



Crl.O.P.No.20565 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2025

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

Crl.O.P.No.20565 of 2022
and
Crl.M.P.Nos.13475 & 13473 of 2022

Dr.Rani

... Petitioner

Vs.

Obuli Dileep

... Respondent

Prayer : Criminal Original Petition filed under Section 482 of Code of Criminal Procedure to call for the records in C.C.No.640 of 2022 on the file of the Judicial Magistrate No.II, Salem, and quash the same.

For Petitioner : Mr.V.Karthik
Senior Counsel
for Mr.E.K.Kumaresan

For Respondent : Mr.R.John Sathyan
Senior Counsel
for Mr.P.Divakar



Crl.O.P.No.20565 of 2022

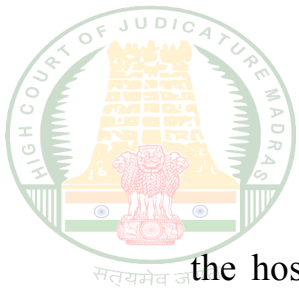
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ORDER

This Criminal Original Petition is filed to quash the private complaint in C.C.No.640 of 2022 on the file of the learned Judicial Magistrate No.II, Salem, filed against the petitioner, who is a medical practitioner, for the offence under Section 304-A IPC, for causing death of the wife of the *de facto* complainant/respondent due to medical negligence, when she was admitted in the hospital for delivery of her second child.

2.The crux of the private complaint is as follows :

2.1.On 21.09.2008, the wife of the *de facto* complainant delivered a male child through caesarian. During the second pregnancy, the wife of the *de facto* complainant got medical advice from the petitioner and the petitioner assured his wife that, despite previous delivery performed by C-Section, she can give normal delivery of second child by a method called Vaginal Birth After prior Caesarean (VBAC). Accordingly, from March, 2016, till admission in the hospital for delivery of second child on 07.11.2016, the wife of the *de facto* complainant was regularly attending



CrI.O.P.No.20565 of 2022

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the hospital of the petitioner. On 05.11.2016, the *de facto* complainant's wife was admitted in the hospital at 04.30 p.m. On 06.11.2016, being a Sunday, no medical officer was available in the hospital. On 07.11.2016, the wife of the *de facto* complainant developed labour pain at 04.30 a.m. Therefore, she was admitted in the ICU. Thereafter, the *de facto* complainant left for his home at 7.55 a.m. At 09.00 a.m., the *de facto* complainant was informed by his mother that his wife was in serious condition. When he came to the hospital, the petitioner informed the *de facto* complainant that there are some complications in delivery and therefore, they had to resort to C-Section surgery for delivery and thereby, a female child was delivered at 08.37 a.m. He was informed that his wife had developed breathlessness during surgery and that they have sought medical opinion from a neurologist. Thereafter, the wife of the *de facto* complainant was taken to Neuro Foundation Hospital for taking CT Scan at around 11.30 a.m., where she was declared dead.

2.2.It is the case of the *de facto* complainant that, only while declaring the death, consent was obtained from the mother-in-law of the deceased. Prior to the surgery, no consent, whatsoever, has been obtained



Crl.O.P.No.20565 of 2022

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from the deceased or her mother-in-law. Thereafter, after cremation of the body, on 09.11.2016, when the *de facto* complainant and his relatives went to the hospital and sought for case sheets, the hospital authorities refused to give the case sheets. As the case sheets were not handed over to the *de facto* complainant, he entertained a doubt about the treatment.

2.3.It is the contention of the complainant that, before undertaking VBAC, consent of the patient has to be obtained. However, no such consent has been obtained either from the deceased or her mother-in-law. Further, no anaesthetist was present in the hospital at the time of surgery and child specialist was also not present. In this regard, a committee was constituted by the State Government to enquire and report about the maternal death and accordingly, enquiry was conducted by Dr.Shanthi, DGO and Dr.Rajan, Senior Assistant Surgeon. The experts have submitted a report dated 20.12.2016, stating that the wife of the *de facto* complainant died due to the negligent act of the petitioner. In the report, it is clearly held that anaesthetist should have been present in the hospital during surgery, however, no such anaesthetist was present at the time of surgery and no specialist was also present in the hospital at the time of conducting



Crl.O.P.No.20565 of 2022

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surgery. Further, it is also opined that, without noticing the labour pain, several medicines have been given wrongly and before VBAC, no consent has been obtained. Based on the report of the experts, the Tamil Nadu Medical Council has suspended the petitioner for a period of six months.

