

CrI.O.P.(MD)No.15947 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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Reserved on : 29.10.2024

Pronounced on : 20.12.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

CrI.O.P.(MD)No.15947 of 2024

and

CrI.M.P.(MD)No.10056 of 2024

Dr.Jenbagalakshmi

... Petitioner

Vs.

1.The State of Tamil Nadu
rep. by its Inspector of Police,
All Women Police Station,
Srirangam,
Tiruchirappalli District.

2.N.Mala

... Respondents

Prayer : This Criminal Original Petition filed under Section 528 B.N.S.S., to call for the records in connection with FIR in Crime No.1 of 2024 on the file of the All Women Police Station, Srirangam, Tiruchirappalli District and quash the same.



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Crl.O.P.(MD)No.15947 of 2024

For Petitioner : Mr.Isaac Mohanlal, Senior Counsel
for M/s.Isaac Chambers

For R1 : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

For R2 : Mr.G.Karuppasamy Pandian
for Mr.T.Navaneetha Krishnan

ORDER

“Medical profession is a noble profession, dedicated to the service of humanity.

A Doctor's reputation is a valuable asset, any false or malicious complaint can cause irreparable harm to their reputation and career.”

-Hon'ble Supreme Court of India

The Criminal Original Petition has been filed, invoking Section 528 B.N.S.S., seeking orders to call for the records pertaining to the FIR in Crime No.1 of 2024 pending on the file of the All Women Police Station, Srirangam,Tiruchirappalli District and quash the same as against the petitioner.

2. On the basis of the complaint lodged by the second respondent, FIR came to be registered in Crime No.1 of 2024 on 28.02.2024 against



Crl.O.P.(MD)No.15947 of 2024

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three persons including the petitioner for the alleged offences under Sections 5(l), 5(j)(ii), 6(1) and 21(1) of Protection of Child from Sexual Offences Act, 2012 (hereinafter called as 'POCSO Act') and Section 312 IPC.

3. The case of the prosecution is that the victim girl is the younger sister of the second respondent/defacto complainant, that the victim girl, who was aged 17 years, was admitted in Trichy Government Hospital by her maternal aunt Meenakshi and she had called the second respondent to come to Trichy Government Hospital, that when the second respondent had gone to the hospital, it was informed by her maternal aunt that the victim girl was pregnant as she was having a relationship with one Ramkumar, that the maternal aunt, in order to abort the fetus, had taken the victim girl to Sudharsana Hospital at Woraiyur on 24.02.2024 and scan was taken and they came to know that she was 9 weeks pregnant then and that on 26.02.2024, the victim girl was brought to Sudharsana Hospital by her maternal aunt to abort the fetus and at the time of abortion, since the victim girl failed to co-operate, there was profuse bleeding, she was taken to Trichy Government Hospital on 27.02.2024 at about 02.00 a.m. in a



Crl.O.P.(MD)No.15947 of 2024

WEB COPY

serious condition and hence, the second respondent has lodged a complaint.

4. It is not in dispute that the victim girl, despite treatment, died at Trichy Government Hospital.

5. It is pertinent to mention that one Ramkumar, who allegedly made the victim girl pregnant, was made as first accused and the maternal aunt Meenakshi, who had accompanied the victim girl to the hospitals, was made as second accused and that the Senior Doctor / Gynecologist at Sudharsana Hospital, the petitioner herein was named as third accused.

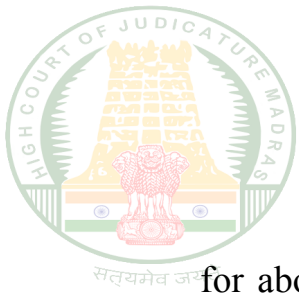
6. The case of the petitioner/third accused is that the victim girl visited the petitioner's hospital on 24.02.2024 as out-patient along with her maternal aunt Meenakshi with a complaint of abdominal pain and delayed periods, that the petitioner, based on the symptoms informed by the victim girl, instructed her to take a blood test and an abdominal ultrasound scan, that scan report revealed that the victim girl was 9 weeks pregnant and hence, the petitioner enquired about her age and martial status, that the



