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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 15TH DAY OF NOVEMBER 2024 / 24TH KARTHIKA, 1946

CRL.MC NO. 9062 OF 2023

CRIME NO.825/2021 OF ERNAKULAM NORTH POLICE STATION, ERNAKULAM

CC NO.93 OF 2022 OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE COURT, ERNAKULAM

PETITIONER/ACCUSED:

PRINCY MOL
AGED 33 YEARS
W/O. SUJITH GEORGE, SOPHAN VILLA, KANNACHAMTHODU ROAD,
AYYAPPANKAVU, ERNAKULAM, PIN - 682018

BY ADVS.SMT.SREEKALA KRISHNADAS
SRI.C.VIVEK
SMT.ASHLY JAMES
SRI.BONIFUS P.A.
SMT.DEVIKA WARRIER

RESPONDENTS/STATE & COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA,
PIN - 682031
- 2 SANDRA PAUL
D/O. PAUL, MANAYIL HOUSE, EDAYAKKUNNAM KARA, BEHIND
CHERANALLOOR PANCHAYAT OFFICE ,CHERANALLOOR VILLAGE,
ERNAKULAM., PIN - 683544

R1 BY SENIOR PUBLIC PROSECUTOR SRI.RENJIT GEORGE

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 21.10.2024, THE
COURT ON 15.11.2024 PASSED THE FOLLOWING:



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'C.R.'

ORDER

Dated this the 15th day of November, 2024

The accused in CC 93/2022 on the files of the Additional Chief Judicial Magistrate Court, Ernakulam seeks the following relief in this petition filed under Section 482 of the Code of Criminal Procedure, 1973:

“To quash Annexure II Final Report in Crime No.825/2021 of ET North Police Station, Ernakulam District, which is now pending as CC No.93/2022 before the Hon'ble Additional Chief Judicial Magistrate Court, Ernakulam in the interest of justice.”

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor in detail. Perused the records.

3. Even though notice served upon the 2nd respondent/de facto complainant, she did not appear.

4. In the instant case, prosecution alleges commission



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of offence punishable under Section 336 of the Indian Penal Code, 1860 (for short 'the IPC') by the accused and the precise accusation is that the accused, who was working at Metropolis Lab, when requested to conduct 'Elisa Hit Antibody Test' as per the prescription of the doctor, for the mother of the de facto complainant, she informed the de facto complainant that Elisa method by using Hit Antibody Test was not available in the lab. Subsequently the accused at 1:20 hours on 11.06.2021, conducted Hit Antibody Test by 'Particle Gel Immuno Assay Method' rashly and negligently so as to endanger the life, and thereby committed offence punishable under Section 336 of IPC.

5. The learned counsel for the petitioner, who pressed for the relief vehemently argued that merely conducting Elisa Test by using Particle Gel Immuno Assay method instead of using the Hit Antibody Test by itself would not attract offence under Section 336 of IPC. According to the learned counsel for the petitioner, even though copy of request forwarded by Dr. Bobby Varkey (Consultant Neurologist, Aster Medcity) to



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Metropolis Lab (Town Hall, Kacheripady) stated "kindly do ELISA-Hit Antibody Test, with the sample given along," when the accused conducted 'Particle Gel Immuno Assay method' instead of conducting Hit Antibody Test, the doctor gave statement that since the said test was not useful, blood sample was again collected and positive result obtained from Medical College, Vellore, and subsequently the doctor treated the patient and avoided fatality to her. Therefore, by conducting 'Particle Gel Immuno Assay Method Test', no overt acts endangering the life or personal safety of the mother of the de facto complainant occurred so as to attract the offence under Section 336 of the IPC.

6. Opposing this contention, the learned Public Prosecutor gave much emphasis to the doctor's request which is part of Annexure-II, specifying to conduct 'Elisa Hit Antibody Test' and with support of the doctor's evidence, contended that the accused herein had done 'Particle Gel Immuno Assay Method Test' without any authorisation and the doctor's statement is that the same was not useful. Accordingly, the



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doctor collected another sample of blood and obtained report from the Medical College, Vellore, and on getting a 'positive' report, the patient was treated and fatality avoided. At the same time, the report by using Particle Gel Immuno Assay Method gave the result as 'negative' as per the report that appears in page No.33 of the paper book. It is pointed out by the learned Public Prosecutor that if the said result was relied upon, without getting report of 'Elisa Hit Antibody Test' with 'positive' result and the patient was not given timely treatment to avoid fatality on account of positive result, the same would have been fatal to the patient. Thus, the offence is prima facie made out warranting trial.

7. In consideration of the rival submissions, the crucial question to be decided is; whether the allegations of the prosecution would attract the offence under Section 336 of IPC?. In this connection it is apposite to extract Section 336 of the IPC as under:

"336. Act endangering life or personal safety of others.-- Whoever does any act so



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rashly or negligently as to endanger human life or the personal of safety 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.”

