

**HIGH COURT FOR THE STATE OF TELANGANA  
AT HYDERABAD**

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**Criminal Petition No.3416 OF 2021**

Between:

1. Dr.G.Ravi Kumar  
2. Dr.Anjaiah ... Petitioners/A1 & A2

And

1. The State of Telangana,  
Rep. by its Public Prosecutor,  
High Court for the State of Telangana ...Respondent  
2. Smt.Birelli Satyavathi ...Respondent/defacto  
complainant

DATE OF JUDGMENT PRONOUNCED: 29.01.2024

Submitted for approval.

**THE HON'BLE SRI JUSTICE K.SURENDER**

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|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals     | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

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***K.SURENDER, J***

**\* THE HON'BLE SRI JUSTICE K. SURENDER**

**+ CRL.P. No. 3416 of 2021**

% Dated 29.01.2024

# 1. Dr.G.Ravi Kumar  
2. Dr.Anjaiah

... Petitioners/A1 & A2

And

\$ 1. The State of Telangana,  
Rep. by its Public Prosecutor,  
High Court for the State of Telangana  
2. Smt.Birelli Satyavathi

...Respondent

...Respondent/defacto  
complainant

**! Counsel for the Petitioners:** Sri Srinivasa Rao Pachwa

**^ Counsel for the Respondents:** Sri S.Sudershan  
Additional Public Prosecutor for R1  
Sri N.Yadishwar for R2

**>HEAD NOTE:**

**? Cases referred**

1. (2005) 6 Supreme Court Cases 1
2. (2013) 10 Supreme Court Cases 741

**THE HONOURABLE SRI JUSTICE K.SURENDER****CRIMINAL PETITION No. 3416 OF 2021****O R D E R:**

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') by the petitioners/A1 & A2, to quash the proceedings against them in CC.No.4878 of 2018 on the file of XI Additional Metropolitan Magistrate, Cyberabad, L.B.Nagar, Ranga Reddy District. The offence alleged against the petitioners is under Section 336 of the Indian Penal Code.

2. Heard learned counsel for the petitioners and learned Additional Public Prosecutor for the respondent – State. Perused the record.

3. The son of the defacto complainant had a blister on his right leg. She approached these petitioners who are doctors in Sai Sanjeevani Hospital, Saroornagar, for treatment. The petitioners allegedly suggested that there was no need of any operation and it would be cured by injections. However, the blister was not cured and has become complicated, for which reason, the complainant took her son to Xenia Hospital at ECIL. There, the doctors informed that on account of the incorrect diagnosis and treatment given earlier, the injury has become complicated necessitating an operation for which Rs.75,000/- was charged.

4. Aggrieved by the said inefficiency of these petitioners in curing her son, a complaint was filed on the ground that their inefficiency resulted in the complainant's son being operated upon while incurring an expenditure of Rs.75,000/-.

5. The Police after investigation filed charge sheet under Section 336 of the Indian Penal Code.

6. Learned Counsel appearing for the petitioners would submit that the Honourable Supreme Court in **Jacob Mathew v. State of Punjab and another**<sup>1</sup> held that the doctors can only be prosecuted after the investigation officer has taken independent medical opinion from a competent and qualified person in the branch of medical practice who can give an impartial and unbiased opinion.

The relevant paragraph is as follows;

*“52.....A private complaint may not be entertained unless the complainant has produced prima facie evidence before the Court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor. The investigating officer should, before proceeding against the doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion preferably from a doctor in government service, qualified in that branch of medical practice who can normally be expected to give an*

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<sup>1</sup> (2005) 6 Supreme Court Cases 1

*impartial and unbiased opinion applying the **Bolam** test (**Bolam v. Friern hospital Management Committee (1957) 1 WLR 582**) to the facts collected in the investigation.”*

7. Counsel further argued that for not following the guidelines of the Honourable Supreme court in **Jacob Mathew’s case**, the proceedings have to be quashed.

8. Learned Counsel further relied on the Judgment of **A.V.S.Narayanan Rao v. Ratnamala and another<sup>2</sup>**. In the said case, the Honourable Supreme Court quashed the proceedings under Section 304 A of IPC on the ground that the complainant did not make out a case of gross negligence. Further, opinion of the third party doctors in determining medical negligence was not taken while filing charge sheet.

9. On the other hand, learned counsel appearing for the 2<sup>nd</sup> respondent would submit that even doctors can be prosecuted as an ordinary person and they cannot escape the eye of law. In the present case their incompetence as medical practitioners led to complications in the child’s blister on the leg and he had to be operated upon. Fort he said reason, the proceedings have to go on and it is for the trial Court to determine the complicity or otherwise of the petitioners.

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<sup>2</sup> (2013) 10 Supreme Court Cases 741

10. The Police except examining the defacto complainant, has not sought any help from a professional in the medical field to substantiate that the act of the petitioners as doctors while treating the son of the defacto complainant was negligent, reckless and the said treatment by petitioners resulted in the situation in which the son of defacto complainant was in. Only on the statement made by the defacto complainant that the doctors failed to provide proper treatment, would not attract the offence under Section 336 of the Indian Penal Code.

*336. Act endangering life or personal safety of others.—Whoever does any act so rashly or negligently as to endanger human life or the personal safety of 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.*

11. To attract the offence under Section 336 of IPC, a person should have done any act so rashly or negligently endangering human life or personal safety. As already stated, there is no evidence as to what are the acts committed by the petitioners who are doctors endangering the life of the son of the defacto complainant. Only for the reason of the defacto complainant stating that the treatment given by the doctors did not result in curing the problem of her son and he had to be taken to two different hospitals

for treatment, cannot be made basis for criminal prosecution under Section 336 of the Indian Penal Code.

12. For the reasons of not taking any expert opinion during the course of investigation and also witnesses merely stating that the problem of the son of the defacto complainant was aggravated after being treated by the petitioners herein who are doctors, the ingredients of Section 336 of the Indian Penal Code are not made out.

13. In view of the aforesaid reasons, the Criminal Petition is allowed and the proceedings against the petitioners/A1 and A2 in CC.No.4878 of 2018 on the file of XI Additional Metropolitan Magistrate, cyberabad, L.B.Nagar, Ranga Reddy District, are hereby quashed.

Miscellaneous applications pending, if any, shall stand closed.

Date: 29.01.2024  
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**K.SURENDER, J**