Crl.O.P.(MD)No.15947 of 2024

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victim girl revealed that she was 18 years old and she is unmarried, that the victim girl also informed that her parents were already dead and she is studying paramedical course at Gandhigram, Dindigul and is staying in college hostel, that the victim girl and her maternal aunt insisted on getting a medical termination of the pregnancy but the petitioner refused to do the same and informed them that she will have to report it to the police and to the District Collector as the victim girl was unmarried, that the victim girl's maternal aunt along with the victim girl had left the hospital without even informing or collecting the blood test report, that the victim girl and her maternal aunt had again visited the petitioner's hospital on 26.02.2024 in the early hours around 05.45 a.m. with complaints of dizziness and weakness, that the blood report revealed that the victim girl had severe anaemia with hemoglobin as low as 6.8 grms/dl which is below par, that the petitioner advised the victim girl to approach the Government Medical College Hospital, Trichy but however, observing the victim girl's weakness and low blood pressure, the petitioner commenced to give IV fluids to the victim girl purely with an intention to revive her strength, that the victim girl herself filled up the admission form mentioning that she is 18 years old, that the victim girl and her maternal aunt had again insisted



Crl.O.P.(MD)No.15947 of 2024

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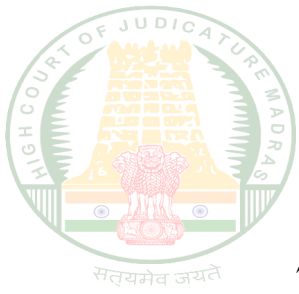
for abortion but the petitioner refused to perform Dilation and Curettage (D & C) procedure and advised them to go to Government Hospital, that the petitioner has also informed that the victim girl is requiring blood transfusion of multiple units of blood and directed them to go to Government Hospital immediately as multiple units of blood would be available only in Government Hospital, that the victim girl's maternal aunt informed the petitioner that she is new to the place and that it would take time for her sons to arrive and take them to Government Medical College Hospital and requested the petitioner to arrange for one unit of blood in the meantime, that the victim girl's blood group was matched around 01.00 p.m. and blood transfusion process started and at that time, the victim girl's vitals were normal and stable, that around 06.00 p.m., the victim girl developed high grade fever and rigor and she was given paracetamol tablet and antibiotics, that thereafter the victim girl was conscious and oriented and was soundly communicating under the care of the petitioner, that the victim girl at about 07.00 p.m. wanted to use the rest room to urinate and after coming out, she told that there was bleeding from her vagina and she saw some solid clots, that when the hospital nurses went to check the rest room, they found that the victim girl had



Crl.O.P.(MD)No.15947 of 2024

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already flushed and cleaned everything, that the petitioner and her staff had tried to examine the victim girl to find out what really happened and shifted her to the adjacent labour room, that the petitioner found some blood like tissue sticking on the outside of the vaginal opening and the petitioner carefully took it and sent it to a pathologist for examination, that the victim girl refused to co-operate and did not allow the petitioner to examine her further, that since the victim girl's blood pressure kept fluctuating and more blood units were required, the petitioner arranged for an ambulance around 11.00 p.m. on the same day and sent the victim girl and her maternal aunt and two staff members along with them to Mahatma Gandhi Memorial Government Hospital, Trichy and at that time, the victim girl was conscious and oriented throughout, that the petitioner has also contacted the Obstetrics and Gynecology Department of the Government Hospital and communicated with the labour ward to update them about the approaching patient, that the victim girl got admitted in the Government Hospital and was given inpatient treatment and that the petitioner received an information that the victim girl died on 29.02.2024 at about 10.30 a.m. at Mahatma Gandhi Memorial Government Hospital, Trichy.



Crl.O.P.(MD)No.15947 of 2024

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7. The main contention of the petitioner is that the allegations in the FIR are completely false and that she is innocent and she has not committed any offence.

8. It is the further contention of the petitioner that the petitioner, after completing her Senior House Surgeon in Obstetrics and Gynecology and Speciality training at Thanjavur Medical College, joined as a Medical and Family Welfare Officer at Trichy Municipality in the year 1979 and after getting voluntary retirement in the year 2002, started her private practice at Sudharsana Hospital, owned by her husband Dr.Mohanasundaram and that the petitioner is having more than 50 years experience in the medical field and she has always intended only the best for her patients and now she is aged about 70 years. The prosecution has not disputed these factual aspects regarding her experience and hospital operations.

