



2023:KER:75400

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

THURSDAY, THE 30TH DAY OF NOVEMBER 2023 / 9TH AGRAHAYANA, 1945

WP(C) NO. 9355 OF 2021

PETITIONERS:

- 1 USHAKUMARI.O
AGED 56 YEARS,

- 2 ALOK SUNNY
AGED 29 YEARS,

- 3 AATHIRA SUNNY
AGED 26 YEARS,

BY ADV M.S.AMAL DHARSAN

RESPONDENTS:

- 1 STATE OF KERALA
HOME DEPARTMENT, SECRETARIAT, STATUE,
THIRUVANANTHAPURAM - 695 001,
REP. BY HOME SECRETARY.

- 2 THE STATION HOUSE OFFICER
MEDICAL COLLEGE POLICE STATION, MEDICAL
COLLEGE P.O., THIRUVANANTHAPURAM - 695 011

- 3 THE INSPECTOR OF POLICE
MEDICAL COLLEGE POLICE STATION, MEDICAL
COLLEGE P.O., THIRUVANANTHAPURAM - 695 011

- 4 THE DISTRICT POLICE CHIEF
OFFICE OF COMMISSIONER OF POLICE, THYCAUD,



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THIRUVANANTHAPURAM - 695 014

**5 THE STATE POLICE CHIEF
KERALA POLICE HEADQUARTERS, VAZHUTHACAUD,
THIRUVANANTHAPURAM - 695 010**

**6 M/S.KIMS HOSPITAL
TRIVANDRUM (A PROJECT UNDER KIMS HEALTH
CARE MANAGEMENT (P) LIMITED), ANAMUKHAM,
ANAYARA P.O., THIRUVANANTHAPURAM - 695 029,
REP.BY ITS MANAGING DIRECTOR.**

BY ADV.

SRI HRITHWIK CS, PP

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 30.11.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**



P.V.KUNHIKRISHNAN, J.

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Dated this the 30th day of November, 2023

JUDGMENT

This is a case in which the grievance of the petitioners is that, there is unnecessary delay in completing the investigation in a medical negligence case. This Writ Petition(C) is filed with the following prayers:

“1) Issue a writ of mandamus, directing the Respondents 4 & 5 to entrust the investigation of Crime No.2543/2019 of the Medical College Police Station with the Crime Branch or to a Special Investigation Team headed by a police officer not below the rank of the Superintendent of Police.

2) Issue such other appropriate writ, direction or order as this Hon’ble Court may deem fit and necessary.”



2. The petitioners are the defacto complainants in Crime No.2543/2019 of Medical College Police Station, Thiruvananthapuram. The petitioners are the dependents and legal heirs of Late. Mr. K.V. Sunny. According to the petitioners, the deceased was taken to 6th respondent Hospital on 17.10.2018 for getting Gastroenterological opinion in view of multiple polyps in his intestine as per the CT scan done at Hind Labs. The deceased consulted a doctor who had advised an upper GI Endoscopy with Biopsy and an appointment was given on next day and informed that the procedure cost is Rs.3,000/-. The procedure was done by Dr. Madhu Sasidharan on 18.10.2018 at 10.A.M and the petitioners were given a bill amounting to Rs.9,000/-, is the submission. Upon enquiring about the additional



amount of Rs.6,000/-, the 6th respondent had informed the petitioners that they did Polypectomy as well, as the doctor felt that it was needed even though prior consent or risks of that procedure were not explained to the petitioners or the deceased. Later on, Dr. Madhu Sasidharan explained to the petitioners that he felt Polypectomy was required while doing endoscopy and hence performed it.

3. It is submitted that, the deceased developed severe abdominal pain by around 8 P.M. on 18.10.2018 and the petitioners rushed him to the 6th respondent Hospital. He was admitted to the emergency ward and administered antacids, analgesics and enema. It is submitted that no proper medical care was given to the deceased by the 6th respondent Hospital. It is also



submitted that, Dr. Madhu Sasidharan or Dr. Venugopal did not examined the deceased despite a complication reported on the same day. The deceased was sent home at 2.00 A.M. on 19.10.2018 with some medicines is the allegation.

