



Crl.R.C.No.1506 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2026

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THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

Crl.R.C.No1506 of 2025

and

Crl.M.P.Nos.15845 and 15846 of 2025

M.Ganesan
S/o.K.Muthusamy

... Petitioner

Vs

Dr.Thilagam, MBBS., DGO
Joint Director of Medical and Rural Health Service,
Kuppur (Post)
Dharmapuri-636 704

... Respondent

PRAYER : Criminal Revision cases filed Under Section 438 r/w 442 of BNSS, prays to set aside the order dated 13.08.2024 passed in Crl.M.P.No.2389 of 2022 in C.C.No.17 of 2021 by the learned District Munsif – Cum- Judicial Magistrate, Pennagaram, Dharmapuri District.



Crl.R.C.No.1506 of 2025

For Petitioner : Mr.S.R.Rajagopal, Senior Counsel
for Mr.S.Praveennath
For Respondent : Mr.J.Ravindran,
Additional Advocate General
Assisted by Mr.K.Thippusultan
Government Advocate

ORDER

Challenging the impugned order passed by the learned District-cum-Judicial Magistrate, Pennagaram, Dharmapuri District, in Criminal M.P. No.2389 of 2022 in C.C. No.17 of 2021, the first accused has preferred the present revision.

2. Before the Trial Court, the petitioner filed an application under Section 245(2) of the Code of Criminal Procedure, seeking to discharge him from the criminal proceedings on the ground that there is no prima facie material available to prosecute him for the alleged offences under Sections 19(b), 19(d) and 19(g) of the Transplantation of Human Organs and Tissues (TOHO) Act, 1994. Objections were raised by the prosecution. After hearing both sides, the learned Trial Judge dismissed the application, holding that the reasons assigned by the petitioner require appreciation of detailed evidence and that, at this stage, the petitioner cannot be discharged.

Aggrieved by the said order, the present revision has been filed.

2\26



CrI.R.C.No.1506 of 2025

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3. Brief Facts of the Case: The respondent / de facto complainant lodged a complaint before the Judicial Magistrate Court, Pennagaram. The respondent, Joint Director of Medical and Rural Health Services, Kuppur, filed a complaint under Section 13(4) of the TOHO Act read with Section 200 Cr.P.C. against three accused persons. The petitioner herein was arrayed as the first accused, and he is a Nephrologist by profession, and the other two accused are private individuals.

4. The case of the prosecution is that in the year 2021, the petitioner, who was working as a Nephrologist at Vinayaga Mission Hospital, along with the other accused, arranged a kidney transplantation surgery for one V.Iyyer. It is alleged that, in contravention of the provisions of the TOHO Act, 1994, the petitioner arranged a donor by falsifying affidavits, portraying the donor as a willing person to donate a human organ in exchange for monetary consideration. He further alleged that the petitioner undertook to arrange the entire illegal transaction in his capacity as a Kidney Transplant Surgeon and as the Head of the Kidney Transplant Accreditation Committee of Vinayaga Mission Hospital. Thus, according to



Crl.R.C.No.1506 of 2025

the prosecution, the petitioner violated the provisions under Sections 19(b), 19(d) and 19(g) of the TOHO Act, 1994.

5. Based on the said allegations, a private complaint was lodged by the respondent, which was taken cognizance of and numbered as C.C. No.17 of 2021 against the three accused. Upon receipt of copies, the petitioner filed a discharge petition stating that after completing his medical studies in the year 2007, he has been practicing as a Nephrologist with an unblemished professional career and that he has been falsely implicated in this case with respect to an alleged illegal kidney transplantation said to have taken place in the year 2013. The petitioner contended that he has not committed any offence and that there is no prima facie material on the side of the de-facto complainant to connect him with the alleged crime. Therefore, he sought discharge from the entire prosecution. However, the said discharge petition was dismissed by the Trial Court.

