust and cheating. Therefore, the respondent lodged private complaint against the petitioners before the learned Judicial Magistrate No.I, Namakkal, which was taken cognizance as C.C.No.164 of 2014.

5. The petitioners filed Crl.O.P.No.8755 of 2017 challenging the cognizance order, dated 02.09.2016, in C.M.P.No.4943 of 2015. The respondent took treatment in Arvind Hospital, Namakkal, during the period from 18.06.1999 to 10.04.2000. The petitioners/Doctors attended him, conducted surgery during this period. On 26.07.1999 Orthofix Fixator an instrument was fixed to his left leg, five surgeries conducted, he got discharged, but the problems continued even after discharge. Hence, the respondent stopped from taking further treatment from the petitioners.

6. The respondent received summons from the learned Sub Judge, Namakkal, in O.S.No.138 of 2001, both by registered post and from process server, calling him to appear on 25.04.2001. The respondent appeared before the Court, the case was not taken up for hearing on that day.



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Thereafter, on enquiry, the respondent was informed that the suit in O.S.No.138 of 2001 was listed for hearing on 02.04.2001, he was set *ex parte*, and *ex parte* decree was passed directing him to remove and hand over the Orthofix Fixator to the first petitioner and if the said instrument is not maintained properly, to pay Rs.1,10,000/- with interest. Finding the forgery committed and the dishonest intention of the first petitioner in making false claim and fraudulently obtaining a decree in O.S.No.138 of 2001 on 02.04.2001, the respondent filed complaint before the Judicial Magistrate No.I, Namakkal, who by order dated 02.09.2016, in C.M.P.No.4943 of 2015, took cognizance against the petitioners, who are A1 and A2 for the offences under Sections 209, 210, 211, 465, 466, 468 and 469 I.P.C.

7. The learned counsel for the petitioners submitted that the complaints are barred by limitation, since the same were filed during the year 2012, for the alleged occurrence of the year 1999. He further submitted that the respondent earlier filed a complaint before the State Consumer Disputes Redressal Commission, Chennai, in O.P.No.136 of 2001 and the



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same has been dismissed on 11.10.2007. Suppressing the same, the respondent filed a complaint before the Judicial Magistrate Court No.I, Namakkal, which was taken cognizance in C.C.No.164 of 2014. Thereafter, the respondent filed another complaint before the same Court alleging forgery committed in O.S.No.138 of 2001, wherein the respondent suffered an *ex parte* decree. Without challenging the *ex parte* decree, he filed a second complaint, wherein the points raised are primarily questioning the decreetal order. The Trial Court, by cognizance order in the second case, gave its own reasoning as though in the first complaint, proper penal provisions were omitted to be mentioned.

8. The learned counsel for the petitioners submitted that the petitioners filed Crl.O.P.No.17552 of 2014 questioning the order of the learned Magistrate taking cognizance of the complaint filed under Section 200 Cr.P.C. in C.C.No.164 of 2014. The learned Magistrate failed to consider the fact that the operation was done in the year 1999 and the complaints were filed in the year 2012 with an ulterior motive, suppressing the filing of complaint by the respondent before the State Consumer



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Disputes Redressal Commission, Chennai, in O.P.No.136 of 2001, which got dismissed on 11.10.2007 after full-fledged enquiry. The respondent neither filed an application to set aside the *ex parte* decree nor disclosed the same in both C.C.Nos.164 of 2014 and 376 of 2016. The learned Magistrate ought to have rejected the complaints, since they were filed after delay of 12 years with *mala fide* intention. The learned Judicial Magistrate failed to consider that the allegations averred in the complaints even if taken at their face value and accepted in its entirety, do not constitute an offence. Further, the averments in the complaints are full of ambiguity, falsity and vagueness, demonstrate only the personal animosity that existed over a period of 15 years. The learned Magistrate failed to consider that the respondent has not explained the reasons for delay. The respondent has resorted to abuse of process of Court by filing impugned complaints, so as to harass the petitioners to ventilate his private grudge in the absence of any materials and taking cognizance of the impugned complaints itself bad in law.

