



CRL.P No. 8213 of 2019

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 24<sup>TH</sup> DAY OF AUGUST, 2022**

**BEFORE**

**THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ**

**CRIMINAL PETITION NO. 8213 OF 2019**

**BETWEEN:**

1. DR. (SMT.) ANITHA PATIL,

...PETITIONER

(BY SRI. VIJETHA R. NAIK., ADVOCATE)

**AND:**

1. STATE OF KARNATAKA,  
THROUGH K.R.PET TOWN POLICE STATION,  
REPRESENTED BY  
STATE PUBLIC PROSECUTOR,  
HIGH COURT OF KARNATAKA BUILDING,  
BENGALURU – 560 001.

2. SMT.SAKAMMA,

3. CRIME INVESTIGATION DEPARTMENT (CID),  
CARLTON HOUSE, PALACE ROAD,

Digitally signed by  
POORNIMA  
SHIVANNA  
Location: HIGH  
COURT OF  
KARNATAKA



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BENGALURU – 560 001.  
REPRESENTED BY ITS  
DY. SUPERINTENDENT OF POLICE.

...RESPONDENTS

(BY SRI.MAHESH SHETTY, HCGP FOR R1 AND R3;  
R2 SERVED AND UNREPRESENTED)

THIS CRL.P. IS FILED U/S 482 OF CR.PC PRAYING TO QUASH THE COMPLAINT DATED 11.02.2018 LODGED BY THE SECOND RESPONDENT THE CERTIFIED COPY OF WHICH IS PRODUCED AS ANNEXURE-A TO THE CRL.P AND QUASH THE FIR IN CR.NO.59/2018 REGISTERED BY K.R.PET TOWN P.S., PENDING BEFORE ADDITIONAL DISTRICT AND SESSIONS JUDGE, MANDYA THE CERTIFIED COPY OF WHICH IS PRODUCED AS ANNEXURE-B TO THE CRL.P.

THIS CRL.P. COMING FOR ADMISSION, THIS DAY THE COURT MADE THE FOLLOWING:

**ORDER**

1. The petitioner is before this Court seeking for the following reliefs:

- a) *"This Hon'ble Court may be pleased to quash the Complaint dated 11.02.2018 lodged by the second respondent the certified copy of which is produced as Annexure - A to the Criminal Petition.*
- b) *This Hon'ble Court may be pleased to quash the FIR in Crime No.59/2018 registered by K.R.Pet Town Police Station pending before the Additional District and Session Judge, Mandya, the certified copy of which is produced as Annexure B to the Criminal Petition.*



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- c) *This Hon'ble Court may be pleased to quash Charge Sheet in Crime No.59/2018 dated 05.01.2019 filed by K.R.Pet Town Police Station as against this Petitioner for offences punishable under Secs. 363, 363A, 370A(1), 326, 365, 367, 370, 465, 468, 376, 34 of IPC, Sec.6, 21 of Protection of Children from Sexual Offences Act, 2012 and Sec. 75 of the Juvenile Justice Act, 2000 the certified copy of which is produced as Annexure D to the Criminal Petition.*
- d) *This Hon'ble Court may be pleased to quash criminal proceedings numbered as Spl.C.No.14/2019 for offences punishable under Secs. 363, 363A, 370A(1), 326, 365, 367, 370, 465, 468, 376, 34 of IPC, Sec.6, 21 of Protection of Children from Sexual Offences Act, 2012 and Sec. 75 of the Juvenile Justice Act, 2000 pending before the I Additional District and Session Judge, Manoya, as against the petitioner herein.*
- e) *This Hon'ble Court may be pleased to restrain the 3rd respondent CID from proceeding with the further investigating of the case as against this Petitioner in Crime No.59/2018, in the interest of justice and equity."*

2. A complaint had been filed on 11.02.2018 by the second respondent, the grand mother of one \_\_\_\_\_ stating that the petitioner along with several others, had conducted a forcible sex change operation on \_\_\_\_\_ changing his sex from male to female by kidnapping him etc. Apart therefrom, there are various allegations which have been made against the different accused including



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offences under Section 376 of IPC and Sections 6 and 21 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'the POCSO Act' for short).