6. The learned counsel for the petitioner submitted that the present proceedings were initiated by the respondent on 13.06.2021 for an alleged offence said to have occurred in the year 2011, with an inordinate and



Crl.R.C.No.1506 of 2025

unexplained delay, which itself demonstrates the absence of prima facie material against the petitioner. He further contended that although this Court, in W.P. No.6287 of 2016, directed the respondent to complete the investigation within six months after affording personal hearing and opportunity to the petitioner and other relevant parties, no such investigation was conducted within the stipulated period, nor was any personal hearing granted. The respondent also failed to file the complaint within the time frame directed by this Court.

7. The learned counsel further submitted that the materials relied upon by the respondent have not been authenticated by the competent authority and suffer from procedural irregularities. The statutory mandates and directions issued by this Hon'ble Court were not complied with, which vitiates the proceedings from their inception. He also contended that the complaint lacks specific particulars as to how the petitioner initiated or negotiated the alleged illegal transaction for arranging a kidney transplant. No specific dates, events, or circumstances have been mentioned to show how and when the petitioner instructed the second accused, Ayyavu, who is alleged to be a broker. In the absence of such particulars, the petitioner has



Crl.R.C.No.1506 of 2025

been falsely implicated as having arranged a donor by means of false affidavits.

8. The learned counsel further argued that although the second accused, Ayyavu, is stated to have acted as a broker, there is no material evidence to show that any bogus donor was arranged through him at the instance of the petitioner. There is also no proof that the petitioner earned any monetary gain from the alleged transaction. No material evidence has been produced by the de facto complainant to attract the offences under Sections 19(b), 19(d) and 19(g) of the TOHO Act, 1994. He further submitted that no kidney transplantation actually took place, no proper witnesses were examined, and the alleged falsification and role of the petitioner were not properly investigated. In the absence of any material showing preparation, attempt, or commission of the alleged offences by the petitioner, continuation of the prosecution amounts to abuse of process of law. Hence, the learned counsel prayed that the petitioner be discharged from the criminal proceedings.



Crl.R.C.No.1506 of 2025

9. The de-facto complainant raised objections contending that the petitioner, being an approving and authorised officer, knowingly approved and signed all the documents despite being fully aware that they were bogus. It was specifically stated that it is false to contend that the petitioner merely signed the documents in his capacity as a Nephrologist, rather, he was a member of the Authorisation Committee and had affixed his signature in all the relevant records in that capacity. He further contended that, after conducting a separate enquiry, the de facto complainant collected sufficient evidence and materials and thereafter filed the present complaint, which is sustainable in law. Hence, the de facto complainant prayed for dismissal of the petition as being devoid of merits.

10. Considering the submissions made on both sides, the learned Trial Judge held that the petitioner's contention that he was only serving as a Nephrologist in a private hospital cannot be accepted at this stage, as the allegations in the complaint clearly state that he was a member of the Authorisation Committee and an authorised person involved in conducting the transplantation surgery. It was further observed that, as per the allegations in the complaint, the petitioner had earned amounts running into



Crl.R.C.No.1506 of 2025

crores by conducting illegal kidney transplantations and that the veracity and truth of such allegations could be decided only during trial.

11. The learned Trial Judge further held that, by arranging a broker, the petitioner had received a sum of Rs.2,00,000/- and that the complaint had originally been lodged much earlier, in the year 2016. It was also observed that one donor, namely Chitra, was arranged, and that her identity and address were falsely created with the assistance of the petitioner. The learned Trial Judge further held that the de facto complainant is the appropriate authority competent to initiate the complaint against the petitioner and that the complaint was lodged pursuant to the directions of the Court. Holding that there exists prima facie material to implicate the petitioner, the learned Trial Judge dismissed the discharge petition. Challenging the said findings, the present revision has been filed.