9. The learned counsel for the petitioners submitted that the



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respondent in the complaints *inter alia* states that as the operation and the follow up treatment given to him, at the hospital concerned was negligent, which resulted in certain consequences as having been mentioned in the complaints. The learned counsel for the petitioners further submitted that upon reading of the entire complaints, except for mentioning in great detail about the operation and the follow up treatment, there is no allegation of negligence as could be made out. At this stage, the learned counsel drew the attention of this Court to the decision of the Hon'ble Apex Court in case of **Jacob Mathew vs. State of Punjab and another** reported in **(2005) 6 SCC 1**, and submitted that insofar as prosecuting a doctor for criminal negligence, the Hon'ble Apex Court in the aforesaid decision has set out certain guidelines. The learned counsel referring to Paragraph No.52 of the said judgement, submitted that the Hon'ble Apex Court has *inter alia* stated that till Statutory Rules or Executive Rules, incorporating guidelines to be framed by the Government of India and/or the State Government, in consultation with the Medical Council of India, are not framed, the guidelines laid down by the Hon'ble Apex Court would hold the field. Insofar as the present petitions are concerned, the learned counsel submitted



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that, according to the guidelines of the Hon'ble Apex Court, a private complaint may not be entertained unless the complainant has produced *prima facie* evidence before the Court in form of an opinion given by another competent Doctor to support the charge of rashness or negligence on part of the accused Doctor. The learned counsel submitted that in this case, no such opinion of another Doctor was obtained stating that the petitioners/doctors were negligent or criminally negligent in performing their duty, which is as required as per the law laid down by the Hon'ble Apex Court in the above referred judgment.

10. The learned counsel thereafter once again draws the attention of this Court to the judgment of the Hon'ble Apex Court in case of **Jacob Mathew** (cited *supra*), more particularly, the conclusions of the Hon'ble Apex Court at Paragraph No.48(2), whereby the Hon'ble Apex Court has *inter alia* observed that negligence in context of medical profession necessarily calls for a different treatment. According to the learned counsel, the Hon'ble Apex Court has held that to infer rashness, other than the normal consideration, additional consideration would apply and that a simple lack of care or an error of judgment or an accident, is not proof of



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negligence on the part of the medical professional. It is submitted that the Hon'ble Apex Court has observed that so long as an established practice, is followed by a Doctor, he cannot be liable for negligence, merely because, a better alternative course or method of treatment was available. Furthermore, insofar as the aspect of failure to take precautions has to be considered from the aspect of whether precautions were taken, which the ordinary experience of men has found to be sufficient and whereas extraordinary precautions, were not required. Similarly, it was also observed that in case negligence arises on account of allegation that some particular equipment was not used then, the said charge would not stand if the said equipment was not generally available at that particular time. The learned counsel has further emphasized on Paragraph No.48(5) of the said judgement and submitted that insofar as the criminal law, the concept of negligence as observed by the Hon'ble Apex Court is different than in civil law. The learned counsel submitted that as per the judgement of Hon'ble Apex Court, for negligence to amount to an offence, there has to be an element of *mens rea* or a culpable state of mind, which must be shown to exist. The learned counsel emphasized on the observations that for an act to amount to criminal



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negligence, the degree of negligence should be much higher *i.e.* gross or of a very high degree.

11. The learned counsel submitted that as per decision of the Hon'ble Apex Court in case of **Jacob Mathew** (cited supra), there are three requirements, which ought to be fulfilled before a medical professional is prosecuted. The learned counsel submitted that the requirements being (1) existence of an expert opinion (2) existence of criminal negligence and (3) existence of *mens rea*, all of which, according to learned counsel, are completely absent in the instant case. The learned counsel submitted that if the allegations made against the petitioners are accepted as a whole, then also, there is no negligent conduct on part of the petitioners, more particularly, with an intention to cause harm to the respondent/complainant. The learned counsel, therefore, submitted that this Court may allow these petitions and quash the impugned complaints.

