



WP(MD) No.5870 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **13.03.2024**

CORAM:

THE HONOURABLE **MR.JUSTICE SATHI KUMAR SUKUMARA KURUP**

W.P.(MD) No.5870 of 2024

M.A.K.Fathima Munavvara

... Petitioner

/vs./

1.The Commissioner of Police,
Tirunelveli City.

2.The Inspector of Police,
Junction Police Station,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents to take action on the petitioner's complaint dated 22.12.2023 under the criminal law in the light of the dictum laid down by the Honourable Supreme Court of India in the case of Lalita Kumari Vs. Government of Uttar Pradesh and Ors. reported in (2014) 2 SCC 1.

For Petitioner : Mr.V.Rama Subbu
For Respondents : Mr.B.Thanga Aravindh
Government Advocate (Crl.side)



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ORDER

The learned Counsel for the Petitioner submits that the Petitioner's father suffered from carcinoma cancer and he was having status of post hemicolectomy. It is the case of the Petitioner that her father and mother went to the Shifa Hospital and when the Petitioner's father admitted in the Shifa Hospital on 11.12.2023, the Doctor namely Dr.Mohamed Ibrahim advised him to undergo 3 rounds of chemotherapy after getting the fitness certificate from the Cardiologist by name Dr.Girish Deepak at Shifa Hospital. He had issued instructions to the nurses to administer chemotherapy. When the procedure of chemotherapy carried on by the nurses, Dr. Mohamed Ibrahim was not present to supervise the team. He left the hospital. Subsequently, the father of the Petitioner suffered Fits by 4.00 p.m on 12.12.2023. The chemotherapy was administered till 12.12.2023 at 2.30 p.m. By 4.00 p.m., the father of the Petitioner suffered fits and subsequently he lost the consciousness. By around 11.30 p.m., Dr.Alagesan, Neurologist came to the hospital to examine the father of the Petitioner and had informed the nurses that the chemotherapy had affected his brain and advised to shift the patient to IMCU. By 12.00 night the Petitioner's father was shifted to IMCU. The woman Doctor at IMCU administered ventilator and the Petitioner and her mother were



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not allowed on 14.12.2023 by around 10.00 a.m. Dr.Girish Deepak, Cardiologist examined the father of the Petitioner and stated that the administration of chemotherapy had affected his heart. Therefore, the pulse rate has come down. After all these procedures and after other Doctors have visited the patient, Doctor Mohamed Ibrahim had not at all come to the ward of the Petitioner's father.

2.On 16.12.2023, when the Petitioner and the mother sought clarification regarding treatment given to the Petitioner's father, the Doctors were not responding to the same. On 18.12.2023, by around 4.00 a.m., in the morning there was power breakdown. Therefore, the hospital authorities requested the relatives of the patient to shift the patient. Accordingly, the Petitioner and her mother took the Petitioner's father from the Shifa Hospital to the Tirunelveli Medical College Hospital. The father of the Petitioner was admitted in the Tirunelveli Medical College Hospital on 18.12.2023 by around 8.00 a.m. and by 9.30 a.m, the father of the Petitioner died. It is the submission of the learned Counsel for the Petitioner that the Petitioner's father died only because of lack of medical care by Dr.Mohamed Ibrahim of Shifa Hospital. Hence, the Petitioner had preferred a complaint with the Respondent Police.



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3.The learned Government Advocate (Criminal Side) on instructions from the Respondents would submit that the second Respondent had enquired with the Petitioner herein, regarding availability of any documents of medical negligence. Since the Petitioner claims that she did not have any documents, they had closed the enquiry report. Also, the learned Government Advocate submits that the Respondent Police forwarded the complaint through the Commissioner of Police to the Joint Director of Health for getting opinion. Based on the opinion, they have closed the enquiry.

4.The learned Government Advocate for the Respondents would further submit that the first Respondent/Commissioner of Police had directed the second Respondent/the Inspector of Police to get an opinion from the Joint Director of Health Service, Tirunelveli, regarding the complaint. Only after getting the opinion from the Joint Director of Health Service, Tirunelveli, further action will be taken.

5.In the case of *Lalitha Kumari Vs. State of Uttar Pradesh* reported in



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(2014) 2 SSC 1, the Hon'ble Supreme Court had issued guidelines that the Investigation Officer can in the circumstances conduct an enquiry before registering the case. Here, the facts of the case as narrated by the Petitioner herein as Complainant in the case attracts negligence from the point of view of the common man. When the father of the Petitioner went to the hospital, the Doctor, by name Mohammed Ibrahim in the hospital advised the father of the Petitioner to undergo three rounds of Chemotherapy after getting fitness certificate from the Cardiologist. He had advised the Nurses of the hospital to administer Chemotherapy, but he left the Hospital. It was not done under the supervision of the Doctor. That is the gist of the case. It is a case involves Superspecialist. Therefore, getting opinion from the Joint Director of Health Service, Tirunelveli will not be sufficient. The Investigation Officer shall get an opinion from the Superspecialist dealing with Chemotherapy. Only then, they can come to a conclusion that whether the case is made out or not. If the cognizable offence is made out against the Doctor under Section 304 IPC, the Investigation Officer can register a case and investigate the same against him/her.

6. On perusal of the complaint, it is found that the case is made out that the



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Doctor was not present in the place of administration of Chemotherapy. Not only that, the Petitioner and her mother, who were present in the hospital as attendants of the patient, were eagerly enquiring the staff of the hospital regarding the condition of the Petitioner's father. They were not informed of the condition. Only after power breakdown the Petitioner was directed to take the patient to medical college hospital. In the normal course of human conduct, the conduct of Dr.Mohamed Ibrahim of Shifa Hospital and his staff attracts case of medical negligence. The Investigation Officer is directed to take opinion from the Super-specialists in the Government Hospital, Tirunelveli Medical College. Only then, further proceedings will be taken up in the investigation by the Investigation Officer.

With the above directions, ***this Writ Petition stands disposed of.*** No costs.

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Index : Yes / No
Internet : Yes / No
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SATHI KUMAR SUKUMARA KURUP, J.

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