9. It is pertinent to note that the the petitioner is facing the charges under Section 21(1) of POCSO Act and under Section 312 IPC.



Crl.O.P.(MD)No.15947 of 2024

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10. The second respondent alleged the victim girl was born on May 26, 2006 and was 17 years old, prompting the police to invoke the POCSO Act and charge the petitioner under Section 21(1) of POCSO Act for failing to report the incident. However, the learned Senior Counsel appearing for the petitioner would contend that the victim girl stated her age as 18 years on Sudharsana Hospital's admission form dated February 26, 2024 and both she and her maternal aunt informed the petitioner of her alleged 18 year age.

11. The learned Senior Counsel appearing for the petitioner would further contend that the essential element for a POCSO Act offence is the victim girl's minority status, which is contradicted by the records and the admission form confirming the victim girl's age as 18. The police's reliance on the sister's statement alone is insufficient, challenging the POCSO Act allegations. The learned Senior Counsel appearing for the petitioner would emphasize the victim girl's claimed majority status, questioning the validity of the charges.

12. It is noteworthy that during the final hearing, the learned



Crl.O.P.(MD)No.15947 of 2024

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Additional Public Prosecutor appearing for the first respondent would fairly concede that the investigation confirmed the victim girl was over 18 years old, rendering the provision of the POCSO Act inapplicable. Even if the victim's age remains uncertain, it is pertinent to consider whether Section 21(1) of the POCSO Act would still be applicable.

13. The learned Senior Counsel appearing for the petitioner would rely on the judgment of the Hon'ble Supreme Court in ***SR. Tessy Jose and others Vs. State of Kerala*** reported in ***(2018) 8 SCC 292***, wherein, the Hon'ble Supreme Court has held that the knowledge requirement foisted on the appellants cannot be that they ought to have deduced from circumstances that an offence has been committed and the relevant passages are extracted hereunder:-

“9. The entire case set up against the appellants is on the basis that when the victim was brought to the hospital her age was recorded as 18 years. On that basis appellants could have gathered that at the time of conception she was less than 18 years and was, thus, a minor and, therefore, the appellants should have taken due care in finding as to how the victim became pregnant. Fastening the criminal liability on the basis of the



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Crl.O.P.(MD)No.15947 of 2024

aforesaid allegation is too far fetched. The provisions of Section 19(1), reproduced above, put a legal obligation on a person to inform the relevant authorities, inter alia, when he/she has knowledge that an offence under the Act had been committed. The expression used is “knowledge” which means that some information received by such a person gives him/her knowledge about the commission of the crime. There is no obligation on this person to investigate and gather knowledge. If at all, the appellants were not careful enough to find the cause of pregnancy as the victim was only 18 years of age at the time of delivery. But that would not be translated into criminality.

...

13. The knowledge requirement foisted on the appellants cannot be that they ought to have deduced from circumstances that an offence has been committed.”

14. In a similar case, Dr.Latha N.N. Vs. State of Karnataka by Hebbagodi Police Station and another (Criminal Petition No.3694 of 2023 dated 27.03.2024), the Karnataka High Court at Bengaluru, considered a scenario where a Doctor treated a victim girl, who claimed to be 18 years old. Citing the Hon'ble Supreme Court's decision in SR.Tessy Jose's case



Crl.O.P.(MD)No.15947 of 2024

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above referred, the High Court has held that continuing proceedings against the Doctor would amount to an abuse of process, given the nature of allegations and the discharge of the co-accused (4, 5 and 7) by the trial Court. Consequently, the Court quashed the case against the Doctor.

15. In the case of ***Dr.Lata Krishnaraddi Mankali Vs. State of Karnataka through Ankola Police Station (Crl.RP.No.100169 of 2020 dated 02.02.2024)***, the High Court of Karnataka, Dharwad Bench, while considering the statement of the victim girl and her mother, who brought her to the hospital that the victim girl was aged 18 years, has observed as follows:-

“15. It is argued by the counsel for the State as the victim girl was a minor therefore, accused no.2 should have taken due care in finding as to how the victim became pregnant. Fastening the criminal liability on the basis above allegations is too far fetched. Provisions of Section 19 and 21 as stated above put an obligation on the person to inform the relevant authorities inter alia when she or he has knowledge of an offence under the Act has been committed. The expression used is "knowledge" which means that some information received by such a person gives him/her knowledge about the commission of the



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Crl.O.P.(MD)No.15947 of 2024

crime. There is no obligation on this person to investigate and gather knowledge. If at all, the petitioner was not careful enough to find the cause of pregnancy as the victim is only 18 years of age at the time of delivering, but, that would not be translated into criminal liability.