3. After the completion of the investigation, a charge sheet has been laid including that the petitioner, who is accused No.4 therein.
4. Ms. Vijetha Nayak, learned counsel appearing for petitioner would submit that the petitioner is only a Doctor, who has wrongfully been implicated in the matter. She submits that the petitioner has not performed any operation as alleged or otherwise. She further submits that no criminal prosecution could be initiated against the petitioner, who is a Doctor, without following the guidelines laid down by the Hon'ble Apex Court in the case of **JACOB MATHEW Vs. STATE OF PUNJAB AND ANOTHER** reported in **2005 (6) SCC 1**, more particularly,



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paragraphs 51 and 52 thereof, which are reproduced hereunder for easy reference.

*"51. We may not be understood as holding that doctors can never be prosecuted for an offence of which rashness or negligence is an essential ingredient. All that we are doing is to emphasize the need for care and caution in the interest of society; for, the service which the medical profession renders to human beings is probably the noblest of all, and hence there is a need for protecting doctors from frivolous or unjust prosecutions. Many a complainant prefers recourse to criminal process as a tool for pressurizing the medical professional for extracting uncalled for or unjust compensation. Such malicious proceedings have to be guarded against.*

*52. Statutory Rules or Executive Instructions incorporating certain guidelines need to be framed and issued by the Government of India and/or the State Governments in consultation with the Medical Council of India. So long as it is not done, we propose to lay down certain guidelines for the future which should govern the prosecution of doctors for offences of which criminal rashness or criminal negligence is an ingredient. A private complaint may not be entertained unless the complainant has produced prima facie evidence before the Court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor. The investigating officer should, before proceeding against the doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion preferably from a doctor in government service qualified in that branch of medical practice who can normally be expected to give an impartial and unbiased opinion applying Bolam's test to the facts collected in the investigation. A doctor accused of rashness or negligence, may not be arrested in a routine manner (simply because a charge has been levelled against him). Unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the investigating officer feels*



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*satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld."*

5. By relying on the above decision, she submits that unless there is a credible opinion given by another Doctor against the accused-Doctor, no criminal case ought to be registered against the Doctor, i.e. accused No.4 in this case.
6. She also relies upon the decision of the Hon'ble Apex Court in the case of **MARTIN F. D'SOUZA VS. MOHD. ISHFAQ** reported in **2009 (3) SCC 1**, more particularly paragraph-25, 26, 27, 28 and 29 thereof, which are reproduced hereunder for easy reference.

*"25. Cases, both civil and criminal as well as in Consumer Fora, are often filed against medical practitioners and hospitals, complaining of medical negligence against doctors/hospitals/nursing homes and hence the latter naturally would like to know about their liability. The general principles on this subject have been lucidly and elaborately explained in the three Judge Bench decision of this Court in Jacob Mathew vs. State of Punjab and Anr. (2005) 6 SCC 1. However, difficulties arise in the application of those general principles to specific cases. For instance, in para 41 of the aforesaid decision it was observed :(Jacob Mathew case, SCCp.28).*

*"41.....The practitioner must bring to his task a reasonable degree of skill and knowledge, and must*



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*exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence is what the law requires."*

*26. Now what is reasonable and what is unreasonable is a matter on which even experts may disagree. Also, they may disagree on what is a high level of care and what is a low level of care.*

*27. To give another example, in paragraph 12 to 16 of Jacob Mathew's case (Supra), it has been stated that simple negligence may result only in civil liability, but gross negligence or recklessness may result in criminal liability as well. For civil liability only damages can be imposed by the Court but for criminal liability the Doctor can also be sent to jail (apart from damages which may be imposed on him in a civil suit or by the Consumer Fora). However, what is simple negligence and what is gross negligence may be a matter of dispute even among experts.*

*28. The law, like medicine, is an inexact science. One cannot predict with certainty an outcome of many cases. It depends on the particular facts and circumstances of the case, and also the personal notions of the Judge concerned who is hearing the case. However, the broad and general legal principles relating to medical negligence need to be understood.*

