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**(1986) 11 KL CK 0011**  
**In the High Court Of Kerala**

V. Rughmini

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

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**Date of Decision :** 13-11-1986

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Criminal Procedure Code, 1973 (CrPC) — Section 154, 157, 162, 2, 482  
Penal Code, 1860 (IPC) — Section 304A

**Citation :** (1987) CriLJ 200 : (1987) 1 ILR (Ker) 470

**Hon'ble Judges :** U.L. Bhat, J;P.S. Shamasuddin, J;K.T. Thomas, J

**Bench :** Full Bench

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## Judgement

K.T. Thomas, J.—The petitioner, a lady Civil Surgeon of the General Hospital, Cochin, is arraigned as an accused in an FIR registered by the city police commissioner, Cochin, alleging commission of the offence u/s 304A of the I.P.C. She was arrested and released on bail on 1-11-1985. This petition filed u/s 482 of the Criminal P.C. (for short "the Code") is to quash the said FIR and all subsequent proceedings thereto. A learned single Judge who heard the Cri. M. C. was of the opinion that the case involves "substantial questions for which direct precedents are lacking." and referred the case to a Division Bench and the Division Bench, in turn, referred the case to a Full Bench.

2. The FIR is mainly based on a petition filed by one Madan Gopal. His wife Mala aged 28 died at the Lakshmi Nursing Home on 21-9-1983. The substance of the petition filed by Madan Gopal is this : When his wife Mala became pregnant, he took her to the petitioner on 24-2-1983 for consultation and prenatal treatment. The petitioner examined her and assured that there was nothing abnormal and that Mala would have a normal confinement. Mala continued to be under observation of the petitioner. She developed labour pain on 19-9-83 and was admitted in Lakshmi Nursing Home on the advice of the petitioner. After examining her, the petitioner again assured Madan Gopal that there would be no problem with the patient. Mala gave birth to a cyanosed baby on 21-9-1983 and soon after the delivery both the mother and child died. As a matter of fact, the

petitioner knew that Mala had a damaged heart (Ventricular Septal Defect - "VSD" for short) but the petitioner never divulged this to the patient or to her husband despite the diagnosis made by the doctor. Death of Mala is hence attributed to the absence of specialised care and attention with the help of a specialist in Cardiology, since the petitioner did not divulge the above fact to the patient or to her husband. In the concluding portion of the petition, Madan Gopal has stated that Mala's death occurred "as a direct consequence of the gross and wilful negligence" of the petitioner.

3. Madan Gopal filed the petition on 14-10-1983 before the city police commissioner, Cochin. According to the petitioner, the police fully enquired into the said complaint and closed the matter in 1983 itself. However, Madan Gopal filed a second petition before the city police commissioner on 30-10-1984 complaining of inaction on the part of the police and annexing a copy of the petition dated 14-10-1983. On 21-9-1985, the city police commissioner registered Crime No. 155/85 of Mattanchery Police Station against the petitioner u/s 304A of the I.P.C. The FIR mentions that the case was registered on the basis of the petition presented by Madan Gopal to city police commissioner on 30-10-1984 and "on the basis of the enquiry and legal opinion".

4. The learned Counsel contended first that, when once a crime was registered on an FIR which was investigated by the police, a second FIR on the same set of allegations for the same offence is not permitted by law. This argument was based on the assumption that police had registered a crime and FIR had been prepared on the basis of the petition filed by Madan Gopal on 14-10-1983. This assumption is factually incorrect, according to the learned Public Prosecutor. The petitioner did not produce a copy of the alleged first FIR, nor could he furnish the number of the crime registered. Nowhere in his petition did the petitioner state that FIR was registered prior to registration of Crime No. 155/85 on 21-9-1985 in regard to the allegations made against the petitioner. It is therefore, a futile exercise, to consider the contention which is based on a wrong assumption that there was an earlier FIR prepared by the police.

