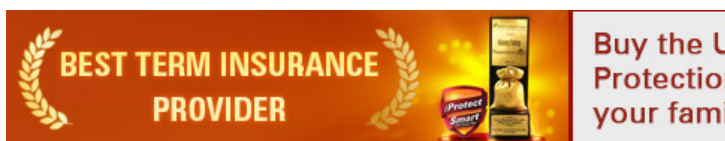


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## Madras High Court

### Suresh vs The State Of Tamil Nadu on 20 August, 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.08.2014

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

W.P.(MD) Nos.1207 of 2012

and 1696 of 2012

Suresh

... Petitioner in W.P.No.1207/2012

Selvaraj

... Petitioner in W.P.No.1696/2012

Vs.

- 1.The State of Tamil Nadu,  
Represented by its Secretary  
Health Department,  
Fort St. George,  
Chennai.
- 2.The Secretary to Government  
Home Department  
Fort St. George  
Chennai.
- 3.The Director General of Police,  
Office of the Director General of Police,  
Beach Road,  
Chennai.
- 4.The Additional Director General of Police,  
Crime Branch Crime Investigation Branch  
(CBCID),Office of the Additional  
Director General of Police,  
Beach Road, Chennai.
- 5.The Chairman  
Tamil Nadu Medical Services Corporation,  
No.417 Panthiyan Salai, 2nd floor  
Egmore, Chennai.

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6.The District Collector,  
Office of the District Collector,  
Theni District.

7.The Superintendent of Police,  
Office of the Superintendent of Police,  
Theni District.

8.The Inspector of Police,  
Kandamanoor Police Station,  
Theni District.

... Respondents

Prayer in W.P.No.1207: Writ Petition filed under [Article 226](#) of the Constitution of India for issuance of Writ of Mandamus to transfer the investigation in Crime No.14 of 2012 on the file of the respondent No.8 to the respondent No.4 for conducting effective investigation within the time stipulated by this Court.

Prayer in W.P.No.1207: Writ Petition filed under [Article 226](#) of the Constitution of India for issuance of Writ of Mandamus to transfer the investigation in Crime No.14 of 2012 on the file of the respondent No.8 to the respondent No.4 for conducting effective investigation within the time stipulated by this Court, for find out the truth relating to the sudden unconscious and consequent serious sufferings of the petitioner's children namely Alaguraja aged 11 years and Karthika aged nine years, after given injection to the petitioner's children at M.Subbalapuram Primary Health centre on 21.01.2012 along with find out the reason for the death of 10 months old child namely Madhubalan after given injection at the said primary health center on 21.01.2012.

!For Petitioners : Mr.R.Alagumani

For Respondents : Mr.V.Muruganandham  
Addl.Govt.Pleader  
for R1 to R4 and R6 to R8

:COMMON ORDER

This is an unfortunate case. It all happened on 21.01.2012 at the Government Primary Health Centre at M.Suppulapuram where three children were brought for treatment with prolonged high fever and cough. Injection paracetamol was given to all the three. Soon, all the three fainted. The doctor gave first aid and rushed them to the nearby Medical College Hospital. On their way, one child breathed his last and two of them survived.

2.The mother of the deceased child made a complaint to the Sub- Inspector of Police, Kandamanur Police Station, alleging that the death of the child was due to the negligence on the part of the Doctor and the other paramedical staff of the said Primary Health Centre. The Sub-Inspector of Police, Kandamanur Police Station registered a case in Crime No.14 of 2012 under [Section 174](#) Cr.P.C. The case was taken up for investigation by the then Inspector of Police Mr.Arumugam. During the course of investigation, he conducted inquest on the body of the child, examined many witnesses including the Doctor at the Primary Health Centre and forwarded the body for postmortem examination.