12. The learned Legal Aid Counsel for the respondent submitted that the respondent sustained an injury in an accident and got admitted in the first petitioner's hospital on 18.06.1999 and continuously took treatment in



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the hospital from 18.06.1999 to 10.04.2000. The petitioners/A1 and A2 given a wrong treatment to him by fixing an Orthofix Fixator and caused inconvenience, pain and suffering and great mental agony to the respondent. He further submitted that the petitioners filed a false case before the Subordinate Court, Namakkal, in O.S.No.138 of 2001, seeking damages from the respondent, obtained an *ex parte* decree on 02.04.2001 by forging the summons, but not taken any steps to execute the decree even after the expiry of the limitation period. The respondent already filed a private complaint against the petitioners on 21.09.2012 itself and it was taken on file by the learned Judicial Magistrate No.I, Namakkal, as C.C.No.164 of 2014 for the offences under Sections 418 and 468 I.P.C., but, no penal provisions mentioned by the respondent in his previous complaint and about the forgery committed by the petitioners and *ex parte* decree obtained by them in O.S.No.138 of 2001, the respondent filed another complaint, which has been taken cognizance by the learned Judicial Magistrate No.I, Namakkal, on 02.09.2016, in C.M.P.No.4943 2015, for the alleged offences under Sections 209, 210, 211, 465, 466, 468 and 469 I.P.C.



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13. The learned counsel further submitted that the petitioners failed to provide any documents related to the treatment and gave false information by hiding the treatment details and thereby, committed breach of trust and cheating. It is for the Trial Court to resolve the issue, ultimately giving a clear finding as to whether the petitioners, who treated the respondent, were grossly negligent or not. In this case, the learned Judicial Magistrate No.I, Namakkal, was right in taking cognizance of the offence on the complaint.

14. The learned counsel for the respondent submitted that a perusal of the complaints reveal that there has been a *prima facie* negligence on part of the petitioners concerned in providing treatment to the respondent. A perusal of the complaints further reveal that the petitioners prepared forged documents and subjected the respondent/complainant to a new treatment method as a laboratory rat. The learned counsel submitted that the allegations as made in the complaints, would reveal that the requirement as laid down by the Hon'ble Apex Court in Paragraph No.48 of **Jacob Mathew**



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(supra) as well as Paragraph No.52 of the very same judgment are fulfilled.

The learned counsel further submitted that since serious allegations have been levelled against the petitioners and *prima facie* materials available in support of the allegations in the complaints of the respondent/complainant, this Court may not interfere with the complaints and prayed for dismissal of the Criminal Original Petitions.

15. In support of his submissions, the learned counsel for the respondent relied on the decision of this Court in **Dr.J.S.Rajkumar vs. Assistant Commissioner of Police** reported in **2012 (6) CTC 739**, wherein this Court held that when there are sufficient materials to make out a *prima facie* case of gross negligence, the case cannot be quashed.

15.1. For the point of limitation, the learned counsel submitted that the respondent earlier filed a complaint before the District Legal Services Authority, District Medical Council and before the State Consumer Disputes Redressal Commission, hence, the delay occurred, which can be condoned and relied on the following decisions.

(i) In **Charanjit Pal Jindal vs. L.N.Metalics** reported in **2015 (15)**



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SCC 768, the Hon'ble Apex Court held that for maintaining the prosecution under Section 141 of the Negotiable Instruments Act, 1881, arraigning the Company as an accused is imperative and gave liberty to the complainant therein to move before the Court of competent jurisdiction for appropriate relief and file a petition under Section 14 of the Limitation Act, 1963 seeking exclusion of the period on the ground that the respondent therein was seeking remedy before the other forum.

(ii) In **N.Vijayaraghavan and others vs. Cyberstar Infocom Pvt. Ltd.** reported in **2020 SCC Online Mad 22539**, this Court taking note of the judgment of the Hon'ble Apex Court in **Charanjit Pal Jindal** [cited supra] and finding that the drawer of the cheque viz., New Version India Private Limited has not been made as an accused, gave liberty to the respondent therein to proceed against the petitioners/accused, if they feel so and they can invoke Section 14 of the Limitation Act.

16. This Court considered the rival submissions and perused the materials available on record.



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17. It is seen that on 18.06.1999 at about 11.00 a.m., the respondent while riding his Moped on Namakkal – Salem Bypass Road, was knocked by a Tempo, thrown away, sustained a fracture on his left leg and injury on the right knee. Thereafter, he was rushed to the Hospital of the petitioners. On the same day, *i.e.*, on 18.06.1999, an emergency surgery was conducted and rod was fixed in the left leg bone. Two days later, a second surgery was performed and thereafter, on 26.07.1999, when the third surgery was performed, the big and small injured bones were cut to an extent of 5 inch and rod introduced during the first surgery was removed. Orthofix Fixator was fixed. After 87 days, the respondent was discharged with an instruction to come for regular review and to continue physiotherapy exercises. Due to recklessness and non-cooperation to the treatment, the respondent was again admitted in the Hospital for 37 days.

