

CRL.REV.PET NO. 1402 OF 2016



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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 26TH DAY OF MAY 2025 / 5TH JYAISHTA, 1947

CRL.REV.PET NO. 1402 OF 2016

CRIME NO.915/2012 OF PALAKKAD TOWN SOUTH POLICE STATION,
PALAKKAD

AGAINST THE ORDER DATED 26.08.2016 IN CRL.M.P.NO.101/2016 IN
SC NO.375 OF 2015 OF ASSISTANT SESSIONS COURT (ADDITIONAL)
PALAKKAD

REVISION PETITIONER/
PETITIONER/ACCUSED:

DR.K.RAJAGOPALAN
AGED 71 YEARS, S/O. MANIKKAN,
PADINJARE VEEDU,
NOCHUPULLY P.O., PALAKKAD.

BY ADV K.P.BALAGOPAL

RESPONDENTS/COMPLAINANT,
CW2 & STATE:

- 1 REGHA
AGED 42 YEARS, W/O. HARIDAS,
CHERAMBATTA VEEDU, VENNAKKARA,
NOORANI P.O., PALAKKAD - 678 004
- 2 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM - 682 031

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BY ADV SRI.UNNI SEBASTIAN KAPPEN
SRI.E.C.BINEESH-PP

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 26.05.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

**“C.R.”****ORDER**

This criminal revision petition has been filed challenging the order passed by the Assistant Sessions Court (Addl.), Palakkad (for short, 'the trial court') in CrI.M.P. No.101 of 2016 in S.C. No.375 of 2015, dismissing the petition for discharge filed under Section 227 of the Cr.P.C.

2. The revision petitioner is the accused, and the 1st respondent is the *de facto* complainant in S.C. No.375 of 2015 pending before the trial court. The offence alleged against him is under Section 304 of IPC.

3. The petitioner is a doctor by profession. In 2012, the petitioner was working as a visiting doctor at the Kerala Nursing Home in Palakkad. On 08.05.2012, the petitioner performed surgery on a child, namely Athira, the 10-year-old daughter of the 1st respondent, for appendicitis. The petitioner himself administered spinal anesthesia to the child just before the



surgery. He did not seek the service of an anesthetist. During the surgery, the child developed complications due to the anesthesia. The surgery started at 03.35 p.m. At 03.45 p.m., the oxygen saturation came down to 80%, and the child developed cardiac arrest. At 04.00 p.m., the child was declared dead.

4. On the same day, the Palakkad South Police registered a crime based on the statement given by the 1st respondent, alleging medical negligence on the part of the petitioner, who conducted the surgery and administered the anesthesia. The police, after investigation, filed the final report against the petitioner, alleging an offence under Section 304 of IPC. Annexure A is the final report. The allegation in Annexure A final report is that the petitioner knowing well that conducting of surgery without the assistance of an anesthetist may lead to complications and even result in the death of the child, conducted the surgery on the child who died due to anesthesia complications and thereby committed the



offence.

5. The petitioner appeared before the trial court and was released on bail. He filed a petition as Crl.M.P.No.101 of 2016 under Section 227 of Cr.P.C for discharge. The trial court, after hearing both sides, dismissed the petition as per the impugned order.

6. I have heard Sri.K.P.Balagopal, the learned counsel for the petitioner, Sri.Unni Sebastian Kappen, the learned counsel for the 1st respondent and Sri.E.C.Bineesh, the learned Public Prosecutor.

7. The learned counsel for the petitioner submitted that a close reading of the FIR, the FIS, the statements of the witnesses and the documents on record would reveal that there is no sufficient ground for proceeding against the revision petitioner. The counsel further submitted that not even a *prima facie* case, even after the final report, is made out by the prosecution, for accusing the petitioner of the offence under



Section 304 of IPC. The counsel also submitted that the sole allegation that the petitioner administered anesthesia by himself without availing the services of an anesthetist itself, cannot be taken as a ground for implicating him in the commission of an offence punishable under Section 304 of IPC. According to him, the petitioner cannot be said to have done the act of administration of anesthesia with the knowledge that his act was likely to cause the patient's death, and he did not know that administering anesthesia without seeking the assistance of an anesthetist was likely to cause death. The trial court ought to have discharged the petitioner under Section 227 of Cr.P.C., submitted the counsel. On the other hand, the learned counsel for the 1st respondent as well as the learned Public Prosecutor, submitted that the materials produced by the prosecution are *prima facie* sufficient to show that the petitioner had administered anesthesia without seeking the assistance of an anesthetist and that he had the requisite knowledge that



administering anesthesia without seeking the assistance of an anesthetist was likely to cause death and hence, the offence under Section 304(ii) of IPC is squarely attracted.