3.A team of Doctors, at Theni Government Medical College, Theni, conducted autopsy on the body of the deceased child. The viscera was sent for chemical examination and brain was sent for pathological examination. Based on the said opinion, the team of Doctors, who conducted postmortem gave opinion that the history of the case, postmortem finding and pathological finding was consistent with death due to 'hemorrhagic fever?'. Thereafter, the Inspector of Police, forwarded all the records to three expert Doctors. They gave opinion that there was no negligence on the part of the Doctor, who administered paracetamol injection on the child and they concurred with the opinion of the team of doctors who conducted autopsy.

4. Based on the said opinion of the Doctors and other materials collected during investigation, the Inspector of Police prepared a final report dropping all further proceedings. When the final report was yet to be filed before the Magistrate, the petitioner in W.P.(MD) No.1207 of 2012, who is the father of the child, who died, filed the writ petition seeking a direction to transfer case in Crime No.14 of 2012 to Crime Branch-Crime Investigation Division, Chennai, for further investigation.

5. The father of the other child, who survived, has come up with W.P.(MD) No.1696 of 2012 making a similar request.

6. This Court, while admitting these two writ petitions, passed an interim order on 13.03.2013 restraining the investigating officer from filing the final report until further orders. Thus, the final report has not been filed so far. In these circumstances, both the writ petitions have come up today for final hearing.

7. I have heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

8. The present Inspector of Police, Kandamanur Police Station and the Deputy Superintendent of Police, Theni District are also present before this Court. I have had the benefit of going through the entire case diary.

9. According to the case of the petitioner in W.P.(MD) No.1207/2012, the child Madhubalan died on account of the negligence on the part of the Doctor, who prescribed paracetamol injection and the paramedical staff, who administered the same on the child. In other words, according to the petitioner, they are liable for prosecution for offence under [Section 304A](#) of the Indian Penal Code.

10. Now, before going into the factual aspects of the case, let us have a quick look into the legal position on this subject. In this regard, I may refer to the judgment of the Hon'ble Supreme Court in Jacob Mathew Vs. State of Punjab and another reported in AIR 2005 SC 3180.

11. That was a case where the Doctor, who treated a patient, who ultimately died, was attributed with negligence falling within the scope of 304A of the Indian Penal Code. On a complaint made by the son of the deceased, straight away, a case was registered under [Section 304A](#) read with [Section 34](#) IPC. On completing the investigation, charge sheet was also laid against a Doctor under [Section 304A](#) of the Indian Penal Code. Challenging the same, the Doctor filed a revision before the Sessions Court; that was dismissed. As against the same, the Doctors filed a petition under [Section 482](#) Cr.P.C. Before the High Court, to quash the FIR and all the other subsequent proceedings. The High Court ultimately dismissed the said petition. That is how the Doctor approached the Hon'ble Supreme Court by way of a Special Leave Petition.

12. In that case, the Hon'ble Supreme Court had an occasion to draw a line of difference between ? negligence as a tort? and ?negligence as a crime?. While drawing the line of difference, the Hon'ble Supreme Court held in Paragraph 15 as follows:

?15. In order to hold the existence of criminal rashness or criminal negligence it shall have to be found out that the rashness was of such a degree as to amount to taking a hazard knowing that the hazard was of such a degree that injury was most likely imminent. The element of criminality is introduced by the accused having run the risk of doing such an act with recklessness and indifference to the consequences. Lord Atkin in his speech in *Andres v. Director of Public Prosecutions*. (1937) AC 576, stated ?Simple lack of care? such as will constitute civil liability is not enough; for purposes of the criminal law there are degrees of negligence; and a very high degree of negligence is required to be proved before the felony is established.? Thus, a clear distinction exists between ?simple lack of care? incurring civil liability and ?very high degree of negligence? which is required in criminal cases. Lord Porter said in his speech in the same case

-- ?A higher degree of negligence has always been demanded in order to establish a criminal offence than is sufficient to create civil liability.?

