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ABSTRACT

Prosecution of doctors for offences of criminal rashness or criminal negligence in treatment modalities – Guidelines laid down by the Supreme Court of India – Aiding of – Instructions – Order issued.

Health and Family Welfare (Z1) Department

Thiruvalluvar Aandu 2039

Aani – 20

Dated : 4.7.2008

Read:

G.O. (Ms) No. 220

1. G.O.(Ms) No. 133, Health and Family Welfare Department, dated 9.7.2002
2. G.O.(D) No. 3, Health and Family Welfare Department, dated 2.1.2008
3. From the Hony. Secretary, Indian Medical Association, Madurai Branch letter dated 23.7.2007
4. From the State Secretary, Tamil Nadu Government Doctors' Association letter dated 18.12.2007
5. From the Registrar, Tamil Nadu Medical Council, letter No. TNMC/Government Comm. 2/2000 dated 30.1.2008

XXXXX

Order :

The issue of prosecution of doctors on the complaints of negligence of treatment modalities under section 304A of the Indian Penal Code has been engaging the attention of the Government for long and certain guidelines have been issued in the matter in the Government Orders first and second read above.

2. In the letter third read above, the Indian Medical Association, Madurai Branch has requested the Government to issue an order abiding the guidelines laid down by the Supreme Court of India on the arrest of doctors for treatment modalities. In the letter fourth read above, the Tamil Nadu Government Doctors' Association has requested the Government to bring a Government order against the arrest of doctors without establishing a prima-facie evidence for criminal case as laid down by the Supreme Court.

3. The Supreme Court of India in its judgement dated 5.8.2005 in Criminal Appeal Nos. 144-145 of 2004 (Jacob Mathew vs State of Punjab and Another) has laid down the following 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 leveled 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.

4. The Government have examined the request of the Indian Medical Association and the Tamil Nadu Government Doctors' Association for abiding the guidelines laid down by the Supreme Court of India in the matter taking account of the existing guidelines in the matter and issue the following orders

(a) In partial modification of the orders issued in the Government Order first read above, the investigating officers are directed to follow the guidelines laid down by the Supreme Court of India in its judgement dated 5.8.2005 in Criminal Appeal No. 144- 145 of 2004 (Jacob Mathew vs State of Punjab and Another) governing the prosecution of doctors for offences of criminal rashness or criminal negligence detailed in para 3 of his order.

(b) The orders issued in the Government Order second read above constituting a permanent enquiry committee to look into the complaints against doctors regarding negligence in treatment modalities are hereby cancelled.

(By Order of the Governor)

V.K. SUBBURAJ
SECRETARY TO GOVERNMENT

To

The Director of Police, Chennai – 600 004.

The Hony. State Secretary, Indian Medical Association, Tamil Nadu State Branch.

The State Secretary, Tamil Nadu Government Doctors' Association.

Copy to

The Registrar, Tamil Nadu Medical Council, Chennai.

The Director of Medical Education, Chennai – 600 010.

The Director of Medical and Rural Health Services, Chennai – 600 006.

The Director of Public Health and Preventive Medicine, Chennai – 600 006.

All District Collectors.

The Home Department, Chennai – 600 009.

The Secretary to Chief Minister, Chennai – 600 009.

The Senior Personal Assistant to Minister (Health) Chennai – 600 009.

The Principal Secretary to Government, Home Department, Chennai 600 009.

The Health and Family Welfare (A/B/E/F) Department, Chennai – 600 009.

/ forwarded by order /

Sd/-
SECTION OFFICER

