
(2001) 11 MAD CK 0012

In the Madras High Court

Case No : Criminal O.P. No. 21544 and 22987 of 2001

Chief Administrator CSI Kalyani Multi Speciality Hospital, Dr. APPELLANT
Radhakrishnan Road, Chennai 4 and Dr. Sujatha

Vs

Kasiviswanathan RESPONDENT

Date of Decision : 22-11-2001

Acts Referred:

Citation : (2002) 2 LW(Cri) 755

Hon'ble Judges : P.D. Dindkaran, J

Bench : Single Bench

Advocate : S. Ashok Kumar, for the Appellant; V. Thillaisamy Advocate for Respondent, for the Respondent

Final Decision : Allowed

Judgement

P.D. Dindkaran, J.—Heard both sides.

2. The petitioner's seek to call for the records in C.C. No. 332 of 2001 on the file of Judicial Magistrate I. Poonamallee and to quash the same.

3. The petitioners are the respondents in the private complaint in C.C. No. 332 of 2001 on the file of the Judicial Magistrate I, Poonamallee

wherein the respondent / complainant filed a private complaint against the petitioners herein for the alleged offences punishable u/s 336, 406 read

with 420 and read with 34 IPC stating that the respondent's wife become pregnant and delivered a girl baby inspite of the Tubectomy operation

conducted by the petitioners on 6-12-2001, which according to the respondent/complainant was conducted negligently. It appears that the

complainant sent a lawyer's notice on 14-4-2001, pursuant to which the complainant also made a claim as follows :

(1) Expenses incurred before and after the delivery Rs. 75,000/-

(2) Expense of bringing up and educating the baby Rs.3,00,000/-

(3) Compensation for mental agony Rs.2,00,000/-

(4) Expense incurred for tubectomy operation Rs.6,500/-

Total Rs. 5,81,500/-

3.1 Mr. S. Ashok Kumar, learned counsel appearing for the petitioners/accused invited my attention to the reply notice dated 8-5-2001 issued on

behalf of the petitioners to the legal notice dated 14-4-2001 of the respondent/complainant. In the said reply notice dated 8-5-2001 the

petitioners/accused have not disputed the fact that they under took Tubectomy operation to the respondent's wife on 6-12-2000, but however

strongly dispute any negligence or carelessness in performing the Tubectomy operation on respondent's wife.

3.2 According to Mr. S. Ashok Kumar, learned counsel appearing for the petitioners, even the allegation in the complaint does not constitute the

offences referred to in the complaint and therefore there is no justification for the petitioners/accused to face the trial and further proceedings in

C.C.No.332 of 2001 on the file of the Judicial Magistrate No. 1, Poonamallee.

3.3 Mr. Ashok Kumar, learned counsel for the petitioners also invited my attention to the orders of the State Consumer Redressal Commission

dated 27-6-2000 in O.P.No.87 of 2000 wherein it is held that the Tubectomy operations are not 100% successful and there will be some failures

in such operations in the normal run of things, in the sense of pregnancy occurring even subsequent to such operations.

4. Per contra, Mr. V. Thillaiswamy, learned counsel appearing for the respondent/complainant submits that due to the negligence on the part of the

petitioners/accused in conducting the Tubectomy operation, the respondent's wife had given birth to a girl baby.

5. I have given careful consideration to the facts and circumstances of the case.

6. In this regard, I am obliged to refer Section 336 of Indian Penal Code which reads its follows:

Section 336 IPC:

Act endangering life or personal safety of others: Whoever does any acts so rashly or negligently as to endanger human life or the personal safety

of others. Shall be punished with imprisonment of either description for a term

which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.

7. In my considered opinion, assuming the averments stated in the complaint are proved, I do not think that the petitioner/accused have committed

any rash and negligent act attracting Section 336 of Indian Penal Code as firmly admitted by the learned counsel for the respondent himself

inasmuch as the respondent and his wife had given a consent to the operation which admittedly includes risk factor.

8. I am also satisfied that even the complaint itself does not constitute the offence punishable u/s 420 IPC which reads as follows: Section 420 IPC:

Cheating and dishonestly inducing delivery of property: Whoever cheats and thereby dishonestly induces the person deceived to deliver any

property to any person or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is

capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven

years and shall also be liable to fine.

9. I am also obliged to refer decision in the State Consumer Disputes Redressal Commission by order dated 27-6-2000 in O.P.No.87 of 2000

which arose in identical circumstances which reads as follows: ""The factors stated as above as being called out from the averments made in the

complaint do not all prima facie point out that there was any sort of a negligence on the part of the Opposite Parties in the performance of the

tubectomy operation. This apart, the infallible medical opinion is that since the disconnected ends of the fall upon tube are close to each other, there

is chance for re-union of these ends resulting pregnancy, notwithstanding the fact that there was no negligence in the performance of the tubectomy

operation. It is to be taken note of here that the tubectomy operations are not 100% successful and there will be come failures in such operations in

the normal run of things, in the sense of pregnancy occurring even subsequent to such operation.

10. Therefore I am satisfied that the complaint does not constitute any offence attracting Section 336 and 420 IPC and therefore the above

complaint itself is liable to be quashed in order to prevent miscarriage of justice.

11. Hence the above O.Ps. are allowed and the complaint in C.C.No.332 of 2001

stands quashed. Consequently, connected Cr.M.Ps. are closed.