13. After having referred to several other judgments of the Supreme Court and the Foreign Courts, the Hon'ble Supreme Court held in paragraph Nos.30 and 31 as follows:

30. If the hands be trembling with the dangling fear of facing a criminal prosecution in the event of failure for whatever reason? whether attributable to himself or not, neither a surgeon can successfully wield his life-saving scalper to perform an essential surgery, nor can a physician successfully administer the life-saving doses of medicine. Discretion being better part of valour, a medical professional would feel better advised to leave a terminal patient to his own fate in the case of emergency where the chance of success may be 10% (or so), rather than taking the risk of making a last ditch effort towards saving the subject and facing a criminal prosecution if his effort fails. Such timidity forced upon a doctor would be a disservice to the society.

31. The purpose of holding a professional liable for his act or omission, if negligent, is to make the life safer and to eliminate the possibility of recurrence of negligence in future. Human body and medical science both are too complex to be easily understood. To hold in favour of existence of negligence, associated with the action or inaction of a medical professional, requires an in-depth understanding of the working of a professional as also the nature of the job and of errors committed by chance, which do not necessarily involve the element of culpability.?

14. Finally, the Hon'ble Supreme Court summed up its conclusions as under in paragraph No.49:

49. We sum up our conclusions as under:-

(1) Negligence is the breach of a duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. The definition of negligence as given in Law of Torts, Ratanlal & Dhirajlal (edited by Justice G.P.Singh), referred to hereinabove, holds good. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence are three: 'duty', 'breach' and 'resulting damage'.

(2) Negligence in the context of medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part of a professional, in particular a doctor, additional considerations apply. A case of occupational negligence is different from one of professional negligence. A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. So long as a doctor follows a practice acceptable to not be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed. When it comes to the failure of taking precautions what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence. So also, the standard of care, while assessing the practice as adopted, is judged in the light of knowledge available at the time of the incident, and not at the date of trial. Similarly, when the charge would fail if the equipment was not generally available at that particular time (that is, the time of the incident) at which it is suggested it should have been used.

(3) A professional may be held liable for negligence on one of the two findings; either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly skilled professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence. (4) The test for determining medical negligence as laid down in Bolam's case (1957) 1 WLR 582, 586 holds good in its applicability in India. (5) The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence

to amount to an offence, the element of mensrea must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher i.e., gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution.

(6) The word 'gross' has not been used in [Section 304A](#) of IPC, yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be gross. The expression 'rash or negligent act' as occurring in [Section 304A](#) of the IPC has to be read as qualified by the word 'grossly' (7) To prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely imminent.

(8) Res ipsa loquitur is only a rule of evidence and operates in the domain of civil law specially in cases of torts and helps in determining the onus of proof in actions relating to negligence. It cannot be pressed in service for determining per se the liability for negligence within the domain of criminal law. Res ipsa loquitur has, if at all, a limited application in trial on a charge of criminal negligence.?

15.As has been observed by the Hon'ble Supreme Court in sub para 7 of Paragraph 49, to prosecute a medical professional for negligence under criminal law, it must be shown that the accused did something or failed to do something, which in the given facts and circumstances, no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely imminent. This is the test, which is to be applied to the facts of each case to find whether the Doctor is criminally negligent so as to prosecute him for offence under [Section 304A](#) IPC or not.

16.The judgment of the Supreme Court in Jacob Mathew was later on considered in yet another case in [Martin F.D'Souza vs. Mohammed Ishfaq](#) reported in 2009 (3) SCC 1. That case was concerned with the claim for compensation made under [Consumer Protection Act](#) before the Commission constituted under the said Act. The Hon'ble Supreme Court, issued few more directions for entertaining such claim applications by Consumer Forums. In paragraph 106 of the judgment in Martin F.D'Souza, it was directed as follows:

?106.We, therefore, direct that whenever a complaint is received against a doctor or hospital by the Consumer Fora (whether District, State or National) or by the criminal court then before issuing notice to the doctor or hospital against whom the complaint was made the Consumer Forum or the criminal court should first refer the matter to a competent doctor or committee of doctors, specialised in the field relating to which the medical negligence is attributed, and only after that doctor or committee reports that there is a prima facie case of medical negligence should notice be then issued to the doctor/hospital concerned. This is necessary to avoid harassment to doctors who may not be ultimately found to be negligent. We further warn the police officials not to arrest or harass doctors unless the facts clearly come within the parameters laid down in Jacob Mathew case, otherwise the policemen will themselves have to face legal action.?