5. The next contention was that after receipt of earlier petition the investigation was conducted and hence it must be deemed that FIR had been registered even though, the police did not follow the formalities prescribed in Section 154 of the Code. The learned Counsel in this connection referred to the decisions in *Palaniswami Goundan Vs. Ramasami Goundan and Another*, *Narapureddigari Narayanareddi and Others Vs. State and Another*, *In Re: G.R. Macfarland*, and *P. Sirajuddin Vs. Government of Madras and Others*. The ratio laid down in those decisions is this : When information regarding a cognizable offence is furnished to the police that information will be regarded as the FIR and all enquiries held by the police subsequent thereto would be treated as investigation, even though the formal registration of the FIR takes place only later. The other proposition emerging from those decisions is that the statements made by witnesses to the police prior to the formal registration of the FIR will fall

within the scope of Section 162 of the Code. On the other hand, the learned Public Prosecutor contended that the FIR is only that which is prepared in conformity with Section 154 of the Code and any complaint received by the police even if it discloses a cognizable offence, would not be FIR as envisaged in Section 154 of the Code. We do not think it necessary to settle this controversy for the disposal of the present Cri. M. C.

6. Even assuming that the first complaint is deemed to be FIR, the proceedings are not liable to be quashed in exercise of the inherent powers. Non-registration of FIR on the information, regarding the commission of a cognizable offence, received by a police officer, may, at best be an irregularity, it would not vitiate the proceedings and the steps taken by the police pursuant to such petition or information, assuming, a contended for the petitioner, that such steps would amount to "investigation" as defined in Section 2(h) of the Code. If it is deemed that such steps amount to investigation, statements made by any person to a police officer during such investigation may fall within the scope of Section 162 of the Code. The question whether such irregularities, if any, would lead to miscarriage of justice, is a matter to be decided during trial and in the light of evidence,

7. In H.N. Rishbud and Inder Singh Vs. The State of Delhi, the Supreme Court has pointed out that if cognizance of an offence is taken on a police report "vitiating by breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice." The same position was reiterated by the Supreme Court in The State of Uttar Pradesh Vs. Bhagwant Kishore Joshi, Subba Rao, J. (as he then was) speaking for the majority has stated thus:

...However, the question in such a case is not whether in investigating an offence the police have disregarded the provisions of the Act, but whether the accused has been prejudiced by such disregard in the matter of his defence at the trial. It is, therefore, necessary for the accused to throw a reasonable doubt that the prosecution evidence is such that it must have been manipulated or shaped by reason of the irregularity in the matter of investigation, that he was prevented by reason of such irregularity from putting forward his defence or adducing evidence in support thereof. But where the prosecution evidence has been held to be true and where the accused had full say in the matter, the conviction cannot obviously be set aside on the ground of some irregularity or illegality in the matter of investigation; there must be a sufficient nexus, either established or probabilized, between the conviction and irregularity in the investigation.

Mudholkar, J. who wrote a separate judgment concurred with the aforesaid observation, though he dissented from the majority judgment on a different point.

8. That apart, should this Court interfere during the stage of investigation, even

if a party succeeds in showing that the investigating agency has committed irregularities in investigation? Courts have always sounded a note of caution against such interference either in exercise of the powers u/s 482 of the Code of Criminal Procedure or under Article 226 of the Constitution, except where non-interference would result in miscarriage of justice. It has been pointed out by the Supreme Court in *State of Bihar and Another Vs. J.A.C. Saldanha and Others*, that "there is a Clear-cut and well demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively reserved for the executive through the police department, the superintendence over which vests in the State Government...." Again in *State of West Bengal and Others Vs. Swapan Kumar Guha and Others*, the Supreme Court reaffirmed the same proposition. Chandrachud C. J., has observed in paragraph 21 of the reported decision thus:

21. The position which emerges from these decisions and the other decisions which are discussed by brother A. N. Sen is that the condition precedent to the commencement of investigation u/s 157 of the Code is that the FIR must disclose, *prima facie*, that a cognizable offence has been committed. It is wrong to suppose that the police have an unfettered discretion to commence investigation u/s 157 of the Code. Their right of inquiry is conditioned by the existence of reason to suspect the commission of a cognizable offence and they cannot, reasonably, have reason so to suspect unless the F. I. R., *prima facie*, discloses the commission of such offences. If that condition is satisfied, the investigation must go on and the rule in *Khwaja Nazir Ahmed* will apply. The Court has then no power to stop the investigation, for, to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. On the other hand, if the F. I. R. does not disclose the commission of a cognizable offence, the Court would be justified in quashing the investigation on the basis of the information as laid or received.