16. In view of the clear provisions of the POCSO Act, it is the duty of the prosecution to prove that the petitioner had a knowledge about this empirical knowledge of a commission of rape on the victim girl by the accused no.1.

.....

19. In the considered opinion of this Court, there is no proper evidence brought on record by the prosecution to show that this petitioner/ accused no.2 is involved in the commission of the crime in the manner alleged by the prosecution. So to say, I am of the opinion that there is no evidence implicating accused no.2 for the offence under Sections 19 and 21 of the POCSO Act. Based upon is grave suspicion story of the prosecution, cannot be believed. Therefore, the petition filed by the petitioner deserves to be allowed.”



Crl.O.P.(MD)No.15947 of 2024

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16. The precedents set by the Hon'ble Supreme Court are directly relevant to the present case. As the Hon'ble Apex Court has astutely noted, the petitioner bore no responsibility to verify the victim girl's age or ascertain whether offences had been committed. In light of this, this Court has no hesitation in concluding that the provision of Section 21(1) of the POCSO Act are inapplicable to the petitioner.

17. Now turning to the offence under Section 312 IPC, the above Section states that voluntarily causing a woman to miscarry, except in good faith to save her life, is punishable by up to three years imprisonment, a fine, or both. If the woman is pregnant and the fetus is developed, the punishment increases to up to seven years imprisonment and a fine. To put it in other way, if the miscarriage was not caused in good faith to save the woman's life, the punishment is up to three years imprisonment or fine or both and if the woman was quick with child, the punishment is up to seven years imprisonment and fine. Causing miscarriage involves intentionally or knowingly causing a woman to miscarry, except under circumstances where it is medically justified.



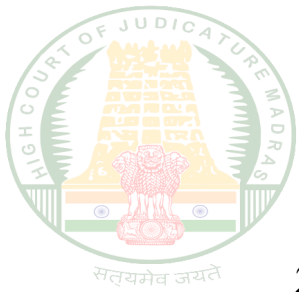
Crl.O.P.(MD)No.15947 of 2024

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18. In the present case, the petitioner would contend that no abortion was performed on the victim girl at Sudharsana Hospital, instead treatment was given due to her weak condition and low hemoglobin levels.

19. No doubt, the learned Additional Public Prosecutor has produced the copy of the postmortem certificate, whereunder, two Doctors, who attended the postmortem, have given their final opinion that the deceased would appear to have died of hemorrhagic shock due to lower abdominal region manipulation or multiple blunt force injuries to abdomen could not be ruled out. To put it in other way, the postmortem certificate concluded that the victim girl likely died from hemorrhagic shock due to lower abdominal region manipulation or multiple blunt force injuries to abdomen. However, the prosecution does not specifically allege that the petitioner or the staff at Sudharsana Hospital performed such action.

20. The learned Senior Counsel appearing for the petitioner would submit that despite the victim girl and her maternal aunt's insistence, the petitioner refused to perform an abortion, and instead directed them to the Government Hospital, Trichy.

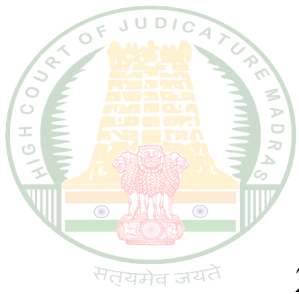


Crl.O.P.(MD)No.15947 of 2024

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21. The learned Senior Counsel appearing for the petitioner would further contend that, given the victim girl's approximately 9 week pregnancy, a Dilation and Curettage (D & C) procedure would have been necessary for termination, which requires anesthesia to render the patient unconscious. However, the prosecution does not allege that anesthesia was administered or Dilation and Curettage (D&C) performed. Furthermore, it is pertinent to note that the Joint Director of Health Services and Family Welfare's proceedings, dated 26.07.2024, specifically state that Sudharsana Hospital refused to terminate the victim girl's pregnancy at her request, corroborating the petitioner's stance.