17.The correctness of the said judgment was again examined by the Hon'ble Supreme Court subsequently in [V.Kishan Rao vs. Nikhil Super Speciality Hospital and another](#), reported in (2010) 5 SCC 513. In that case, the Hon'ble Supreme Court has held that the directions in paragraph 106 in D'Souza case are not binding as precedent in cases of medical negligence before the Consumer Forum. But, the said direction was affirmed in respect of criminal prosecution. Since both the D'souza's case and Kishan Rao's case are cases concerned with the medical negligence as a tort, I need not elaborate much about the conclusions and observations made in those two cases. Suffice for me to refer only to Jacob Mathew's case, which is concerned with the prosecution of a Doctor for alleged medical negligence.

18.As I have already pointed out, in Jacob Mathew's case, the Supreme Court has held that for prosecuting a Doctor, it should be shown that the hazard taken by the Doctor should of such a nature that the injury, which resulted was most likely imminent. After holding so, the Hon'ble Supreme Court

has also issued certain guidelines in respect of the prosecution of medical professionals. In paragraph Nos.51 to 53, the Hon'ble Supreme Court has issued the following directions: ?51.As we have noticed hereinabove that the cases of doctors (surgeons and physicians) being subjected to criminal prosecution are on an increase. Sometimes such prosecutions are filed by private complainants and sometimes by police on an FIR being lodged and cognizance taken. The investigating officer and the private complainant cannot always be supposed to have knowledge of medical science so as to determine whether the act of the accused medical professional amounts to rash and negligent act within the domain of criminal law under [Section 304A](#) of IPC. The criminal process once initiated subjects the medical professional to serious embarrassment and sometimes harassment. He has to seek bail to escape arrest, which may or may not be granted to him. At the end he may be exonerated by acquittal or discharge but the loss which he has suffered in his reputation cannot be compensated by any standards.

52.We may not be understood as holding that doctors can never be prosecuted for an offence of which rashness or negligence is an essential ingredient. All that we are doing is to emphasize the need for care and caution in the interest of society; for, the service which the medical profession renders to human beings is probably the noblest of all, and hence, there is a need for protecting doctors from frivolous or unjust prosecutions. Many a complainant prefers recourse to criminal process as a tool for pressurizing the medical professional for extracting uncalled for or unjust compensation. Such malicious proceedings have to be guarded against.

53.Statutory Rules or Executive Instructions incorporating certain guidelines need to be framed and issued by the Government of India and/or the State Governments in consultation with the Medical Council of India. So long as it is not done, we propose to lay down certain guidelines for the future which should govern the prosecution of doctors for offences of which criminal rashness or criminal negligence is an ingredient. 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 impartial and unbiased opinion applying Bolam's test to the facts collected in the investigation. A doctor accused of rashness or negligence, may not be arrested in a routine manner (simply because a charge has been levelled against him). Unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the investigation officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld.?

(emphasis supplied)

19.Recently, a Constitution Bench of the Hon'ble Supreme Court [Lalita Kumari vs. Government of Uttar Pradesh and others](#), reported in (2014) 2 SCC 1, after having forensically analysing the legal provisions relating to registration of FIRs, more particularly [Section 154](#) of the Code of Criminal Procedure, has issued certain directions which includes a direction regarding registration of a criminal case against doctors on the allegation of gross medical negligence. The Constitution Bench has affirmed the law laid down in Jacob Mathew's case, as seen in paragraph 116 of the judgment. In paragraph 115, the Constitution Bench has held as follows: ?115.Although, we, in unequivocal terms, hold that [Section 154](#) of the Code postulates the mandatory registration of FIRs on receipt of all cognizable offences, yet, there may be instances where preliminary inquiry may be required owing to the change in genesis and novelty of crimes with the passage of time. One such instance is in the case of allegations relating to medical negligence on the part of doctors. It will be unfair and inequitable to prosecute a medical professional only on the basis of the allegations in the complaint.?

