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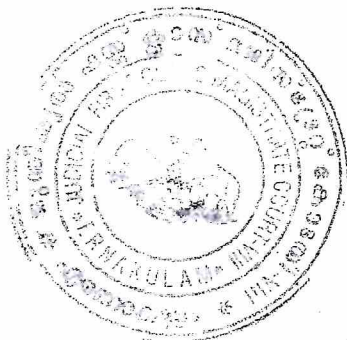
**IN THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS-VIII,
ERNAKULAM**

Present:- Sri. Eldos Mathew, Judicial I Class Magistrate-VIII
Dated this the 29th day of May, 2023

Crl.M.P No. 1004/2021

Complainant :- Dr. S. Ganapathy, aged 73/21,
S/o.Late Adv. K. Sadanandan, residing at "Anjali",
Maruthadi P.O., Kollam, Kerala – 691 003
(Rep By Adv.Santhan V Nair)

- Respondents:-
1. Lakeshore Hospital and Research Centre Pvt. Ltd.
(presently known as VPS Lakeshore Hospital) NH-66, Bye-pass , Nettoor, Maradu, Cochin-682 040 represented by its Chairman and Managing Director
 2. Dr. Philip Augustine, Senior Gastroenterologist, No.35/194-B, Symphony, Automobile Road, Near Renai Medi-city Ernakulam – 680 025
 3. Dr.S Mahesh, Surgical Gastroenterologist, Lakeshore Hospital & Research Centre Pvt. Ltd, NH-Bye pass, Nettoor, Maradu Cochin – 682 040
 4. Dr.George Jacob Eraly, Senior Consultant, Surgical Gastroenterology, Lakeshore Hospital and Research Centre Pvt.Ltd, NH -66 Bye-pass Nettoor, Maradu, Cochin – 682 040
 5. Dr.Sai Sudarsan, Neuro Surgeon Lakeshore Hospital and Research Centre Pvt.Ltd, NH -66 Bye-pass Nettoor, Maradu, Cochin – 682 040
 6. Dr.Thomas Thachil, Medical Superintendent Lakeshore Hospital and Research Centre Pvt.Ltd, NH -66 Bye-pass Nettoor, Maradu, Cochin – 682 040
 7. Dr.Murali Krishna Menon, Neurologist, Lakeshore Hospital and Research Centre Pvt.Ltd, NH -66 Bye-pass Nettoor, Maradu, Cochin – 682 040
 8. Dr.Sujith Vasudevan, Consultant Physician, Lakeshore Hospital and Research Centre Pvt.Ltd, NH -66 Bye-pass Nettoor, Maradu, Cochin – 682 040
 9. Dr. Sajeev S, Vadakkedan, Neuro Surgeon, Mar Baselios Hospital Kothamangalam Ernakulam District – 686 666



This application having been heard on this day, the court delivered the following:-

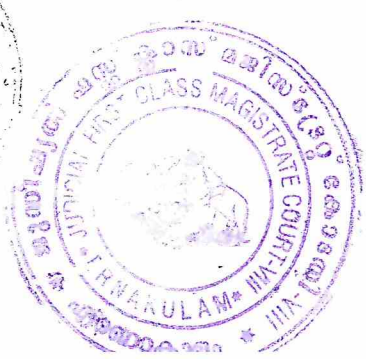
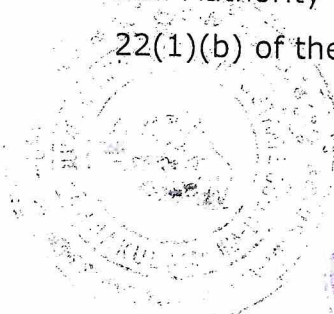
ORDER

This is a private complaint filed u/s.22(1)(b) of the Transplantation of Human Organs Act, 1994 read with Section 190(1)(a) of Cr.P.C.