(emphasis supplied)

In a more recent decision the Supreme Court has once again repeated the same principle vide *Eastern Spinning Mills, Eastern Spinning Mills and Virendra Kumar Sharda and Another Vs. Rajiv Poddar and Others*, "...We consider it absolutely unnecessary to make reference to the decisions of this Court and they are legion, which have laid down that save in exceptional case where noninterference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences.

(emphasis supplied).

9. The petitioner in this case has failed to show that the registration of Crime No. 155/85 subsequent to the alleged "investigation" on the earlier petition has led to or would lead to miscarriage of justice.

10. The third contention of the learned Counsel is that the complaint (or petition) of Madan Gopal does not disclose any offence, much less the offence u/s 304A of

the I.P.C. The said Section is the penalising provision for causing death by doing any rash or negligent act which does not amount to culpable homicide. The act which causes death need not necessarily be a rash act; it is enough that death is caused by the negligent act of the accused.

11. To sustain a charge of causing death by negligent act it is necessary that death should have been the direct result of the negligent act. That act must be the proximate cause, without any other supervening act or intervention. In the words of Sir Lawrence Jenkins C. J. *Emperor v. Omkar Rampratap* (1902) 4 Bom LR 679 "it must be the causa causans; it is not enough that it may have been the causa sine qua non". learned Counsel made a reference to *Kurban Hussein Mohammedali Rangwalla Vs. State of Maharashtra*, wherein the court found that death was not the direct or proximate result of the rash or negligent act. In that case seven workmen in a factory died as a consequence of the over-flow of froth out of burners used for heating bitumen which caught fire. The Manager of the factory was prosecuted for the offence u/s 304A of the I.P.C. on the allegation that he allowed the burners to be kept in the same room in which varnish and turpentine was stored. The Supreme Court found that the cause of fire was not merely the presence of the burners in the same room in which varnish and turpentine were stored, though that circumstance was indirectly responsible for the fire which broke out. The cause of the fire was found to be the act of one of the workmen in pouring turpentine into the burners at a too early stage in the heating process. Evidently there was supervening intervention which caused the fire resulting in the death of the workmen. Reference was also made to *Suleman Rehiman Mulani and Another Vs. State of Maharashtra*, . The facts of the said case have no relevance to the present case and hence no useful purpose will be served by discussing the details herein.

12. We made a scrutiny of the petition appended to the FIR prepared in this case. The broad points averred in the petition are : (1) Mala died during her confinement. (2) The petitioner examined her during the second month of her pregnancy and continued to treat her during pregnancy. (3) The petitioner, even during her first examination, diagnosed that Mala had Ventricular Septal Defect (4) That fact was not divulged by the petitioner to the patient or to Madan Gopal (5) On the other hand the petitioner assured Madan Gopal that Mala's case is only a normal one. (6) petitioner never suggested that Mala should be examined by a Cardiologist. (7) Due to the deliberate suppression of the above fact Mala could not get expert medical attention. (8) Consequently Mala died. (9) Her death occurred as a direct consequence of the gross and wilful negligence of the petitioner.

13. We are not able to agree that those averments do not disclose commission of an offence u/s 304A of the I.P.C. The complaint is still in the stage of investigation. We cannot hold that case should not have been registered. We are not called upon at this stage, to consider why the case was registered so late and what are the consequences of such late registration of the case.

For all the above reasons, we are not inclined to interfere at this stage. The petition is accordingly, dismissed.