

(2004) 10 KAR CK 0022

In the Karnataka High Court

Case No : Writ Petition No's. 35640 and 35641 of 2004

S. Malligamma alias Malligavva and Another

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 15-10-2004

Acts Referred:

Citation : (2005) 1 KCCR 340

Hon'ble Judges : K.L. Manjunath, J

Bench : Single Bench

Advocate : M.A. Humayun and Shivaraj Patil, for the Appellant; Satheesh M. Doddamani, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Manjunath, J.—The first Petitioner is suffering from chronic renal failure. The Doctor advised her to go for a kidney transplantation. According to her, her close relatives are not in a position to donate their kidney due to non-matching of their blood group with her blood group.

2. Petitioner No. 1 is a permanent resident of Holalu village of Hadagalli Taluk, Bellary District. According to the first Petitioner, the 2nd Petitioner is known to her and out of love and affection, the second Petitioner voluntarily offered to donate kidney to the first Petitioner. The Petitioners appeared before the Committee and their depositions were recorded by the committee.

3. The second Respondent-Committee by its order dated 17.8.2004 as per Annexure-D to the writ petition has rejected the request of the Petitioners. The Committee has come to the conclusion that the offer made by the second Petitioner to donate the kidney as not out of love and affection. Being aggrieved by the order passed by the second Respondent as per Annexure-D dated 17.8.2004, the present petition's are filed.

4. After hearing the parties for some time, the Court directed the second Petitioner to appear before the Court. Accordingly, she appeared in the chambers

and she was interrogated in the presence of the learned Counsel for the Petitioners and the learned Government Advocate. The Court noticed during the course of interrogation that the second Respondent is from the village of Ramanagaram Taluk, Bangalore District. According to her, her husband was working in the field of the first Petitioner and she visited Halalu village once or twice. According to her, her husband is having 5 acres of land in Ramanagaram Taluk and that he is running a poultry business in Ramanagaram for the last five years, and she also stated that about 3 years back she visited Holalu village of Hadagalli Taluk. If the Petitioner No. 2 and her husband are having five acres of land in Ramanagaram Taluk and are also having a poultry business in Ramanagaram Taluk for the last five years, it would be difficult to believe that the husband of the second Petitioner was working in the fields of the first Petitioner and that she had visited Holalu village of Hadagalli Taluk, Bellary District about three years back.

5. According to the learned Counsel for the Petitioner the second Petitioner out of love and affection has offered to donate a kidney to the first Petitioner. The Committee has failed to consider the Police Report, which discloses that the husband of the second Petitioner was working at Holalu. No documents are produced before the Court to show that the husband of the second Petitioner was working at Holalu and was permanently residing at Holalu village. In the circumstances, it would be difficult for this Court to hold that voluntarily the second Petitioner out of love and affection has offered to donate her kidney to the first Petitioner.

6. The 2nd Petitioner is aged about 32 years and having minor children. She belongs to Vokkaliga caste and the 1st Petitioner belongs to a different caste. The popular proverb is "Love at First Sight", but Court is yet to hear the proverb "Affection at First Sight". Here is a case, the 2nd Petitioner has visited the place of the 1st Petitioner only once or twice; it would be difficult to believe that by visiting the house of the 1st Petitioner once or twice about 3 years ago, the 2nd Petitioner all of a sudden developed such a love and affection for the 1st Petitioner. The Petitioners have failed to produce any documents before this Court. The 2nd Petitioner's husband was working in the field of 1st Petitioner and she had visited the house of the 1st Petitioner. Therefore, this Court is not in a position to take a different view than that of the Committee. Therefore, these writ petitions are to be rejected.

7. Along with the writ petition, the Petitioners have produced a copy of the order passed in W.P. No. 19439 of 2004 disposed of on 20th May, 2004 as Annexure-E1 to the writ petition. In the said case, one Krishna Naika who was the second Petitioner is also from Ramanagaram Taluk has offered to donate a kidney to the first Petitioner there in who is a permanent resident of Ballupet, Hassan District. This Court also has come across another donor by name Lakshamma of Ramanagaram Taluk voluntarily agreed to donate a kidney to one Dr. K. Subramanyam of K.R. Puram, Bangalore in W.P. No. 42083 of 2004. Considering

the age and locality of the donors in these three cases, this Court entertains a doubt in regard to the genuinity of the applications filed by them, seeking permission to donate kidney under the guise of love and affection. Though none of the donors are related or acquainted with the donees for a long time. When particularly the kith and kin of the donees are not willing to donate their kidney voluntarily, it would be difficult to believe that the persons who are the residents of Ramanagaram Taluk alone have approached the Competent Authority seeking permission to donate their kidneys out of love and affection. In the circumstances, this Court entertains a serious doubt about the offer made by the donors to donate their kidneys to the patients of different places and belong to different communities.

8. As per the provisions of Transplantation of Human Organs Act, 1994, a human organ cannot be sold for extraneous considerations. Considering the fact that this Court is coming across donors from a particular taluk, namely, Ramanagaram Taluk of Bangalore District, this Court is of the opinion that the Government has to hold an enquiry in regard to the genuineness of these transactions in order to prevent sale of human organs for considerations or for other reasons.

9. In the circumstances, the Director General of Police is directed to look into all the files submitted by all the applicants seeking permission to donate their kidneys and to find out how many of the donors are from Ramanagaram or surrounding Taluks and whether kidneys have been donated out of love and affection or for any other consideration. A detailed enquiry is required in order to prevent future illegal transactions. He shall submit his report to the Court within a period of two months.

10. In the result, these writ petitions are dismissed. The Director General of Police shall submit his report within two months from the receipt of this copy.