2. The brief facts in the complaint is as follows:- On 29.11.2009 at 8.30 Pm, one Abin V.J, met with an accident when his motor cycle rammed an electric post and he sustained head injury. He was admitted in Mar Baseliious Hospital, Kothamangalam at 8.58 p.m. On 30.11.2009 at 4.15 am, he was shifted to the Lakeshore Hospital, Ernakulam where he was declared brain dead at 7.00 pm on 1.12.2009. His Kidneys and Liver were harvested in contravention of the Transplantation of Human Organs Act, 1994 (Pre-amended).

3. According to the complainant, the victim was denied proper treatment at Mar Baselios Hospital as well as at the Lakeshore Hospital, Ernakulam making the relatives believe that he is brain dead and thus induced them to donate his vital organs. According to the complainant, the respondents acted in criminal conspiracy and denied proper treatment to the victim and his organs were transplanted to a foreign national in violation of the prescribed laws and amassed huge money for the hospital and thus the respondents have committed the offences under sections 109, 120B, 420, 302, 379 r/w 34 IPC and Section 18, 20 and 21 of the Transplantation of Human Organs Act, 1994 (pre-amended) (Hereafter referred to as TOHO Act).

4. The complaint was filed as per the provisions under section 22(1) (b) of TOHO Act. He filed representation before Appropriate Authority on 25.9.2019 calling upon them to initiate action against respondents. As there was no action, on 5.7.2020, he sent another notice showing his clear intention to approach before the court of law, in case no action is taken by the Authority. Still Authority did not take any action. So he filed this complaint under section 22(1)(b) of the TOHO Act.



5. On receipt of the complaint, proceeding under Chapter XV of Cr.P.C was initiated and sworn statement of the complainant was recorded and document P1 to P20 were marked from the side of the complainant. The complainant filed a list of witnesses to be examined and Dr.P.S.Sanjay, District Police Surgeon was examined as an additional witness. The supplementary post mortem report was marked as document P21. Another witness cited by the complainant Dr. Rema could not be examined since she expired.

6. The court called for the opinion of Dr.Thomas Iype, Professor and Head of Department, Department of Neurology, Medical College Hospital, Thiruvananthapuram u/s.202 Cr.P.C. His report is marked as C1.

7. The sworn statement of the complainant was recorded on 23.7.2021. He is a Doctor by profession residing in Kollam. He came to know about the facts of this case through a news paper report dated 12.1.2019. He enquired the nitty-gritty of the case and found that organ transplantation has been conducted in gross violation of the then existing laws in this field and also obtaining consent of parents under misrepresentation. According to him, the brain death has been certified by the team of doctors who has not been authorised for this purpose. They have not conducted Apnoea Test to confirm brain death and organ was transplanted to a foreign national in violation of the provisions under the Act. The major latch on the part of these two hospitals wherein the injured Abin was admitted was the non-evacuation of blood from cranial cavity.

8. Dr.P.Sanjay (CW2), Assistant Professor, Department of Forensic Medicine, Government Medical College, Manjeri conducted Autopsy on the body of the victim. According to him, there was significant collection of blood in the cranial cavity over the brain due to extra dural and sub dural hemorrhage (SDH) which had not been drained surgically by putting single hole on the skull (cranium) though victim was examined by Neuro surgeons at these two hospitals. He raised a strong suspicion over the non-evacuation on the blood

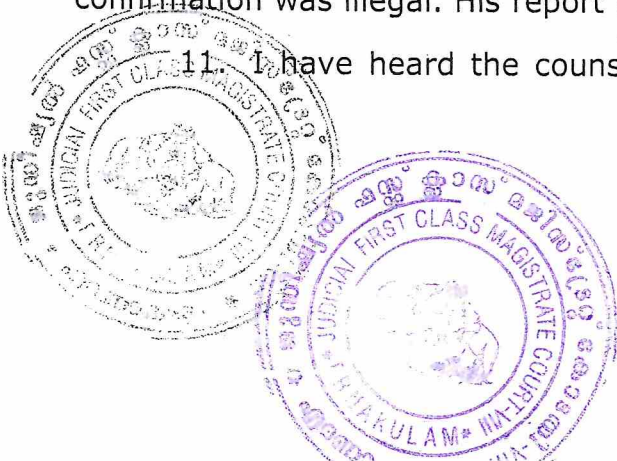


though he was admitted in the hospital soon after the accident and was consulted by a Neuro surgeon. Another lapse pointed out by him is that Abin was not subjected to hematoma evacuation or neuro surgery at the Lakeshore hospital either. On 30.11.2009 at around 3.00 pm, though the victim started respiring himself, the hospital authorities surprisingly downgraded the ventilator settings to C-PAP mode and the Neurosurgeon decided to observe him. According to CW2, Abin had no significant brain injury in the form of brain contusion or brain laceration. According to him, evacuation of the blood could have been life saving for Abin. He also opined that Abin had died due to non evacuation of hematoma over brain.