12. The learned counsel for the petitioner submitted that the Court below failed to take note of the fact that the appropriate authority did not conduct any independent investigation and had merely reproduced the

8\26



Crl.R.C.No.1506 of 2025

allegations found in Crime No.29 of 2013 on the file of the Inspector of Police, District Crime Branch, Dharmapuri, wherein the petitioner was arrayed as accused. He further pointed out that this Court, in Crl.O.P.No.17336 of 2013, related to Crime No.29 of 2013, had already disposed of the matter on 18.02.2015, with a specific direction that the police are not empowered to investigate offences under the Transplantation of Human Organs and Tissues Act, 1994, and that only the competent authority is authorised to conduct such an investigation.

13. The learned counsel further submitted that the Trial Court failed to appreciate the fact that, even according to the case of the de facto complainant, no kidney transplantation had actually taken place. In the absence of any transplantation, the question of prosecuting the petitioner under the provisions of the TOHO Act does not arise, as the object of the Act is to prosecute violations arising out of transplantation of human organs. In the present case, the intended recipient, one Iyyer, was suffering from kidney disease and had died even prior to any transplantation. Therefore, there is no prima facie material made out against the petitioner to prosecute him for the alleged offences, which aspect was not properly appreciated by



Crl.R.C.No.1506 of 2025

the Trial Court. Hence, the order passed by the learned Trial Judge is erroneous in law and liable to be set aside.

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14. The learned counsel also pointed out that, as per the allegations in the present private complaint, the petitioner is said to have negotiated and received a sum of Rs.2,00,000/- as commission for arranging the donor, which is in contradiction to the allegations in the earlier complaint relating to FIR No.29 of 2012, wherein it was alleged that the petitioner received only Rs.1,00,000/-. This material contradiction has not been explained by the de facto complainant by producing any supporting evidence such as account statements or other material documents. He further submitted that, although the de facto complainant alleged that the petitioner earned more than Rs.1 crore by conducting illegal kidney transplantations, no material evidence whatsoever has been produced to substantiate the said allegation. The learned counsel contended that the prosecution is based on baseless and unsubstantiated allegations and that the Trial Court failed to take note of these vital aspects, thereby rendering the impugned order liable to be set aside.



Crl.R.C.No.1506 of 2025

15. The learned counsel for the petitioner further submitted that the de-facto complainant has not produced a single piece of evidence to show that the petitioner negotiated with or arranged any donor. In the absence of such material, there is no basis to take cognizance of the alleged offences, hence, the order passed by the Trial Court is liable to be interfered with. The learned counsel also contended that the alleged offence is stated to have occurred in the year 2011, whereas the complaint was lodged by the appropriate authority only in the year 2021. The inordinate and unexplained delay of nearly ten years itself falsifies the case of the de facto complainant, which aspect has not been properly appreciated by the Trial Court. On these grounds, the learned counsel prayed for setting aside the impugned order.

16. Per contra, the learned Government Pleader submitted that the petitioner actively participated in arranging a bogus donor for the kidney patient, one Iyyer, and that he knowingly signed the relevant documents despite being aware that they were false. It was further contended that the petitioner arranged the donor, Chitra, with the assistance of the broker, Ayyavu (A2), and that he received a commission of approximately Rs.2,00,000/-. He further submitted that although the earlier police

11\26



Crl.R.C.No.1506 of 2025

complaint was quashed, the appropriate authority subsequently initiated proceedings and filed the present complaint in compliance with the directions issued by this Court. The complaint is supported by prima facie materials sufficient to implicate the petitioner. The learned Trial Judge, after considering the materials on record, rightly dismissed the discharge petition, and the same does not warrant interference by this Court. Hence, the learned Government Pleader prayed for dismissal of the revision as being devoid of merits.

17. On a perusal of the records, it is seen that in the year 2021, the respondent / Joint Director of Medical and Rural Health Services lodged a complaint against the petitioner, who was arrayed as A1, along with two other accused, for the alleged offences under Section 13(3)(iv) of the Transplantation of Human Organs and Tissues Act, 1994 (TOHO Act).