18. Further, it is seen that a fracture on both tibia and fibula in the left leg and there was tense swelling, diminished distal pulse of left lower leg. The condition being known as compartmental syndrome was a dangerous



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condition. Hence, immediate surgeries were performed, otherwise, there were possibilities of even amputating the respondent's leg. The bone of the left leg was stabilized with screws and rod. On 26.07.1999 with the consent of the respondent and his family members, Orthofix Fixator was fixed on the respondent's left leg. The instrument is an imported one, used mainly in fractures where the bones were broken into multiple pieces and non-viable and where lengthening of the bone is necessary. The respondent was moving around in the Hospital with the aid of Walker and attendant. He was advised to take regular physiotherapy treatment and visit the hospital at regular intervals, which he failed to do so, except on one or two occasions. Thereafter, the respondent failed to appear for treatment. The Orthofix Fixator fixed in the leg of the respondent, is imported from Italy, costing around Rs.1.25 Lakhs, and finding that the respondent failed to pay the balance fees, the first petitioner filed a civil suit in O.S.No.138 of 2001 before the Sub-Court, Namakkal. The respondent failed to appear before the Sub-Court and hence, he was set *ex parte* and *ex parte* decree was passed, by judgment, dated 02.04.2001.



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19. It is seen that earlier the respondent filed a complaint before the State Consumer Disputes Redressal Commission, Chennai, in O.P.No.136 of 2001, which came to be dismissed on 11.10.2007, which was taken on appeal and the appellate forum confirmed the dismissal of the complaint. The address of the respondent in both the complaint in O.P.No.136 of 2001 filed before the State Consumer Disputes Redressal Commission, Chennai, and in O.S.No.138 of 2001, are one and the same. Thus, the respondent, who was very much available in the said address, had failed to appear before the Sub-Court and therefore, the Sub-Court passed an *ex parte* decree. The first petitioner obtained *ex parte* decree for recovering a sum of Rs.1,10,000/- with interest, if the Orthofix Fixator is not returned in good condition. Admittedly, the respondent not challenged the Civil Court's decree so far. Thus, the petitioners are armed with two orders in their favour, one from the State Consumer Disputes Redressal Commission, Chennai and the other from the Sub-Court, Namakkal. Thus, the two proceedings were much before filing of the criminal complaint by the respondent. In the first criminal complaint in C.C.No.164 of 2014, the respondent narrates about the sequence from the date of his admission to the



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date of his discharge, about the surgeries conducted and directions given to him. Though he makes wild allegations against the petitioners/doctors questioning the operation procedure and method, it is seen that prior to filing of this case, the respondent had earlier lodged a complaint with the District Legal Services Authority, District Medical Council, and a complaint to the Police. All those complaints were closed. The respondent picking the reply and the counters filed during enquiry, filed the criminal case.

20. The Hon'ble Apex Court **Jacob Mathew's case** [cited supra] dealt in detail with regard to the medical negligence as a tort and as a crime. In this Landmark Judgment, guidelines are issued to be followed before prosecuting the medical professionals. For better appreciation, the relevant portion of the said judgment is extracted as follows:-

"Conclusions summed up

48. We sum up our conclusions as under:

(1) Negligence is the breach of a duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. The definition of negligence as given in Law of Torts, Ratanlal & Dhirajlal (edited by Justice



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G.P. Singh), referred to hereinabove, holds good. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence are three: “duty”, “breach” and “resulting damage”.

(2) Negligence in the context of the medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part of a professional, in particular a doctor, additional considerations apply. A case of occupational negligence is different from one of professional negligence. A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed. When it comes to the failure of taking precautions, what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence. So also, the standard of care, while assessing the practice as adopted, is judged in the light of knowledge available at the time of the incident, and not at the date of trial. Similarly, when the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that particular time (that is, the time of the incident)



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at which it is suggested it should have been used.