22. As rightly contended by the learned Senior Counsel appearing for the petitioner, FIR came to be registered solely based on the second respondent's complaint, who is the victim girl's sister. Notably, the second respondent only lodged the complaint after receiving information from her maternal aunt and arriving at Trichy Government Hospital at 08.00 p.m. on February 27, 2024. According to the prosecution, the maternal aunt accompanied the victim girl to Sudharsana Hospital on February 24 and 26, 2024 and later to the Government Hospital, Trichy.



Crl.O.P.(MD)No.15947 of 2024

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23. As already pointed out, the second respondent's complaint relies solely on her maternal aunt's information. The prosecution has not examined other witnesses present at Sudharsana Hospital. Considering the above, this Court has no hesitation to hold that the prosecution has failed to establish *prima facie* case against the petitioner under Section 312 IPC or related offences.

24. The learned Additional Public Prosecutor appearing for the first respondent would submit that investigation is nearly complete, but due to this Court's interim order, the charge sheet has not been filed. Nonetheless, the prosecution still lacks *prima facie* evidence to proceed against the petitioner.

25. The learned Senior Counsel appearing for the petitioner would submit that, following the victim girl's death, the petitioner was subjected to multiple investigations and enquiries. A medical officer from Chinnalampatti Primary Health Care Centre visited the hospital, enquired about the deceased girl and collected records. Subsequently, CB-CID officials conducted a thorough investigation and the Deputy

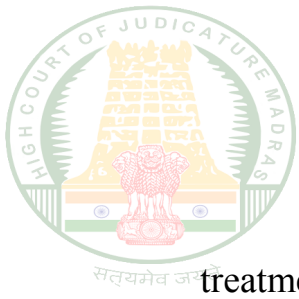


Crl.O.P.(MD)No.15947 of 2024

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Commissioner of Police, Srirangam under took a detailed investigation. Furthermore, the Director of Medical Services and Family Welfare, Chennai along with National Health Rural Mission officials conducted a Death Audit meeting. Additionally, the Joint Director of Health Services and Family Welfare, Tiruchirappalli issued a show cause notice to the petitioner under TNCEA Act, requiring a response. The District Collector of Dindigul has also convened a Death Audit meeting with higher health officials, necessitating the petitioner's presence. Despite the petitioner's genuine intention to save the victim girl, as rightly contended by the learned Senior Counsel appearing for the petitioner, these repeated investigations and enquiries inflicted mental cruelty.

26. In the case of ***Dr.Chanda Rani Akhouri and others Vs. Dr.M.A.Methusethupathi and others*** reported in ***2022 LiveLaw (SC) 391***, the Hon'ble Supreme Court has held that a medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field and he cannot be held liable simply because things went wrong from mischance or misadventure or through an error of judgment in choosing one reasonable course of



Crl.O.P.(MD)No.15947 of 2024

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treatment in preference to other and the relevant passage is extracted hereunder:-

“23. ... Thus, any individual approaching such a skilled person would have a reasonable expectation under the duty of care and caution but there could be no assurance of the result. No doctor would assure a full recovery in every case. At the relevant time, only assurance given by implication is that he possessed the requisite skills in the branch of the profession and while undertaking the performance of his task, he would exercise his skills to the best of his ability and with reasonable competence. Thus, the liability would only come if (a) either a person (doctor) did not possess the requisite skills which he professed to have possessed; or (b) he did not exercise with reasonable competence in given case the skill which he did possess. It was held to be necessary for every professional to possess the highest level of expertise in that branch in which he practices. It was held that simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of the medical professional.”

27. The Hon'ble Supreme Court in ***Jacob Mathew Vs. State of Punjab and another*** reported in ***(2005) 6 SCC 1*** emphasized the need to shield Doctors through unjust punishment, recognizing the essential



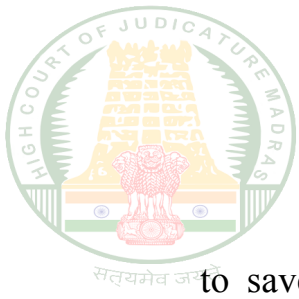
Crl.O.P.(MD)No.15947 of 2024

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services they provide to humanity. The Court has directed the Medical Council of India to advise the Government on developing guidelines for future cases involving medical professionals. Furthermore, the Court stressed that before taking action against Doctors accused of negligence, investigating officers must obtain unbiased and expert medical opinions, preferably from Government Doctors with relevant expertise.