18. Section 13(3)(iv) of the TOHO Act reads as follows:

“ (iv) to investigate any complaint of breach of any of the provisions of this Act or any of the rules made thereunder and take appropriate action ”.



Crl.R.C.No.1506 of 2025

19. The case of the prosecution is that in the year 2011, the petitioner, along with the other accused persons, allegedly arranged a kidney transplantation surgery for one Iyyer, in contravention of the provisions of the TOHO Act, by arranging a donor through false records, falsely portraying the donor as a relative of the patient willing to donate a human organ in exchange for monetary consideration. It is an admitted fact that one Kathavarayan lodged a complaint against the petitioner and others, stating that his father, Iyyer, was suffering from chronic diabetes and that both his kidneys had failed. According to the said complaint, they approached the petitioner, who allegedly introduced one Ayyavu (A3) and Saraswathy, stating that they would arrange a donor for his father. It was alleged that negotiations took place, and a total sum of Rs.2,00,000/- was demanded. It was further stated that a sum of Rs.1,00,000/- was paid initially and the balance was agreed to be paid in three instalments.

20. According to the said complaint, a donor was arranged, and the donor, along with the patient, appeared before the Authorisation Committee. However, it was subsequently found that the transplantation could not be



Crl.R.C.No.1506 of 2025

performed due to blood group mismatch. Thereafter, the complainant demanded the return of the money, but only Rs.50,000/- was refunded, and the remaining amount was not returned. Consequently, a complaint was lodged, and an FIR was registered in Crime No.29 of 2013.

21. Aggrieved by the said FIR, the petitioner approached this Court by filing a petition under Section 482 Cr.P.C. This Court held that the police were not empowered to investigate offences relating to illegal removal or transplantation of human organs under the special enactment, namely the TOHO Act, 1994, and that such matters could be dealt with only by the appropriate authority under the Act. Accordingly, the police were directed to hand over the investigation to the appropriate authority empowered under Section 13(3) and (4) of the TOHO Act within four weeks, and the petition was disposed of.

22. The said order was passed during the years 2014–2015. However, it is revealed that the investigation was not handed over to the appropriate authority within the stipulated time. Thereafter, the petitioner again



Crl.R.C.No.1506 of 2025

approached this Court in Criminal R.C. No.1166 of 2019. Subsequently, in W.P. No.6287 of 2016, this Court issued a writ of mandamus directing the respondent to complete the enquiry within six months. The said order was passed on 22.02.2016. Admittedly, the complaint was not lodged within the said six-month period, and the present complaint came to be filed only in the year 2021.

23. As per the Special Statute, expressly prohibits the police from conducting investigation or filing reports in respect of offences relating to removal or transplantation of human organs. The earlier investigation conducted by the police was not accepted, and the appropriate authority was directed to conduct an independent investigation. However, on perusal of the complaint filed by the de facto complainant, particularly paragraph No.7, as rightly pointed out by the learned counsel for the petitioner, it is evident that the de facto complainant merely verified the investigation conducted by the CBCID police and relied entirely upon the records and statements collected by the police.



Crl.R.C.No.1506 of 2025

24. The statements recorded by the police alone were annexed along

with the private complaint, which clearly indicates that the respondent, being the Appropriate authority, did not conduct any independent investigation. Moreover, no reasons have been assigned for filing the complaint nearly six years after the directions issued by this Court. Apart from that, the alleged occurrence is said to have taken place in the year 2011, whereas the present complaint was lodged nearly ten years thereafter. No explanation has been offered for such inordinate delay, which creates a serious lacuna and reflects lack of procedural integrity and non-compliance with the directions issued by this Court as well as the statutory mandate.

25. As per the earlier complaint lodged by Kathavarayan, it was alleged that the petitioner arranged the donor through the accused Ayyavu and received Rs.2,00,000/-, out of which Rs.1,50,000/- was refunded. However, in the earlier version, it was stated that only Rs.1,00,000/- was paid and that the remaining Rs.1,00,000/- was not returned. In contrast, the present complaint alleges that the petitioner received Rs.2,00,000/- and returned only Rs.1,50,000/-. This contradiction goes to the root of the prosecution case and remains unexplained.