9. He has further stated that the declaration of brain death was not done as per the procedure mentioned in the prescribed Form of the Act. In the case sheet, there is no evidence that Dr. Philip Augustine examined the patient for brain stem death. But certificate is seen signed by him. Another doctor named Sujith Vasudevan has only Karnataka registration, has signed the certificate. The case records do not reveal that those four doctors signed the Brain Death Certificate, have consulted the patient at an interval of 6 hours. The APNOEA test is also not seen conducted in this case. Another anomaly is that even before the declaration of death, the transplantation team was given access to the patient and his liver was transplanted to a Malasian National contrary to the provisions.

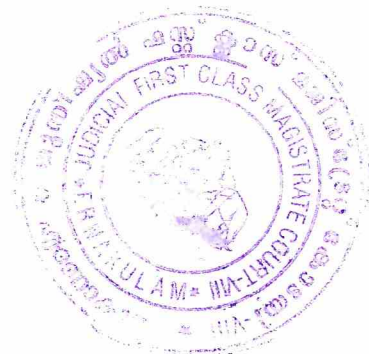
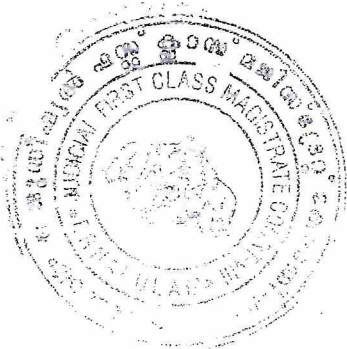
10. Dr. Thomas Iype after verifying the case records reported that procedure for transplantation of human organ has not been complied with in this case. He also opined that there was subdural hematoma with significant midline shift as evidenced in the repeated CT scan and it was a definite indication before the evacuation of subdural hematoma. He is also of the opinion that APNOEA test was not performed and the procedure for brain death confirmation was illegal. His report is marked as C1.

11. I have heard the counsel and perused the records. The discharge



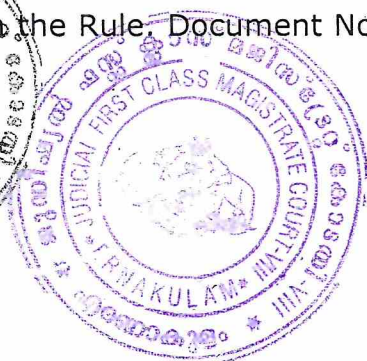
summary of Mar Baselios Medical Mission Hospital, Kothamangalam is produced as document No.19 and case sheet of Lakeshore Hospital is marked as document No.20. The summary of these two case sheets are extracted hereunder.

Date and time	Description
29.11.2009 at 8.30 p.m.	The motor cycle in which Abin P.J. travelled hit on an electric post and he sustained head injury
29.11.2009 at 8.58 p.m.	Abin V.J. was admitted at Mar Baselios Hospital, Kothamangalam. He was examined by Neuro surgeon Dr.Sajeev (R9). CT brain shows extensive SAH, brain edema and SDH. Patient intubated and connected to ventilator
30.11.2009 at 4.15 am	Patient was admitted at Lakeshore Hospital. (Document No.20 is the Case Record. Its page Nos.1 to 22 are the Doctor's case sheet, Page Nos.23 to 27 are the treatment records of SICU. Page Nos.37 to 45 are the nurse's chart.)
30.11.2009 at 5.20 am	Patient was received at "emergency records" (Page No.37)
30.11.2009 at 5.30 am	Discussed with Dr.Sai. advised ILO admission, blood routine, RFT, Na, K, RBS, HIV, HBsAG, Anti HCV , blood group, X-ray chest.
30.11.2009 at 6.10 am	CT brain done, shift to SICU
30.11.2009 at 6.45 am	Patient received at SICU
30.11.2009 at 9.00 am	Dr.Sai visited the patient and recorded in the case sheet (page No.24) Acute SDH with left fronto Parietal collection with mass effect and mid line shift. He recorded the plan to stop paralysis and to observe. He explained the poor prognosis to the relatives.
30.11.2009 at 3.00 pm	Dr.Sai visited the patient. Patient started breathing about 10 breaths per minute. Ventilator changed to 'C' path mode.