4. Again the deceased became restless with severe abdominal pain and was taken to 6th respondent Hospital for review. But, on enrout, he became unconscious and taken to SUT Hospital, Pattom. They explained to the petitioners that as a result of this perforation in his intestine, intestinal contents have leaked and caused peritonitis. Consequently, the patient took his last breath on 5.15 P.M. on 20.10.2018. The definite case of the petitioners is that, there is medical negligence from the part of 6th respondent. Eventhough, 2nd respondent



registered Crime No.2543/2019 against the 6th respondent, there is no progress in the case even after 3 years, because of the influence of the 6th respondent is the allegation. The Medical Expert Committee headed by the District Medical Officer, Thiruvananthapuram, in Ext.P10 report clearly stated that, “in KIMS Hospital the treatment given to the patient in the evening when the patient came with abdominal discomfort after the polypectomy in the morning at KIMS Hospital appeared inadequate and there is medical negligence.” Hence, this Writ Petition is filed to entrust the investigation in Crime No.2543/2019 of Medical College Police Station to the Crime Branch.

5. When this Writ Petition came up for consideration, this Court directed the learned



Public Prosecutor to get instruction. The learned Public Prosecutor, after getting instruction, submitted that the investigating officer was waiting for the report of the State Apex Expert Committee. This Court directed the learned Public Prosecutor to do the needful to see that the final report is filed in this case immediately after getting the State Apex Expert Committee Report.

6. Now, it is submitted that the State Apex Expert Committee Report is received and the police is going to file a final report within a week, after incorporating Section 304A IPC. If that be the case, nothing survives in this case.

7. Recording the above submission this Writ Petition(Crl.) can be closed. But, before parting with the case, I am of the considered opinion that, in medical negligence cases, the investigating



officers should take appropriate steps to expedite the investigation. The District Level Medical Expert Committee and the State Level Apex Expert Committee should take appropriate decision, within a time frame fixed by the competent authority. In medical negligence case, both sides want immediate action. Sometime, unnecessary complaints will be there against the doctors alleging medical negligence, and if the investigation is delayed, the doctors may have to face unnecessary humiliation. Similarly, the victims also want early decisions in medical negligence case. Therefore, a time bound investigation is necessary in these types of cases. The Chief Secretary of the State should take necessary steps to see that a time bound immediate investigation is conducted in medical



negligence case in consultation with the State Police Chief and the Director of Health Service.

With the above observation, this Writ Petition(C) is closed.

Registry will forward a copy of this judgment to the Chief Secretary, State of Kerala and State Police Chief for appropriate action.

Sd/-

**P.V.KUNHIKRISHNAN
JUDGE**

nvj



APPENDIX OF WP(C) 9355/2021

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE CT SCAN REPORT DATED 2/10/2018 TAKEN IN HIND LABS.
- EXHIBIT P2 TRUE COPY OF THE UPPER GI ENDOSCOPY REPORT DATED 18/10/2018.
- EXHIBIT P3 TRUE COPY OF THE CT SCAN DATED 19/10/2018
- EXHIBIT P4 TRUE COPY OF DEATH SUMMARY DATED 20/10/2018 ISSUED BY DEPARTMENT OF SURGICAL GASTROENTEROLOGY SUT HOSPITAL
- EXHIBIT P5 TRUE COPY OF THE COMPLAINT DATED 29.8.2019 BEFORE THE CHIEF MINISTER
- EXHIBIT P6 TRUE COPY OF THE LETTER DATED 5/10/2019 ISSUED BY THE ASSISTANT COMMISSIONER OF POLICE.
- EXHIBIT P7 TRUE COPY OF THE LETTER DATED 11/11/2019 BEFORE THE HON'BLE CHIEF MINISTER.
- EXHIBIT P8 TRUE COPY OF THE LETTER DATED 11/12/2019 ISSUED BY THE ASSISTANT COMMISSIONER OF POLICE.
- EXHIBIT P9 TRUE COPY OF THE FIR IN CRIME NO.2543/2019.
- EXHIBIT P10 TRUE COPY OF THE REPORT DATED 14/12/2020 OF THE MEDICAL EXPERT COMMITTEE OBTAINED VIA RTI DATED 27.2.2021



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EXHIBIT P11 TRUE COPY OF THE REPRESENTATION DATED
30.3.2021 BEFORE THE RESPONDENTS 4
AND 5.

RESPONDENTS EXHIBITS :NIL

//TRUE COPY// PA TO JUDGE