Crl.R.C.No.1506 of 2025

26. Further, the complaint alleges that the petitioner earned nearly Rs.1 crore by illegal transplantation activities. However, there is no prima facie material produced by the de facto complainant to substantiate this allegation. No bank statements, financial records, or documentary evidence have been produced to show that the petitioner possessed or earned such huge sums through illegal means. In the absence of any supporting material, the allegation lacks credibility.

27. According to the prosecution, one Chitra falsely claimed to be a relative of the patient Iyyer, and false records were created to that effect. It is seen that an affidavit bearing the signatures of the donor and her husband was produced, and the said affidavit was attested by the Revenue Officials / Sub-Divisional Officer. Based on these documents, the hospital authorities presumed that the donor was a relative of the patient. In such circumstances, there is no material to show that the petitioner knowingly supported or fabricated false records.



Crl.R.C.No.1506 of 2025

28. If at all any document was fabricated, the same pertains to the second accused and not to the petitioner. It is further seen that the petitioner is a Nephrologist who provides medical consultancy services relating to kidney diseases and is not a transplant surgeon, as alleged by the respondent. The petitioner was required to submit the records to the hospital authorities, and the verification process was undertaken collectively by other doctors, namely Dr. Mohan Babu and Dr. Ezhilvendhan. The certificates were not independently verified by the petitioner alone.

29. Further, the allegation that the petitioner instructed the patient Iyyer that he would arrange a broker to bring donors is not supported by any material evidence. No particulars have been furnished as to when such arrangement was made or the exact amount allegedly paid to the petitioner through the son of the patient. In the absence of such particulars and evidence, the petitioner has been implicated in the case without any legal basis. The Court below failed to appreciate these facts and circumstances in proper perspective.



Crl.R.C.No.1506 of 2025

30. As per Rule 21 relating to the eligibility of an applicant to donate,

it is mandated as follows:

“In the course of determining eligibility of the applicant to donate, the applicant should be personally interviewed by the Authorisation Committee, which shall be videographed, and minutes of the interview shall be recorded.”

31. The donor is required to appear before the Authorisation Committee, which consists of two senior doctors. The role of the committee is to examine the donor and the recipient and to recommend whether the transplantation surgery may be permitted. The surgeon is not expected to conduct or interfere with the proceedings of the Authorisation Committee. The committee members are required to verify the documents and make appropriate recommendations for the proposed surgery.

32. Admittedly, the petitioner, being a Nephrologist, was not a member of the Authorisation Committee. The hospital authorities have certified that all original documents required under the Transplantation of Human Organs and Tissues Act, 1994, pertaining to the donor, Chitra, and

19\26



Crl.R.C.No.1506 of 2025

the recipient, Iyyer, were obtained and verified at the hospital. The hospital authorities also certified that the original documents were verified for their authenticity and that the Authorisation Committee found them to be genuine.

33. Therefore, the petitioner has not played any vital or independent role in the alleged offence. Being a medical practitioner and a Nephrologist, his participation was confined to his role as to suggest for surgery. The entire allegation against the petitioner revolves around that he introduced a broker (A2) to arrange a donor. As discussed earlier, this allegation is not supported by any independent prima facie material.

34. The de-facto complainant did not conduct any independent investigation as mandated under the Special statute governing transplantation of human organs. Instead, the de facto complainant merely relied upon the statements recorded by the police, which is in clear contravention of the provisions of the TOHO Act. This Court had earlier quashed the FIR registered by the police and specifically directed the de facto complainant to conduct an independent investigation. However, nearly

20\26



Crl.R.C.No.1506 of 2025

seven years later, the de-facto complainant came forward with the present private complaint by relying upon the very same police records and investigation.