28. In the present case, a 70 year old Senior Doctor / Gynecologist underwent multiple enquiries including a police investigation, and was compelled to obtain anticipatory bail before the Sessions Court. The investigating officer registered the FIR solely based on the second respondent's hearsay statement, without conducting a preliminary enquiry. Such treatment of medical professionals may discourage them from taking necessary risk to save lives, instead adopting a “play-it-safe” approach, ultimately harming patient care.

29. Now-a-days, we come across attack on the Doctors and Hospitals. Doctors, the Guardian of life, embody a noble profession, often revered as akin to God / Almighty, as they possess the extraordinary ability

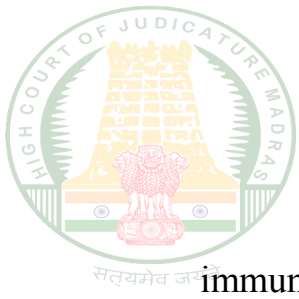


Crl.O.P.(MD)No.15947 of 2024

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to save lives and restore health. While acknowledging the presence of quacks and corporatized hospitals, it is essential to recognize that majority of medical practitioners dedicate their life to serve humanity with compassion and expertise. Unfortunately, false complaints against Doctors can lead to unwanted harassment by police authorities and this can cause immense stress, damage to their reputation, and even impact their ability to practise medicine. It is crucial to accord Doctors the respect and dignity, they deserve and failing to do so, can have devastating consequences on society, including demotivation among medical professionals, decreased access to quality health care and erosion of trust in the medical community. It is high time for the society to preserve the sanctity of the medical profession and to uphold the dignity of Doctors to ensure the continued provision of exceptional care, innovation and dedication to saving lives.

30. As rightly pointed out by the learned Senior Counsel appearing for the petitioner, Section 3 of the Medical Termination of Pregnancy Act, 1971 provides immunity to registered medical practitioners from prosecution under the Indian Penal Code or any other law and that this



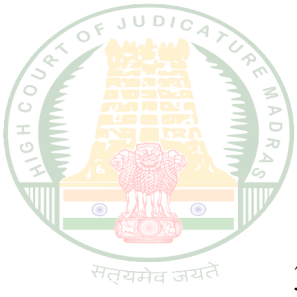
Crl.O.P.(MD)No.15947 of 2024

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immunity applies when a pregnancy is terminated in accordance with Act's provisions. Specifically Section 3(2) permits termination up to 12 weeks without additional approvals and between 12 and 20 weeks with concurrence of two registered medical practitioners, if they determine that the pregnancy poses a risk to the woman's life or health or that child would be born with severe physical or mental abnormalities.

31. As the learned Senior Counsel appearing for the petitioner pointed out, even if the pregnancy was terminated, the the petitioner cannot be held guilty, given the immunity afforded by the Medical Termination of Pregnancy Act.

32. Considering the above, this Court holds that the ingredients of Section 312 IPC are not met against the petitioner. Permitting prosecution would be unnecessary, unwarranted, and amount to an abuse of process of law. Therefore, the FIR in Crime No.1 of 2024 on the file of the first respondent is liable to be quashed against the petitioner.



Crl.O.P.(MD)No.15947 of 2024

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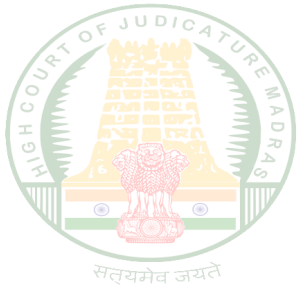
33. In the result, this Criminal Original Petition stands allowed and the proceedings in Crime No.1 of 2024 pending on the file of the first respondent is hereby quashed. Consequently, connected Miscellaneous Petition is closed.

20.12.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

- 1.The Inspector of Police,
All Women Police Station,
Srirangam,
Tiruchirappalli District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.O.P.(MD)No.15947 of 2024

K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
Crl.O.P.(MD)No.15947 of 2024
and
Crl.M.P.(MD)No.10056 of 2024

Dated : 20.12.2024