2.4. Based on the report of the medical experts indicating that the death of the wife of the *de facto* complainant was solely due to the negligent act of the petitioner, the present private complaint has been filed against the petitioner for the offence under Section 304-A IPC before the learned Judicial Magistrate No.II, Salem.

2.5. It is stated in the complaint that the complainant came to the knowledge of the negligent act of the petitioner causing the death of his wife, only on seeing the medical experts' report on 12.05.2017. Though the complaint ought to have been filed within a period of three years from the date of knowledge, it is stated in the complaint that the same has been filed with a delay of 128 days and prayed for condonation of such delay.

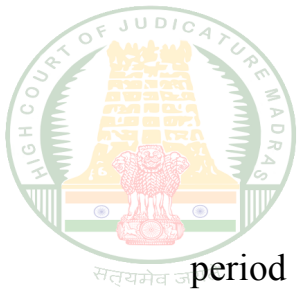


Crl.O.P.No.20565 of 2022

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3.The trial Court took cognizance of the complaint in C.C.No.640 of 2022 for the offence under Section 304-A IPC. Though the complaint was filed on 21.03.2022, taking note of the fact that the petitioner came to the knowledge of the negligent act of the petitioner only after the medical report of the panel comprising of Dr.Shanthi and Dr.Rajan constituted by the State Government on 12.05.2017 and that the period of lockdown has been excluded from computation of limitation, the trial Court held that the complaint is not barred under Section 468(2)(c) of the Code of Criminal Procedure and it is safe to hold that the complaint is within limitation in accordance with Section 469(1)(b) of the Code. The trial Court has also taken note of the sworn statement and the documents filed along with the complaint and found that a *prima facie* case has been made out for the offence under Section 304-A IPC and thereby, issued summons to the accused. The said private complaint is challenged in this Criminal Original Petition.

4.Learned Senior Counsel appearing for the petitioner challenged the private complaint mainly on the ground that the complaint is filed after a



CrI.O.P.No.20565 of 2022

period of three years which is barred under Section 468 Cr.P.C. However, the trial Court has taken the complaint on file, which is barred by limitation.

Further, it is his contention that high degree of negligence is required to prosecute a medical officer for medical negligence. Mere lack of care or ordinary negligence will not attract the offence under Section 304-A IPC. It is his contention that, absolutely, in the entire private complaint and the materials placed along with the complaint, negligence of high standard is conspicuously absent. Therefore, criminal prosecution is not maintainable.

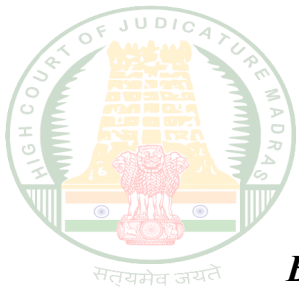
In support of his submissions, the learned Senior Counsel relied upon the judgment of the Hon'ble Supreme Court in ***Jacob Mathew v. State of Punjab and another*** reported in ***(2005) 6 SCC 1***. The learned Senior Counsel would further submit that, in fact, the very next day after death, without any inquest, the body was cremated. Thereafter, the *de facto* complainant, along with a group of people, entered into the hospital and damaged the hospital properties, which resulted in filing of a criminal case as against the *de facto* complainant and others. Only to thwart that, the present criminal complaint has been filed as against the petitioner. Hence, he prayed for quashing the FIR.



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5. Whereas, the learned Senior Counsel appearing for the respondent/*de facto* complainant would submit that the report of the expert committee constituted by the State Government clearly indicates that necessary protocol while conducting a surgery has not been properly followed, viz., no anaesthetist was present during the surgery; no child specialist was present during the surgery; no requisite medical equipments were available in the hospital while conducting surgery, particularly VBAC. He would further submit that, before performing VBAC, no prior consent has been obtained. All these facts clearly indicate that the negligence is gross and culpable. The trial Court has clearly taken note of the above facts. Admittedly, only after receipt of the medical report, the *de facto* complainant came to the know about the negligent act of the petitioner which resulted in the death of his wife. Therefore, it is not a fit case to quash the proceedings at the threshold. In support of his submissions, the learned Senior Counsel relied upon the following judgments :