35. The Transplantation of Human Organs and Tissues Act, 1994

(TOHO Act): *Section 13 of the TOHO Act, 1994 provides that the “Appropriate Authority” is vested with the power to investigate, take necessary action, regulate hospitals, and oversee the entire transplantation programme under the Act.*

36. Section 13 of the TOHO Act further provides that the Appropriate Authority shall have powers akin to those of a Civil Court trying a suit under the Code of Civil Procedure, 1908, including the power to summon persons, conduct enquiries, investigate complaints, order the production of documents and material information, and issue search warrants in cases of suspected unauthorised removal of organs.

37. However, in the present case, criminal proceedings were initiated by the police at the very inception. As per the above provisions of the



Crl.R.C.No.1506 of 2025

special statute, such initiation of proceedings was impermissible, rendering the FIR itself illegal. The same was rightly quashed by this Court in the earlier proceedings, as discussed above. Therefore, the veracity of the complaint ought to have been examined by the Appropriate Authority by furnishing copies of the complaint to the petitioner and by issuing summons for enquiry. No such opportunity was afforded to the petitioner.

38. Even the police, without providing any proper opportunity or obtaining an explanation, arrested and remanded the petitioner, thereby violating his fundamental right and to liberty. The Appropriate Authority also failed to conduct a proper investigation as mandated under the Act. Further, as per Section 22(2) of the TOHO Act, and as contended by the petitioner, he was not supplied with the relevant documents either prior to his arrest by the police or during the investigation by the Appropriate Authority.

39. Moreover, Section 23 of the TOHO Act provides protection for actions taken in good faith. In the present case, the petitioner and the transplant recipient had cancelled the surgery upon founding a blood group



Crl.R.C.No.1506 of 2025

mismatch during the free transplant evaluation. Therefore, the protection afforded under Section 23 for actions taken in good faith ought to have been extended to the petitioner. However, the police, by conducting an improper enquiry, violated the said statutory protection. The petitioner has further established that he was not a member of any hospital committee or any statutory organisational committee. As a nephrologist, his role was limited to referring patients to the Transplantation Committee. The petitioner further suspects that the patient and his son Kathavarayan, the original complainant, might have been influenced by another hospital, and that the said Kathavarayan may have been used with an ulterior motive to harass the petitioner.

40. Even otherwise, there is no primary material to implicate the petitioner for any violation of the provisions of the special Act. It is an undisputed fact that the patient had died prior to the proposed transplantation and that no human organ was removed. Removal or transplantation of a human organ is a fundamental requirement to attract the penal provisions of the Act. In the absence of such an essential ingredient, no offence is made out against the petitioner.



Crl.R.C.No.1506 of 2025

41. The petitioner, being a doctor, has been subjected to prolonged

harassment for several years with an ulterior motive, at the instance of the authorities as well as other individuals. This case clearly amounts to an abuse of the process of law. However, the Court below failed to appreciate both the factual matrix and the legal position in their proper perspective and erroneously dismissed the discharge petition, warranting interference by this Court.

42. Accordingly, the findings of the Trial Court are set aside, and the petitioner is discharged from all the charges levelled against him in C.C.No.17 of 2021 on the file of the learned District Munsif-cum-Judicial Magistrate, Pennagaram, Dharmapuri.

43. In the result, **the Criminal Revision Case is allowed.**
Consequently, connected miscellaneous petitions are closed.

09.01.2026

Index : Yes/No
Neutral Citation : Yes/No
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24\26



Crl.R.C.No.1506 of 2025

To

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- 1.The District Munsif – Cum- Judicial Magistrate,
Pennagaram, Dharmapuri District.
2. The Public Prosecutor,
High Court of Madras, Chennai.



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Crl.R.C.No.1506 of 2025

T.V.THAMILSELVI, J.

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Crl.R.C.No1506 of 2025
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Crl.M.P.Nos.15845 and 15846 of 2025

09.01.2026