



W.P.(MD) No.13836 of 2021
and
CrI.O.P.(MD) No.20938 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.06.2023

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) No.13836 of 2021
and
CrI.O.P.(MD) No.20938 of 2022

W.P.(MD) No.13836 of 2021:

P.N.Balasubramanian

.. Petitioner

Vs.

1.The District Collector,
Thoothukudi District,
Thoothukudi.

2.The Joint Director of Health Services,
166, North Beach Road,
Thoothukudi-1.

3.Edison Hospital,
Through its Proprietrix/
Medical Superintendent,
Dr.V.Nithya,
286, Kulasekaranpatnam Road,
Tiruchendur-628 215,
Thoothukudi District.

.. Respondents



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Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the impugned order passed by the second respondent in Na.Ka.No.3580/ஈ1/2021 dated 15.07.2021 and quash the same as illegal and consequently direct the second respondent to conduct the enquiry afresh in proper manner by affording opportunity to all the parties.

For Petitioner	:	Mr.C.Arul Vadivel @ Sekar Senior Counsel assisted by Mr.J.Selvam
For RR1 & 2	:	Mr.M.Ramesh Government Advocate
For R3	:	Mr.D.Venkatachalam for M/s.AAV Partners

Crl.O.P.(MD) No.20938 of 2022:

1.V.Nithya	
2.Rakesh Fernando	.. Petitioners/Accused 1 & 3

Vs.

1.The Inspector of Police, Tiruchendur Temple Police Station, Thoothukudi District. (Crime No.118 of 2022)	.. 1 st Respondent/ Complainant
2.P.N.Balasubramanian	.. 2 nd Respondent/ Defacto Complainant



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Prayer: Petition filed under Section 482 of Criminal Procedure Code, 1973 to quash the FIR dated 14.10.2022 in Crime No.118 of 2022 on the file of the first respondent.

For Petitioner	:	Mr.D.Venkatachalam
For R1	:	Mr.M.Ramesh Government Advocate
For R2	:	Mr.C.Arulvadivel @ Sekar Senior Counsel for M/s.Arulvadivel Associates

COMMON ORDER

Since both the writ petition and the criminal original petition revolve around the same issue, a common order is being passed in these petitions.

2. Challenging the rejection of his petition dated 24.06.2021, by the second respondent, the writ petitioner has filed W.P.(MD) No.13836 of 2021 for the issue of a Writ of Certiorarified Mandamus to call for the records of the impugned order passed by the second respondent in



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Na.Ka.No.3580/ஈ1/2021 dated 15.07.2021, quash the same and direct the second respondent to conduct an enquiry afresh in a proper manner by affording opportunity to all parties.

3. The facts, which have proceeded the filing of the writ petition, are hereinbelow set out briefly:

The writ petitioner would submit that on 13.06.2021, at about 01.00 am, his wife Backiya Lakshmi developed sudden seizures and cough and she was immediately rushed to the third respondent-Hospital for treatment. After a preliminary examination, the duty Doctor had informed the writ petitioner that the patient showed symptoms of Covid-19 and therefore, advised to admit her in the hospital. She was admitted at around 01.30 am and the duty Doctor informed the writ petitioner that the oxygen level of his wife was 60%. He was directed to deposit a sum of Rs.7,000/- as advance, for which no receipt was issued.

4. The writ petitioner would submit that after the admission, he was asked to remit a sum of Rs.2,387/- in the cash counter of the third



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an attempt to overcome the failure to issue receipt for the sum of Rs.7,000/-. Therefore, it is the case of the writ petitioner that the third respondent-Hospital had collected a total sum of Rs.24,062/- from him.

6. The writ petitioner would submit that once again his wife was shifted from the Tiruchendur Government Hospital to the Thoothukudi Government Medical College Hospital in the earlier hours of 13.06.2021. On 14.06.2021, she had undergone a RTPCR test in the Government Medical College Hospital, which confirmed that his wife was not affected by Covid-19. The writ petitioner would submit that on account of the wrong diagnosis of the third respondent-Hospital, the writ petitioner's wife was admitted in a Covid ward for two days, which has psychologically affected her. Ultimately, he had taken his wife back home on 15.06.2021. On 18.06.2021, he had addressed a letter to the third respondent to furnish all the medical records. Under cover of letter dated 22.06.2021, the third respondent had provided certified copies of the medical records. The writ petitioner would submit that in the guise of treating her for Covid-19, huge sums of money had been extracted from



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the writ petitioner and in respect of taking RTPCR test, the third respondent Doctors took CT scan on the chest and brain of the writ petitioner's wife within half an hour and even before getting the results, she was discharged from the hospital. On account of the wrong diagnosis, the petitioner's wife has been admitted in the Covid ward from 13.06.2021 to 15.06.2021. The writ petitioner would submit that this collection of exorbitant charges was in violation of G.O.Ms.No.251, dated 22.05.2021, Health and Family Welfare Department of the Government of Tamil Nadu, wherein the treatment expenses of all critical and non-critical Covid patient admitted in private hospitals had been brought under the coverage of Chief Minister's Comprehensive Health Insurance Scheme (CMCHIS) and the hospitals were directed to provide cashless treatment. The fee structure has also been fixed under the said Government Order. Therefore, the writ petitioner would submit that not only had the third respondent collected excess amount over and above the sum of Rs.15,000/- per day for non-critical Covid patients, but also collected the sum of Rs.6,530/- twice to adjust the advance amount of Rs.7,000/-.