(3) *A professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly skilled professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence.*

(4) *The test for determining medical negligence as laid down in Bolam case [(1957) 1 WLR 582 : (1957) 2 All ER 118 (QBD)] , WLR at p. 586 [[Ed.: Also at All ER p. 121 D-F and set out in para 19, p. 19 herein.]] holds good in its applicability in India.*

(5) *The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of mens rea must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher i.e. gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution.*



(6) *The word “gross” has not been used in Section 304-A IPC, yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be “gross”. The expression “rash or negligent act” as occurring in Section 304-A IPC has to be read as qualified by the word “grossly”.*

(7) *To prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely imminent.*

(8) *Res ipsa loquitur is only a rule of evidence and operates in the domain of civil law, specially in cases of torts and helps in determining the onus of proof in actions relating to negligence. It cannot be pressed in service for determining per se the liability for negligence within the domain of criminal law. Res ipsa loquitur has, if at all, a limited application in trial on a charge of criminal negligence."*

21. In these cases, the respondent had failed to obtain any independent opinion from a competent doctor, which is *sine qua non* while proceeding against the doctors for medical negligence. This is fortified by the order of the State Consumer Disputes Redressal Commission, Chennai, in O.P.No.136 of 2001.



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22. As regards non-furnishing of complete report by the petitioners, it is seen that the respondent had already approached the District Medical Council and the complaint has been closed. Added to it, he had also approached the District Legal Services Authority and the Director General of Police. Thus, after failing in all his attempts, the respondent had filed the complaint with delay.

23. As regards the second complaint, it is seen that the complaint is primarily focussed and proceeded on the allegation that the petitioners have obtained an *ex parte* decree in O.S.No.138 of 2001 before the Sub Court, Namakkal, by setting the respondent *ex parte*. The primary allegation of the respondent is that, he received notice of summons both by registered post and from the process server, asking him to appear on 25.04.2001 and when he appeared on that day, he was informed that he has been set *ex parte* on 02.04.2001 and the first petitioner dishonestly made false claim and fraudulently obtained *ex parte* decree from the Sub-Court, Namakkal. Admittedly, the respondent had not filed any petition to set aside the *ex parte* decree or filed any appeal before the appellate civil forum. Further,



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filing of second complaint by the respondent on this score is not permissible and the Trial Court ought not to have taken cognizance of the second complaint, since it is barred by Section 195 Cr.P.C. Admittedly, the second complaint was filed by a private individual. It is strange to see in the second complaint, the learned Judicial Magistrate No.I, Namakkal, had taken cognizance of the case for the offences under Sections 209, 210, 211, 465, 466, 468 and 469 I.P.C. in C.M.P.No.4943 of 2015, vide order dated 02.09.2016, which is against law and improper. The Trial Court was very well aware about the pending trial of first complaint in C.C.No.164 of 2014 for the offences under Sections 418 and 468 I.P.C. between the respondent and the petitioners. This being so, giving its own interpretation that no penal provisions were mentioned in the first complaint and taking cognizance on the second complaint, is not only absurd, but unheard.

24. Thus, looking the case against the petitioners, it can be safely held that there is nothing to show they lack necessary skill for performing surgeries to the respondent. Further, there is no gross negligence with an intention to cause harm. Under criminal law, the degree of negligence



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required is of very high degree and the negligence must be culpable or gross negligence and not the negligence merely based upon an error of judgment.

Therefore, this Court finds that the continuation of proceedings against the petitioners is nothing, but an abuse of process of law.

25. In view of the above, this Court quashes the proceedings in both C.C.Nos.164 of 2014 and 376 of 2016, on the file of the Judicial Magistrate No.I, Namakkal. Accordingly, the Criminal Original Petitions are allowed. Consequently, connected Criminal Miscellaneous Petitions are closed.

26. Before parting with this case, this Court places its appreciation to the Legal Aid Counsel Mr.A.Aswin Kumar, who made effective defence in these cases.

Internet : Yes/No
Neutral Citation: Yes/No
smn2/vv2

30.08.2023

To

The Judicial Magistrate No.I,

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Namakkal.

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M.NIRMAL KUMAR, J.

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Pre-delivery common order made in

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