



CRL OP(MD). No.12328 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 02.01.2024

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THE HONOURABLE MRS .JUSTICE R.HEMALATHA

CRL OP(MD)No.12328 of 2020
and
Crl.M.P(MD) No.5558 of 2020

1.Dr.Gunasekaran

2.Dr.N.R.T.R.Thiyagarajan

... Petitioners

Vs

1.The Inspector of Police,
Theni Police Station,
Theni District.
(Crime No.3783 of 2020)

2.V.P.Deivendran

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records relating to the First Information Report in Crime No.3783 of 2020 on the file of the first respondent Police and quash the same as illegal.

For Petitioners : Mr.A.Mithun Chakravarthi

For R1 : Mr.R.M.Anbunithi
Additional Public Prosecutor (crl.side)

For R2 : No appearance



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ORDER

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The present petition is filed seeking to quash the First Information Report in Crime No.3783 of 2020 of Theni Police Station, Theni District.

2. The petitioners are the Accused Nos.1 and 2 in Crime No.3783 of 2020 of Theni Police Station, for the alleged offences punishable under Sections 304(A) and 420 IPC. The case of the prosecution is that the first accused Dr.Gunsekaran though was not a qualified doctor gave treatment to one Karthigaiselvam, son of the defacto complainant on 27.08.2019, as a result of which the said Karthigaiselvam died.

3. Mr.A.Mithun Chakravarthi, learned counsel appearing for the petitioners would contend that though the first petitioner/first accused is not an Allopathy Doctor, he is a Siddha Doctor and that he did not give treatment to the deceased Karthigaiselvam. His further contention is that the deceased Karthigaiselvam was brought dead to the hospital and therefore, the offences under Sections 304(A) and 420 IPC would not be attracted as far as the present case is concerned. According to him, in G.O(Ms)No.220, Health and Family Welfare Department, dated 2/8



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04.07.2008, certain guidelines were issued by the State Government of Tamil Nadu, wherein it is stated that whenever there is a medical negligence on the part of the doctors, the same has to be reported to the Medical Council or Government Medical Practitioners and this procedure has not been followed in the present case. His further contention is that there is a delay in lodging the First Information Report and that in the earlier complaints before the District Collector and Joint Director of Medical Council, the father of the deceased had given different versions.

4. Per contra, Mr.R.M.Anbunithi, learned Additional Public Prosecutor would contend that the police had recorded the statements of four eye witnesses, in which they have clearly stated that the first accused indeed gave treatment to the deceased Karthigaiselvam. It is also his contention that G.O.(Ms)No.220, Health and Family Welfare Department, dated 04.07.2008 would not apply to the present case, since the said Government Order deals with the registered medical practitioners. His further contention is that since the first accused is not a doctor by profession, the treatment given by him is totally wrong.



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5. At the outset, it may be observed that the deceased was aged about 25 years and was brought by his father to N.R.T.Hospital for complaints of chest pain. The first accused Gunasekaran introduced himself as a doctor to the deceased as well as his father and also administered an injection even without verifying whether he is allergic to any particular medicine. The patient immediately collapsed and died and thereafter, the father of the deceased had lodged a complaint with the Inspector of Police, Theni Police Station, which came to be registered in Crime No.3783 of 2020 for the offences punishable under Sections 304(A) and 420 IPC against Gunasekaran and Dr.N.R.T.R.Thiyagarajan, who is the owner of the N.R.T.Hospital.

6. Though it is contended by the learned counsel for the petitioners that the father of the deceased had given two different versions in the complaints given by him to the District Collector and the Joint Director of Medical Council, copies of the said records have not been filed before this Court. The contention of the learned Additional Public Prosecutor is that there are eyewitnesses to show that the first accused gave treatment to the deceased and that the second accused being the owner of the



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hospital had permitted the first accused to give treatment to various patients. Merely because there is a delay in lodging the First Information Report, the entire First Information Report cannot be quashed in the facts and circumstances of the present case. The second accused though was in know of the fact that the first accused Gunasekaran is not a certified allopathy medical practitioner had given permission to him to give treatment to patients.

7. As rightly pointed out by the learned Additional Public Prosecutor, G.O.(Ms).No.220, Health and Family Welfare Department, would not apply to the present case, since the said G.O pertains to allopathy doctors. Moreover, some modifications have been given in G.O(Ms)No.220, which is extracted hereunder:-

4.The Government have examined the request of the Indian Medical Association and the Tamil Nadu Government Doctor's Association for abiding the guidelines laid down by the Supreme Court of India in the matter taking account of the existing guidelines in the matter and issue the following orders:

(a) In partial modification of the orders issued in the Government Order first read above, the



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investigating officers are directed to follow the guidelines laid down by the Supreme Court of India in its judgement dated 05.08.2005 in Criminal Appeal No. 144-145 of 2004 (Jacob Mathew vs State of Punjab and Another) governing the prosecution of doctors for offences of criminal rashness or criminal negligence detailed in para 3 of his order.

(b) The orders issued in the Government Order second read above constituting a permanent enquiry committee to look into the complaints against doctors regarding negligence in treatment modalities are hereby cancelled.

8. In the instant case, the matter has to be thoroughly investigated by prosecution and therefore, I do not find any reason to quash the FIR in Crime No.3783 of 2020. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

02.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To
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- 1.The Inspector of Police,
Thallakulam Police Station,
Madurai City.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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R.HEMALATHA,J.

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