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7. Since there was a blatant violation of the Government Order, the writ petitioner had submitted a petition to the first respondent dated 24.06.2021 requesting him to cancel the permission granted to the third respondent for Covid treatment and to repay the excess amount collected from him. The first respondent, in turn, had directed the second respondent to take action on the petition and inform the same to the writ petitioner. Pursuant to the direction of the first respondent, the second respondent had issued summon to the writ petitioner to appear for an enquiry at 10.30 am on 14.07.2021 in his office. The writ petitioner had appeared and submitted the entire records and has given his statement. However, the second respondent, without considering the material put forward by the writ petitioner, proceeded to reject the claim made by the writ petitioner and informed the first respondent that the records would show that proper treatment has been given to the writ petitioner and no excess amount has been collected from him. Challenging the said order, the writ petitioner is before this Court by way of W.P.(MD) No.13836 of 2021.



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8. The writ petitioner had also lodged a complaint before the Thoothukudi Police Station seeking action against the petitioners in Crl.O.P.(MD) No.20938 of 2022 and one Manikandan alleging that the petitioners in Crl.O.P.(MD) No.20938 of 2022 have extracted money on the presumption that the writ petitioner's wife suffered from Covid-19 and ignored the fact that he was a beneficiary of the CMCHIS for a cashless treatment. It appears that the writ petitioner had lodged his complaint before the Tiruchendur Police Station on 02.09.2021, but they had refused to receive the complaint and advised him to file the complaint before the Superintendent of Police, Thoothukudi. Therefore, he had sent a petition to the Superintendent of Police, Thoothukudi on 07.09.2021, who despite receiving the same on 08.09.2021, has not taken any action. The writ petitioner, therefore, pleaded to file a petition before the Judicial Magistrate, Tiruchendur in Crl.M.P.No.788 of 2021 praying for an order directing investigation into the complaint of the petitioner dated 02.09.2021 before the Tiruchendur Police Station. The said petition was ordered on 14.10.2022 and directions were issued to register



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the complaint and thereafter, the same was taken on file on 14.10.2022.

The petitioners in Crl.O.P.(MD) No.20938 of 2022, who are the accused, have filed the criminal original petition seeking to quash the criminal complaint.

9. A complaint was originally lodged with the District Collector, Thoothukudi, who had directed an enquiry to be conducted by the Joint Director, Health Services, who on a detailed enquiry, had come to the conclusion that the writ petitioner's wife was given the necessary treatment and charges had been collected only for the treatment provided and no excess charge had been received. This factum had been suppressed in the petition before the Magistrate under Section 156(3) of the Criminal Procedure Code and therefore, the Judicial Magistrate had directed registration of the FIR. They would therefore, submit that the complaint is a motivated one and has to be quashed, particularly when one authority has conducted a detailed enquiry and come to the conclusion that there is no merit in the complaint lodged.



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10. Both the writ petition and the criminal original petition revolve around the issue as to whether the writ petitioner had been cheated by the third respondent-Hospital and whether they had collected amounts in excess of the amounts stated in the Government Order referred above.

11. Perusal of the Government Order in G.O.(Ms).No.240, Health and Family Welfare (EAPI-1) Department, dated 05.06.2020 would indicate that this Government Order has been issued to facilitate the treatment of patients who came within the CMCHIS/New Health Insurance Scheme/Tamil Nadu Pensioners' Insurance Scheme. Therefore, it is clear that this Government Order has been issued for the benefit of the beneficiaries of the New Health Insurance Scheme/Tamil Nadu Pensioners' Scheme.

12. A perusal of the petition forwarded by the petitioner to the first respondent dated 24.06.2021 would clearly indicate that the petitioner has not informed the authorities that he is covered under the schemes referred above. Therefore, it is that the third respondent-Hospital has



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directed the petitioner to pay the amounts. It is the further contention of the petitioner that a sum of Rs.24,062/- has been collected by the third respondent-Hospital. However, a perusal of the impugned order would show that with reference to the payment of Rs.6,530/- there is a double entry, since the receipt number of these two amounts are one and the same. When the sum of Rs.6,530/- is deducted, the total amount, i.e. paid is only a sum of Rs.17,912/- which amount has been accounted for by the second respondent in the impugned order. That apart, a detailed break up of the amounts has also been set out in the impugned order. The second respondent has also considered the treatment that has been given to the writ petitioner's wife and opined that the treatment given was also as per the procedure set out for treating Covid-19 patients.

13. Reading of the impugned order would clearly show that nowhere has the writ petitioner stated that he is the beneficiary of the insurance scheme floated by the State. Therefore, I see no reason to interfere with the order impugned.



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14. Since the very basis of the complaint is that the petitioners in Crl.O.P.(MD) No.20938 of 2022 have charged in excess, totally overlooking the fact that the writ petitioner is a beneficiary under the Insurance Scheme, and as this Court has from the records come to see that the writ petitioner has not pleaded that he is a beneficiary of the Insurance Scheme, the criminal complaint lacks any basis and accordingly, the FIR dated 14.10.2022 in Crime No.118 of 2022 on the file of the first respondent is quashed.

15. In the result,

- i. W.P.(MD) No.13836 of 2021 is dismissed; and
- ii. Crl.O.P.(MD) No.20938 of 2023 is allowed.

20.06.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes

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P.T.ASHA, J.

abr

To

- 1.The District Collector,
Thoothukudi District,
Thoothukudi.
- 2.The Joint Director of Health Services,
166, North Beach Road,
Thoothukudi-1.
- 3.The Inspector of Police,
Tiruchendur Temple Police Station,
Thoothukudi District.

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