Thus, the ingredients to attract the offence under Section 336 of IPC are:

- (i) That some act was done;
- (ii) That the act was rash or negligent;
- (iii) That such an act is one capable of endangering human life or the personal safety of others.

8. Thus, if one commits rash or negligent act so as to endanger human life or personal safety of another, he comes under the pale of section 336 of the Indian Penal Code, 1860. For the meaning of "rash or negligent" act see the headings "Rash or negligent", "Negligence: meaning and contrast from rash act" under section 279. When a person in a drunken state indiscriminately fires a gun at a public place (here near a bus stand) he is guilty under Section 336 no matter whether any



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one is injured or not.

9. Criminal rashness is hazarding a dangerous or wanton act with the knowledge that it is so and that it may cause injury but without intention to cause injury or knowledge that it will be probably caused. The criminality lies in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence is the gross and culpable neglect or failure to exercise that reasonable or proper care and precaution to guard against injury either to the public generally or to an individual in particular which having regard to all circumstances out of which the charge has arisen it was the imperative duty of the accused person to have adopted.

10. On reading Section 336 of IPC, it could be seen that the ingredients are doing an act either rashly or negligently, so as to endanger the human life or the personal safety of others. Section 337 of IPC deals with causing hurt by an act endangering the life or personal safety of others and as per Section 337 by doing an act so rashly and



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negligently, when causes hurt to any person the same is an offence under the said Section. Similarly, when the hurt is grievous, the offence is punishable under Section 338 of IPC. Thus, Section 336 of IPC encompasses doing an act rashly or negligently so as to endanger human life or the personal safety of others and no matter whether anyone is injured or affected or not within the orbit of 'endangering life' or 'safety.'

11. In the instant case, as per doctor's request, the doctor demanded to do 'Elisa-Hit Antibody Test'. When the mother of the de facto complainant reached at the Lab at 1:20 hrs. on 11.06.2021, the accused who is well aware of the fact that 'Hit Antibody Test' was not available in the Lab, offered another method, viz; 'Particle Gel Immuno Assay Method' and the result of the same was 'negative'. As per the doctor's statement, when the doctor noticed that Metropolis Lab conducted 'Particle Gel Immuno Assay Method' instead of Hit Antibody Test and the same was not useful, he took another sample of blood and obtained report from the Medical College,



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Vellore, with 'positive' result. The result itself would indicate that if the report of Metropolis Lab by using 'Particle Gel Immuno Assay Method' was relied on, the positive nature of affection of Covid Vaccine could not have been detected. Anyhow, fatality was avoided since the doctor, instead of waiting for the result from Metropolis Lab, had done another blood sample test, and on getting 'positive' result, necessary treatment was given and the patient was saved.

12. In fact, whether the danger to human life was avoided or not has no significance when an act was done either rashly or negligently so as to endanger the human life or personal safety of others.

13. Thus, on no stretch of imagination one could say that the overt act done by the petitioner is not an act of negligence because the Lab Technician is duty-bound to conduct the test commanded by the doctor or to send back the patient, if the said test/procedure was not available at the lab. Therefore, negligence on the part of the petitioner in this matter is foreseeable. The next question is; whether the said



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act would have endangered the life of the patient? It is discernible that when the report on the basis of 'Particle Gel Immuno Assay Method' of 'Hit antibody Test' was given from Metropolis lab the same was 'Negative'. But on noticing the fact that 'Elisa Hit Antibody Test' was not opted by the Metropolis lab, the doctor took another sample and obtained report from the Medical College, Vellore by applying 'Elisa Hit Antibody Test' and the result was 'positive'. Then, the doctor gave proper medicine and avoided danger to the life of the patient. If at all, the doctor could not have understood the negligent act done by the petitioner and had relied on the report with 'negative' result, treatment would not have been possible and the same might have led to danger to the life of the patient or to her personal safety. When construing the overt act in the above compass, it emerges that the act of the petitioner herein would satisfy the ingredients to attract the offence under Section 336 of IPC as argued by the learned Public Prosecutor, negating the contentions raised by the learned counsel for the petitioner. Therefore, the quashment



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sought for by the learned counsel for the petitioner is liable to fail.

14. In the result, this petition stands dismissed. Interim order stands vacated.

15. Registry is directed to forward a copy of this order to the jurisdictional court concerned for information and further steps.

It is specifically made clear that the observations in this order have no binding effect while considering the matter on evidence by the trial court.

Sd/-
A. BADHARUDEEN
JUDGE



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APPENDIX OF CRL.MC 9062/2023

PETITIONER'S ANNEXURES:

Annexure I CERTIFIED COPY OF THE FIR ALONG WITH THE
FIS DATED 22.06.2021.

Annexure II CERTIFIED COPY OF THE FINAL REPORT DATED
31.12.2021 IN CC NO.93/2022 PENDING
BEFORE THE HON'BLE ADDITIONAL CHIEF
JUDICIAL MAGISTRATE COURT ERNAKULAM.

RESPONDENTS' ANNEXURES: NIL

/TRUE COPY/

PA TO JUDGE