8. The crucial question is whether the act of the petitioner would fall within the contours of Section 304 of IPC. Section 304 of IPC has two parts. Both parts deal with culpable homicide, not amounting to murder. The first part deals with culpable homicide not amounting to murder when the act is done with the intention to cause death or bodily injury, as is likely to cause death. The second part deals with culpable homicide not amounting to murder when the act is done without any intention to cause death or bodily injury, as is likely to cause death but with the knowledge that his act is likely to cause death. A person responsible for a reckless or rash or negligent act that causes death which he had knowledge as a reasonable man that such act was dangerous enough to lead to some untoward thing and the death was likely to be caused, may be attributed with the



knowledge of the consequence and may be fastened with the culpability of homicide not amounting to murder punishable under Section 304 Part II of IPC.

9. I have perused the final report and the documents that form part of it. At the instance of the investigating agency, an Expert Medical Board was constituted. The Medical Board, headed by the District Medical Officer, Palakkad submitted a report. Annexure H is the said report. After perusing the hospital records and the postmortem certificate, the Medical Board concluded that the child developed complications of spinal anesthesia, that the surgeon could not manage it, and therefore, he was negligent in his actions. The statement of the Deputy Director, Office of the District Medical Officer, was recorded by the Police. He also stated that the patient died due to the complications of spinal anesthesia, and the negligence was attributed to the petitioner, who treated the child. These are the two incriminating pieces of evidence available in the final report



against the petitioner. In Annexure H report as well as in the statement of the doctor, it is stated that the petitioner was negligent. However, an act of medical negligence, even if resulting in death, would not automatically constitute culpable homicide unless there is intent or knowledge that the death would be a likely consequence. Medical negligence cannot be equated with culpable homicide. In medical negligence cases, if the death is due to failure to exercise reasonable care or a breach of duty by a medical professional, Section 304 A may be invoked.

10. The knowledge contemplated under Sections 299 and 304 of IPC is of a higher degree. Knowledge of the mere possibility that the act may cause death is not the knowledge envisaged. (***Philips Thomas v. State of Kerala***, 2023 (1) KLT 765). The materials on record do not even *prima facie* suggest that the petitioner had the degree of knowledge to the extent that his act was likely to cause the death of the child. Doctors with MBBS registration are qualified to give anesthesia.



Annexure B, the transfer order, would show that the petitioner was transferred to the post of an anesthetist at the District Hospital, Palakkad, in the year 1974. It shows that the petitioner had worked as an anesthetist as well. As there is no *prima facie* material to show that the petitioner knew that administering anesthesia without seeking the assistance of an anesthetist was likely to cause death, the offence under Section 304 of IPC cannot be sustained.

It is settled that if the evidence which the prosecution proposes to adduce to prove the guilt of the accused, even if accepted before the cross-examination or rebutted by defence, if any, cannot show that the accused has committed the offence, there will be no sufficient ground for proceeding with the trial. The prosecution allegations, even if admitted as true in their entirety, would not make out an offence under Section 304 of IPC. Hence, there is no sufficient ground for proceeding against the petitioner. The trial court went wrong in dismissing the

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petition for discharge filed by the petitioner. The petitioner is accordingly discharged. The impugned order is set aside, and the criminal revision petition is allowed.

Sd/-
DR.KAUSER EDAPPAGATH, JUDGE

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APPENDIX OF CRL.REV.PET NO. 1402 OF 2016

PETITIONER ANNEXURES

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|------------|---------------------------------------------------------------------------------------------------------------------------|
| ANNEXURE A | TRUE COPY OF THE FINAL REPORT IN CR.NO.915/2012 OF PALAKKAD TOWN SOUTH POLICE STATION. |
| ANNEXURE B | TRUE COPY OF THE PROCEEDINGS OF HEALTH SERVICES DEPARTMENT DATED 3/12/1974. |
| ANNEXURE C | TRUE COPY OF THE STATEMENT GIVEN BY CW11 TO THE INVESTIGATION OFFICER IN CRIME NO.915/2012 OF TOWN SOUTH POLICE STATION. |
| ANNEXURE D | TRUE COPY OF THE ULTRA-SONOGRAPHY REPORT OF DECEASED ATHIRA DATED 12/4/2012. |
| ANNEXURE E | TRUE COPY OF THE CASE SHEET OF DECEASED ATHIRA DATED 8/5/2012. |
| ANNEXURE F | TRUE COPY OF THE POST-MORTEM REPORT OF DECEASED ATHIRA DATED 9/5/2012. |
| ANNEXURE G | TRUE COPY OF THE HISTOPATHOLOGY REPORT OF DECEASED ATHIRA DATED 6/11/2012. |
| ANNEXURE H | TRUE COPY OF THE EXPERT OPINION IN CR.NO. 915/2012 OF PALAKKAD TOWN SOUTH POLICE STATION ALONG WITH A STATEMENT OF CW 21. |