- i. *Dr.J.S.Rajkumar v. Assistant Commissioner of Police [2012 (6) CTC 379]*
- ii. *Dr.Anil Pinto v. State of Maharashtra [Criminal Appeal No.395/1995 & 123/1996, dated 09.02.2024, High Court of*



Crl.O.P.No.20565 of 2022

Bombay]

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iii. *K.G.Premshankar v. Inspector of Police [2002 SCC Online SC*

859]

iv. *Seth Ramdayal Jat v. Laxmi Prasad [2009 SCC Online SC*

772]

6.Heard the learned counsel on either side and perused the entire materials available on record.

7.On a perusal of the entire private complaint, it is seen that the entire complaint is based on the report given by the expert committee constituted by the State Government to enquire into the maternal death of the wife of the *de facto* complainant. The complaint has been filed, of course, after a period of three years. Along with the private complaint, several documents are also filed including the report of the medical experts, which is also taken note of by the trial Court while taking cognizance. It is also relevant to note that a civil suit in O.S.No.155 of 2017 has also been filed against the petitioner by the *de facto* complainant before the District Court, Salem, claiming damages. The said suit has been decreed. In the said suit, the expert Dr.Shanthi has also been examined as P.W.2 and the expert's report

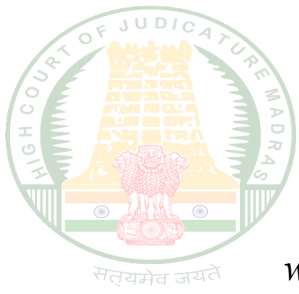


CrI.O.P.No.20565 of 2022

has been marked as Ex.A11. The report filed by the experts clearly indicates that the petitioner ought not to have undertaken VBAC in the case of the wife of the *de facto* complainant. It appears that there was no anaesthetist or child specialist present during the surgery. This is also reflected in the report of the experts. Based on the same, the Medical Council has also taken action as against the petitioner.

8. In such view of the matter, this Court is of the view that there is a *prima facie* case made out as against the petitioner for her negligent act. No doubt, while prosecuting the Doctors for their negligent act under Section 304-A IPC, high degree of negligence is demanded in order to establish the criminal offence than what is required to create a civil liability. This Court, in ***Dr.J.S.Rajkumar v. Assistant Commissioner of Police*** reported in ***2012 (6) CTC 379***], referring to the judgment of the Hon'ble Supreme Court in ***Jacob Mathew v. State of Punjab and another*** reported in ***(2005) 6 SCC 1***, has held as follows :

“16. Thus, the Hon'ble Supreme Court has distinguished an ordinary negligence giving rise to a cause of action for a civil claim and gross negligence which gives rise to a cause of action for criminal prosecution. The Hon'ble Supreme Court

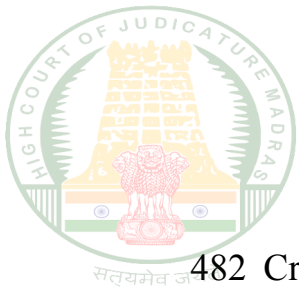


CrI.O.P.No.20565 of 2022

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went on to say that though the word gross is not found in Section 304-A of IPC, when the question of prosecuting a medical practitioner for medical negligence comes, the word "gross" should be read into Section 304-A of IPC. The Hon'ble Supreme Court has further held that gross negligence is a higher degree of negligence than ordinary negligence. In other words, "gross" means "reckless" or "callous". The Hon'ble Supreme Court has finally held that to maintain the prosecution of a medical practitioner for medical negligence, it should be found that there are materials to show that the medical practitioner has committed not an ordinary negligence but, a gross negligence."

9. Therefore, whenever there is an allegation of negligent act of a medical officer, whether such act was due to the recklessness on the part of the Doctor or it is only an ordinary negligence, has to be decided on the basis of preponderance of probability, which can be decided only in a trial after considering the overall substantive evidence on record. Mere negligence may not always amount to gross negligence or culpable. That has to be decided on appreciation of overall materials on record. The question as to whether such negligence amounts to “gross” or “culpable” is a matter of evidence. This Court, exercising its jurisdiction under Section



CrI.O.P.No.20565 of 2022

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482 Cr.P.C., cannot conduct a roving enquiry or mini-trial to come to a definite conclusion as to whether the alleged negligence is ordinary in nature or gross or culpable. It is a matter of evidence which has to be appreciated by the trial Court based on the materials, taking note of overall evidence on record and based on facts and circumstances of each case. Considering the nature of allegations and the nature of negligence pointed out by the experts and the records filed along with the sworn statement which is also perused by the Court, the issue as to whether the act of negligence committed by the petitioner falls within the ambit of ordinary negligence or makes out an offence is within the realm of appreciation of evidence by the trial Court. Therefore, *prima facie*, this Court is of the view that taking cognizance of the complaint by the trial Court, does not require any interference.

