



Crl.O.P.No.27682 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2025

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

Crl.O.P.No.27682 of 2023

1.Dr.C.Palanivelu

Director

GEM Hospital & Research Centre Private Limited,
45-A, Pankaja Mill Road,
Ramanathapuram,
Coimbatore – 641 045.

2.Dr.Srikanth,

GEM Hospital & Research Centre Private Limited,
45-A, Pankaja Mill Road,
Ramanathapuram,
Coimbatore – 641 045.

3.Gem Hospital and Research Centre Private Limited,

Represented by its Director,

Dr.C.Palanivelu,

45-A, Pankaja Mill Road,

Ramanathapuram,

Coimbatore – 641 045.

... Petitioners

*[P3 impleaded as per order dated 28.06.2024 in
Crl.M.P.No.7432 of 2024 in Crl.O.P.No.27682 of 2023]*

Vs.



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1.State represented by Inspector of Police,
Tiruchengode Rural Police Station,
FIR No.329 of 2023,
Tiruchengode Taluk,
Namakkal District.

2.S.Mohan

... Respondents

Prayer : Criminal Original Petition filed under Section 482 of Criminal Procedure Code to call for the entire records relating to Crime No.329 of 2023 from the file of the 1st respondent, quash the same.

For Petitioners	:	Mr.D.Shivakumaran
For R1	:	Mr.K.M.D.Muhilan Additional Public Prosecutor
For R2	:	Mr.V.Anandhamoorthy

ORDER

This Criminal Original Petition is filed to quash the FIR filed against the petitioners in Crime No.329 of 2023 for the offence under Section 337 IPC alleging rash and negligent act of the petitioners who are medical professionals.



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2.The case of the *de facto* complainant/2nd respondent is that he was admitted into GEM Hospital and Research Centre Pvt. Ltd., Coimbatore, on 24.09.2012 for pain in the abdomen and continuous vomiting. After initial medical investigation by one Dr.Sridhar, he was admitted for further treatment and was treated by Dr.Srikanth of GEM Hospital/2nd petitioner. The *de facto* complainant had undergone laparoscopic Cholecystectomy surgery on 27.09.2012 and his gall bladder was removed. Even after the removal of gall bladder, he was suffering discomfort, pain and occasional vomiting. However, the pain got aggravated in the month of March, 2021 and he took treatment in another hospital namely Royal Care Super Speciality Hospital in Coimbatore, wherein, it was found that Biliary Stent was noted in-situ within the CBD and the CBD appeared dilated. Therefore, he had undergone treatment and surgery in Royal Care Super Speciality Hospital to remove the Stent deployed by the GEM Hospital. According to the *de facto* complainant, there was a negligent act of the GEM Hospital and its Doctors and for more than 8 years, they have not advised him properly. The Stent was there in his body and therefore, he



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could not run his normal life, thereby, he had to undergo surgery for Stent removal. Despite the surgery for Stent removal, the *de facto* complainant is still undergoing moderate to severe abdominal pain. Therefore, he lodged a complaint before the 1st respondent Police. Based on the complaint lodged by the *de facto* complainant in this regard, an FIR came to be registered by the 1st respondent Police in Crime No.329 of 2023. Challenging the same, the present Criminal Original Petition has been filed.

3.Learned counsel for the petitioners would submit that, though the *de facto* complainant had undergone surgery in the GEM Hospital in the year 2012, he has given the complaint only in the year 2023 only in order to harass the petitioners. He would further submit that the consumer complaint filed by the *de facto* complainant claiming compensation has also been rejected by the District Consumer Disputes Redressal Commission, Namakkal, in C.C.No.134 of 2022. Therefore, the FIR is nothing but an abuse of process of law.

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



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5.A perusal of the materials would indicate that the FIR has been filed after 11 years from the date of incident. It is relevant to note that, admittedly, the *de facto* complainant has undergone surgery and his gall bladder has been removed in the year 2012 and till 2021, there was no issue. According to him, when he visited the other Hospital namely Royal Care Super Speciality Hospital, on scan, they found that Stent was deployed while performing earlier surgery. It is relevant to note that the only allegation of the *de facto* complainant in the entire FIR is that, despite removal of gall bladder and despite visiting the Hospital regularly, no advice was given with respect to the Stent deployed in his body. Nowhere in his complaint, he has stated that the act that was done intentionally or in a rash and negligent manner.

6.Further, the Consumer Forum, taking note of the facts and delay, and also on the basis of the evidence adduced, has come to a conclusion on an adjudication process that there is no material available as to whether the Stent was actually found in the latter surgery or former surgery.

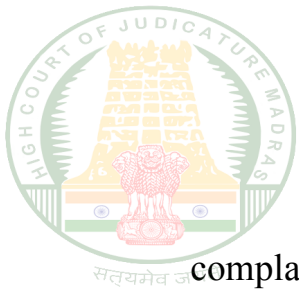


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7.For filing a criminal complaint and prosecuting the Doctors for their medical negligence under criminal law, it must be shown that the accused Doctor did something or failed to do something, which, in the given facts and circumstances, no medical professional in his ordinary senses and prudence would have done or failed to do, as held by the Hon'ble Supreme Court in ***Jacob Mathew v. State of Punjab and another*** reported in ***2005 (6) SCC 1***. In the said judgment, the Hon'ble Supreme Court has further held that a medical professional cannot be prosecuted for negligence merely because a better alternative course or method of treatment was also available, so long as a doctor follows a practice acceptable to the medical profession of that day. It is also held that, for an act to amount to criminal negligence, the degree of negligence should be much higher i.e., gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution.

8.However, in the present case, it is relevant to note that the *de facto*



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complainant has undergone a surgery in the year 2012 and his gall bladder was removed. Merely because some complications had developed later after 10 years, it cannot be said that such complications are only due to the negligent act of the Doctor who performed the surgery in the year 2012. All surgeries in medical field cannot be 100% perfect. How each one's body reacts to the treatment or surgery, is the matter. Therefore, in the absence of any concrete evidence to attribute negligence on the part of the medical officers, criminal prosecution against the medical professionals, that too after a long gap of more than 11 years, just because the *de facto* complainant developed some pain and undergone another surgery in a different Hospital, is nothing but an abuse of process of law, particularly when even the civil proceedings before the Consumer Forum claiming compensation has ended in failure by holding that the *de facto* complainant has not established the negligence on the part of the petitioner Hospital and Doctors. In such view of the matter, continuing criminal prosecution against the petitioners will certainly be an abuse of process of law. Therefore, this Court is inclined to quash the FIR as against the petitioners.



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9. Accordingly, this Criminal Original Petition is allowed and the FIR in Crime No.329 of 2023 on the file of the 1st respondent Police, is quashed.

18.08.2025

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Internet : Yes

Index : Yes / No

Speaking order : Yes / No

Neutral Citation : Yes / No

To

1. The Inspector of Police,
Tiruchengode Rural Police Station,
Tiruchengode Taluk,
Namakkal District.

2. The Public Prosecutor,
High Court, Madras.



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N. SATHISH KUMAR, J.

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