Again in Paragraph 120.6, the Hon'ble Supreme Court has issued the following directions:

?120.6.As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a)Matrimonial dispute/family disputes.

(b)Commercial offences

(c)Medical negligence cases

(d)Corruption cases

(e)Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay. The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.?

20.As has been held by the Hon'ble Supreme Court by way of guidelines, before proceeding against the Doctor accused of rash or negligent act or omission, the investigating officer should 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 impartial and unbiased opinion applying Bolam's test to the facts collected in the investigation.

21.As I have already pointed out, in this case, a team of Doctors by name, Dr.K.G.Juliana Jeyanthi, Senior Assistant Professor, Department of Forensic medicine, District Police Surgeon, Theni Government Medical College Hospital, one Dr.P.Priya, Tutor in Forensic Medicine, Government Theni Medical College, conducted autopsy on the body of the child. There was no external injury on the body of the child. On internal examination, the Doctors recorded the following findings:

?Other Findings: Peritoneal cavity contained 30ml of hemorrhagic fluid. Pleural cavities ? empty, pericardium contained 5 ml of straw hemorrhagic fluid- Heart ? right side fluid blood, left side empty; coronaries patent. Lungs-cut section pale, floatation test-Both lungs floated in the water. Liver, spleen, and kidneys ? cut section pale. Larynx and trachea ? normal taken and preserved in formalin for pathological examination. Hyoid bone ? intact. Stomach-contained 5gms of few cooked rice particles, nil specific odour. Mucosa-pale. Small intestine contained 5 gms of digested food, nil specific smell, mucosa-pale, bladder-empty; brain-hemorrhagic spot of size 3 cms x 2 cms was seen over the right frontal lobe cut section pale. Brain was taken and preserved for pathological and chemical examination.? Brain was taken and sent for pathological and chemical examination. The Doctors reserved their opinion awaiting pathological and microbiological report as well as chemical examination reports. Few ampules of paracetamol injection drug kept in the hospital were also seized and sent for examination in the Drug Testing Laboratory. The opinion of the analysts was that it was of standard quality. The forensic report was to the effect that the ampules contained 'acetaminophen', which is the chemical name of the drug paracetamol. Based on these opinions, the Doctors, who have conducted autopsy gave their final opinion on 12.03.2012 where, they have opined as follows:

?No definite opinion can be given regarding the cause of death. However, history of the case, postmortem findings and pathological findings are consistent with death due to hemorrhagic fever, 02 hrs. to 06 hrs. prior to autopsy, the cause of which could not be detected microbiologically.? Thus, the opinion of the Doctors is so clear that the death of the child was not due to the administration of paracetamol. The opinion further goes to say that the death was due to hemorrhagic fever, which is consistent with the history of the patient that the child was running high fever for few days without treatment.

22.All the above records were subsequently submitted to a team of expert Doctors for the further opinion as has been held by the Supreme Court in Jacob Mathew's case. One Dr.M.R.Manivannan, MD.DM., (Neuro), Professor and Head of Department of Neurology, Government Medical College Hospital, Theni, Dr.M.RajaRajeshwaran, MD., Professor and Head of Department, Department of Pediatrics, Government Medical College Hospital, Theni and Mr.P.Manikanthan, Professor and Head of the Department, Department of Pediatric Surgery, Government Medical College Hospital, Theni, examined all the records. Finally, they gave their opinion on 30.11.2013 as follows: ?(i) The death of the child Madhubalan was not due to the administration of injection Paracetamol

(ii) The death of the child was due to viral fever with complication of shock.?



23. Today, when the matter was taken up, the learned counsel for the petitioner again raised certain doubts about the correctness of the opinion offered by the two doctors, who conducted autopsy on the body of the deceased child and three other expert Doctors, from whom further opinion was obtained as referred to above.

