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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 28/02/2023

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The Hon'ble Mr.Justice **G.ILANGOVAN**

Cr1.RC(MD)No.519 of 2021

N.Kulasekaran : Petitioner/Complainant

Vs.

1.Dr.Iyyappan

2.Dr.Nallathambi

3.M.Namachivayam

4.N.Kulalvaimozhi : Respondents/Respondents

Prayer:- This Criminal Revision Petition has been filed under section 397 r/w 401 of the Criminal Procedure Code, to call for the records of the order passed in Cr.MP No.248 of 2014, dated 12/03/2020 by the Judicial Magistrate No.1, Tirunelveli and set aside the same.

For Petitioner : Mr.N.Kulasekaran
(Party in person)

For 1st Respondent : Mr.R.Anand

For 2nd Respondent : No appearance

For R3 and R4 : Mr.R.J.Karthick

**ORDER**

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This criminal revision has been filed seeking to set aside the order passed in Cr.MP No.248 of 2014, dated 12/03/2020 by the Judicial Magistrate No.1, Tirunelveli.

2.The facts in brief:-

The petitioner is the son of the respondents 3 and 4. The respondents 1 and 2 are the Doctors, who treated the petitioner for some ailments. Now the allegation on the part of the petitioner against the respondents is that he was not properly taken care by the parents and they were insulting and forcing him to work in the shop, which belongs to his father. But he wanted to pursue MCA decree, for which also the parents refused. Since they were forcing, he went to his relatives house in Bangalore and working in a Garment Factory. Even that was not liked by the parents, again he was driven from the relatives family. Later, he joined under graduation, that was also stopped by the parents. They were also compelled him to marry one Santhi stating that he is aged about 21 years. Again, he was chased away from the house, again, he went to his relative house in Bangalore. The father



spite of the above said situation, he pursued B.L. and now practicing as an Advocate. Even though he was making allegation against the parents and the Doctors, no action was taken. Later, he obtained information through Right to Information Act regarding the complaint. He came to know that the enquiry was done with the first respondent namely Dr.Iyyappan and the father of the petitioner namely M.Namachivayam. But the statement that was recorded from them was suppressed. So because of the trouble, that has been made by the parents and the wrong treatment given by Doctors, who are the respondents 1 and 2 herein, they are liable to be punished for the offences under sections 328, 341 and 500 IPC and section 30 of the Protection of Human Rights Act and Regulations 6.6 and 7.5 of Indian Medical Council Professional Conduct Etiquette and Ethic Regulations 2002.

3.That was enquired by the Judicial Magistrate No.1, Tirunelveli, in Cr.M.P No.248 of 2014 and during the course of enquiry, it was found that the parents took care of the petitioner and performed their duty in order to safeguard the interest of the petitioner and the respondents 1 and 2 also treated the petitioner to save



him from the illness. Finding that no *prima facie* case has been made out, the above said petition was dismissed.

4. Against which, this criminal revision has been filed.

5. The petitioner is a practising Advocate and he also appeared as party in person before this court. Finding that it is an issue between the parents and son, the matter was referred to the Mediation and Conciliation Centre, attached to this Bench. Even though, some sort of objection was made by the petitioner, but however, some sort of compromise was reached between the parents and the petitioner. He wanted to abandon the prosecution against the parents. So far as the respondents 1 and 2 herein are concerned, he wanted to pursue the petition/complaint.

6. He was also heard. The learned counsel appearing for the 1st respondent heard, in the presence learned counsel appearing for the parents.



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7. Reading of the complaint shows that some sort of trouble arose right from the graduation of the petitioner. Absolutely, there is no reason much less any motive to subject this petitioner to unnecessary medication and treatment. He has set out some sort of facts in his marital life. But we are not concerned about that here, since only limited point is available for discussion, to find out whether any *prima facie* case has been made out against the respondents 1 and 2 to proceed. We need not go into the other details, which are personal in nature.

8. According to the petitioner, four witnesses have been examined on his side and five documents marked, which also corroborated his allegations and even his father has also admitted his expulsion from the house.

9. The respondents would submit that even during the course of enquiry, the Dean was summoned and he has given a clear statement with regard to the issue.

10. Records called from the trial court shows that one Dr. Ramanujam was examined on the side of the



petitioner and he has given details about the treatment, that can be given to a psychiatric patient. He has gone through the entire medical records of the petitioner.

11.From the records, he found that he was undergoing treatment for "**Paranoid Schizophrenia**" From his assessment, he could not say that the above said treatment was given without any proper ailment.

12.In the light of the above evidence, who is the expert on the field, now let us go to the allegation made by the petitioner.

13.As stated above, the allegation of the petitioner is that without proper ailment, he was subjected to the above said unnecessary medical treatment at the instance of his parents. Even the mother, who was examined on his side, has given a clear picture with regard to the conduct of the petitioner. She would say that he used to make quarrel even on trivial issues and used to get angry. So it seems to be the character of the petitioner.



14. Now in the light of the above said, the question, which arises for consideration is whether any *prima facie* case is available to proceed against respondents 1 and 2, who are the Doctors. But in the light of the statement of the Doctor Ramanujam, no *prima facie* case is made out.

15. In this background, the judgment of the Hon'ble Supreme Court in the case of **Jacob Mathew Vs. State of Panjab and others (AIR 2005 SCC 3180)** is relevant for answering the issue. The relevant portion of the judgment would run like this:-

"53. Statutory Rules or Executive Instructions incorporating certain guidelines need to be framed and issued by the Government of India and/or the State Governments in consultation with the Medical Council of India. So long as it is not done, we propose to lay down certain guidelines for the future which should govern the prosecution of doctors for offences of which criminal rashness or criminal negligence is an ingredient. A private complaint may not be entertained unless



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the complainant has produced prima facie evidence before the Court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor. The investigating officer should, before proceeding against the doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion preferably from a doctor in government service qualified in that branch of medical practice who can normally be expected to give an impartial and unbiased opinion applying **Bolam's test** to the facts collected in the investigation. A doctor accused of rashness or negligence, may not be arrested in a routine manner (simply because a charge has been levelled against him). Unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the investigation officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld."



16. In the above said judgment, detailed guidelines have been given before prosecuting the medical practitioners. Even though relating to negligent aspect, the allegation of the petitioner is that they gave treatment without any ailment. Absolutely, I find no merit to connect the respondents 1 and 2 with the issue, that he was having with his parents.

17. Even on negligent aspect, the statement of Dr. Ramanujam is against the petitioner's case. None of the guidelines has been complied or attracted. So, I find no error or irregularity in dismissing the complaint by the trial court.

18. In the result, this criminal revision is **dismissed.**

28/02/2023

Index: Yes/No
Internet: Yes/No
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To,
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The Judicial Magistrate No.1,
Tirunelveli.



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G . ILANGO VAN , J

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