10.As far as the limitation is concerned, though the trial Court has condoned the delay by reckoning the period of limitation of three years from the date of knowledge under Section 469(1)(b) Cr.P.C., this Court is of the view that such approach is not fair. In fact, limitation will be reckoned from the date of offence, not from the date of knowledge. Therefore, the



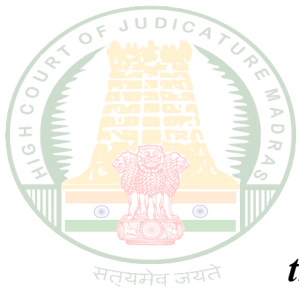
CrI.O.P.No.20565 of 2022

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provision under Section 469(1)(b) Cr.P.C. cannot be applied. However, even assuming that the complaint is not filed within a period of three years, this Court is of the view that the same itself cannot be a ground for non-suiting the complainant. Even then, the Court can take the complaint on file under Section 473 Cr.P.C., if it is satisfied that the delay has been properly explained or if it is necessary to do so in the interests of justice. The Hon'ble Supreme Court, in ***Vanka Radhamanohari (Smt) vs Vanka Venkata Reddy and others*** reported in (1993) 3 SCC 4, has held as follows

:

“6. At times it has come to our notice that many courts are treating the provisions of Section 468 and Section 473 of the Code as provisions parallel to the periods of limitation provided in the Limitation Act and the requirement of satisfying the Court that there was sufficient cause for condonation of delay under Section 5 of the Act. There is a basic difference between Section 5 of the Limitation Act and Section 473 of the Code. For exercise of power under Section 5 of the Limitation Act, the onus is on the appellant or the applicant to satisfy the Court that there was sufficient cause for condonation of the delay, whereas Section 473 enjoins a duty on the Court to examine not only whether such delay has been explained but as to whether it is the requirement of

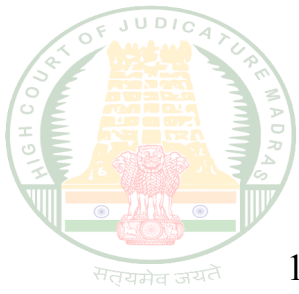


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the justice to condone or ignore such delay. As such, whenever the bar of Section 468 is applicable, the Court has to apply its mind on the question, whether it is necessary to condone such delay in the interests of justice. While examining the question as to whether it is necessary to condone the delay in the interest of justice, the Court has to take note of the nature of offence, the class to which the victim belongs, including the background of the victim. ...”

(emphasis supplied)

11. Therefore, it is the discretion of the Court to take cognizance. If the Court is of the view that it is necessary, in the interest of justice, a complaint, even after the period of limitation, can be taken on file. Though the trial Court has taken cognizance of the complaint by condoning the delay and by reckoning the limitation from the date of knowledge under Section 469(1)(b) Cr.P.C., this Court is of the view that still the complaint is maintainable and the same can be construed as having being taken cognizance under Section 473 Cr.P.C. Therefore, this Court is not inclined to interfere with the order of the trial Court taking cognizance of the impugned private complaint.



Crl.O.P.No.20565 of 2022

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12.In view of the above discussion, I do not find any merit in this Criminal Original Petition. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

13.The trial Court shall consider the entire aspects and overall evidence on record and decide the issue, particularly taking note of the well settled position of law governing this field.

26.08.2025

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Internet : Yes

Index : Yes / No

Speaking order : Yes / No

Neutral Citation : Yes / No

To

The Judicial Magistrate No.II,
Salem.



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Crl.O.P.No.20565 of 2022

N. SATHISH KUMAR, J.

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Crl.O.P.No.20565 of 2022



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CrI.O.P.No.20565 of 2022

26.08.2025