24. In order to get further clarification, this Court had requested the Senior Civil Surgeon one Dr.K.Sarah of the Government Rajaji Medical College Hospital at Madurai and attached to the Dispensary of this Bench to be present before this Court. She had the benefit of going through the postmortem certificate and the other related records. In open Court, in the presence of the learned counsel on either side, the said Dr.K.Sarah also gave the very same opinion that administration of paracetamol injection would not result in the death of the child. She would further submit that it is the normal treatment given to any child, who is running high fever. She would further explained to this Court that the actual cause for the death could be either due to viral infection or due to bacterial infection. Since the child was no more, exact cause as to whether it was due to viral infection or bacterial infection could not be found out. However, she was of the definite opinion that the death was due to hemorrhagic fever. As seen in the postmortem, there was hemorrhage in the stomach of the child.

25. The learned counsel for the petitioner submitted that in normal course, for a child aged 10 months, paracetamol injection won't be given by Doctors. Thus, according to him, the very administration of the paracetamol injection amounts to negligence. But this is inconsistent with the opinion offered by two teams of doctors referred to above as well as the Doctor, who is present before this Court. Dr.K.Sarah would explain that it is normal that depending upon the gravity of the temperature paracetamol drug is administered orally or by means of injection, even to a child at the age of 10 months.

26. Now referring to the bench mark drawn by the Hon'ble Supreme Court in Jacob Mathew's case, in this case, it cannot be said that the administration of paracetamol injection to the child was most likely imminent to result in death. As a matter of fact, the opinion given by the Doctors is negative to the effect that the death was not due to administration of paracetamol injection to the child. As has been held in Jacob Mathew's case, to prosecute a Doctor, opinion from expert Doctors would be obtained to prima facie get satisfied that there was gross negligence on the part of the Doctor.

27. Here in this case, the Doctors have given opinion uniformly, with no dissent, that there was no negligence, much less gross negligence, at all on the part of the Doctor, who administered paracetamol injection. Therefore, prosecuting the Doctor and the paramedical staff for offence under [Section 304A](#) of the Indian Penal Code, in the given case, is not at all possible. As has been held by the Hon'ble Supreme Court, if Doctors are to be prosecuted before the Criminal Courts in a casual manner for every death or every injury to the patient, then, the Doctors, as and when called upon to enter into the operation theatre or the treatment room, will enter with shivering hands, which will not be good for the society at large. The Doctors should be given free hand to diagnose the disease and to decide about the course of treatment. At times, the diagnosis or the treatment given may not be a correct one. But such error of judgment cannot be considered as gross negligence in terms of 304A [IPC](#). As has been held by the Hon'ble Supreme Court, it is the culpability of the negligence, which differentiates the negligence as a crime or the negligence as a tort. In the case on hand, I find, absolutely there is no material even to infer that the Doctor and the paramedical staff, who administered paracetamol injection had acted in a manner amounting to gross negligence warranting prosecution. Thus, I find no infirmity in the final report prepared by the Investigating Officer. Therefore, the question of transferring the investigation does not arise.

28. In view of all the above, both the writ petitions are dismissed, with liberty to the Investigating Officer to present the report as drafted already to the Magistrate concerned. No costs. Consequently connected Miscellaneous Petitions are closed.

To

1. The State of Tamil Nadu, Represented by its Secretary Health Department, Fort St. George, Chennai.



- 2.The Secretary to Government Home Department Fort St. George Chennai.
- 3.The Director General of Police, Office of the Director General of Police, Beach Road, Chennai.
- 4.The Additional Director General of Police, Crime Branch Crime Investigation Branch (CBCID),Office of the Additional Director General of Police, Beach Road, Chennai.
- 5.The Chairman Tamil Nadu Medical Services Corporation, No.417 Panthiyan Salai, 2nd floor Egmore, Chennai.
- 6.The District Collector, Office of the District Collector, Theni District.
- 7.The Superintendent of Police, Office of the Superintendent of Police, Theni District.
- 8.The Inspector of Police, Kandamanoor Police Station, Theni District. □