*29. Before dealing with these principles two things have to be kept in mind : (1) Judges are not experts in medical science, rather they are lay men. This itself often makes it somewhat difficult for them to decide cases relating to medical negligence. Moreover, Judges have usually to rely on testimonies of other doctors which may not necessarily in all cases be objective, since like in all professions and services, doctors too sometimes have a tendency to support their own colleagues who are charged with medical negligence. The testimony may also be difficult to understand, particularly in complicated medical matters, for a layman in medical matters like a Judge; and (2) A balance has to be struck in such cases. While doctors who cause death or agony due to medical negligence should certainly be penalized, it must also be remembered that like all professionals doctors too can make errors of judgment but if they are punished for this no doctor can practice his*



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*vocation with equanimity. Indiscriminate proceedings and decisions against doctors are counter productive and serve society no good. They inhibit the free exercise of judgment by a professional in a particular situation."*

7. Relying on the above decision, she submits that there had been no opinion obtained by the complainant prior to the filing of the complaint and no such opinion having been obtained by the investigating officer before laying the charge sheet. The laying of the charge sheet is violation of the order passed by the Hon'ble Apex Court in the cases of **Jacob Mathew** (supra) and **Martin F. D'Souza** (supra). As such, the proceedings are required to be quashed.
8. Per contra, Sri Mahesh Shetty, learned High Court Government Pleader appearing for respondent Nos.1 and 3 would submit that the decisions would not be applicable since they are relating to medical negligence, in the present matter, there are no allegations as regards medical negligence, the





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allegation is of forcible sex change operation which is a criminal offence both under the IPC and under the POCSO Act.

9. Though respondent No.2, the original complainant has been served, she has not entered appearance.
10. Heard Ms. Vijetha R. Nayak, learned counsel appearing for the petitioner and Sri Mahesh Shetty, learned High Court Government Pleader appearing for respondent Nos.1 and 3 and perused the papers.
11. The allegations that have been made in the complaint state that a forcible sex change operation has been conducted on \_\_\_\_\_, who is the grandson of the complainant. On that basis, the investigation has been taken up. Several person have been implicated in the charge sheet, many of whom are transgenders, who are alleged to have got a forcible sex change operation due in order to make use of \_\_\_\_\_ for the purpose of prostitution as also for extortion of money etc.,



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12. The petitioner in the present matter is a Doctor, who is alleged to have conducted the sex change operation, and the other offences have not been alleged against the petitioner. Learned counsel for the petitioner though has contended that the petitioner has not performed the operation, I am of the considered opinion that this cannot be a matter which can be decided in a proceeding under Section 482 of Cr.P.C. that is a matter which is required to be left for trial.
  
13. As regards the decisions relied upon by the learned counsel for the petitioner in the cases of **Jacob Mathew** (supra) and **Martin F. D'Souza** (supra), which have been extracted hereinabove. It is clear from a reading of the extracted portion that it is only when there is criminal rashness and/or criminal negligence which is alleged against the Doctor that the opinion of another Doctor is required to be obtained which could establish whether there is in fact criminal rashness or negligence or whether the



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treatment mode adopted by the Doctor is the normal and regular treatment mode which does not amount to rashness or negligence. In the present matter, there is no allegation of any rashness or negligence. In fact, the allegation is that there was a successful sex change operation conducted by the petitioner, changing the sex of \_\_\_\_\_ from male to female.

14. The allegations are that the said operation has been conducted without the consent of the said

\_\_\_\_\_ and that he could not have concern that since he was a minor at that point of time. These are matters which are required to be strictly left for trial with all defences left open for the petitioner to be agitated before the trial Court. I am unable to come to a conclusion that there are no offences which have been made out, there are no grounds which have been made out for quashing of the proceedings, as such, reserving liberty to the petitioner to raise all



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the defences before the trial Court, the petition stands dismissed

15. In view of disposal of the main petition, all pending applications do not survive for consideration. Hence, the same are dismissed.

**Sd/-  
JUDGE**

KTY  
List No.: 1 SI No.: 23