1.12.2009 at 11.00 am	Dr.George Jacob, Gastroenterologist (member of liver transplantation team) visited the patient. He ordered to take liver function test, TC & DC as seen page No.26, 41. The result of vitals is informed to Dr.George Jacob on the same date at 1.00 pm as seen page No.42.
1.12.2009 at 1.40 pm	Dr.M.K.Menon, Neurologist visited the patient and declared him clinically brain stem dead (see page No:19)
1.12.2009 at 4.30 pm	Dr.Gursha Singh (Doctor of gastroenterologist transplantation team visited the patient and prescribes for HBSAG, HIV, alp, HCV later these tests are struck off noting that done (see page No.17)
1.12.2009 at 6.25 pm	Dr.Sujith Vasudevan visited the patient and declared that patient was clinically brain dead (page 21 & 43)
1.12.2009 at 7.00 pm	Dr.Mahesh S., (Surgeon and member of the surgical Gastroenterology team) examined the patient and declared that clinically brain dead (See Page No.13)
1.12.2009 at 7.15 pm	Patient's relatives willing for organ donation (liver, both kidneys) (see page 13)
1.12.2009 at 10.00 pm	Patient taken up for organ harvest. Laparotomy, sternotomy – no evidence of intra-abdominal, intra-thoracic organ injury. No evidence of infection. Both kidneys and liver harvested. Cardiac arrest 3.00 am (2.12.2009) page 13 of the case sheet
2.12.2009	Dr.Sai writes in the case sheet at page 21. Patient stopped breathing yesterday afternoon at about 3.00 PM and was declared bread dead after consulting with Dr.Murali Neurologist. Option for organ harvesting was discussed with the relatives and the transplant team was contacted. Relatives consented for organ donation and organs were harvested. Body was handed over to police for post mortem

12. Document No.16 is the certificate of brain stem death signed by four doctors viz. 1) Dr.Philip Augustine, person in charge of the hospital, (2) Dr.Sujith Vasudevan, independent medical practitioner nominated by the appropriate authority, (3) Dr.Murali Krishna Menon, Neurologist nominated by the hospital, (4) Dr.Sai Sudarshan, registered medical practitioner treated the patient. Obviously, Brain stem death Certificate is not prepared in Form No.8 prescribed in the Rule. Document No.18 is the lab report in which HIV test was

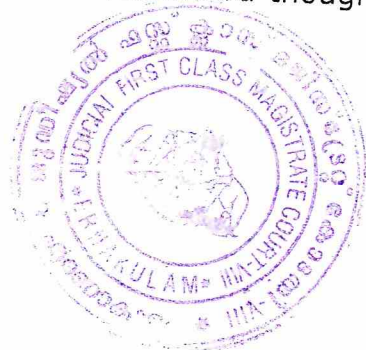
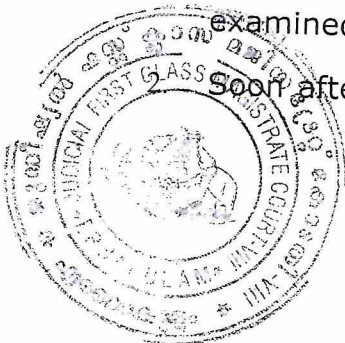


reported negative on 30.11.2009 at 11.12 am. Document No.7 is the report given by Hospital (R1) to the Police in which Hospital Authorities have admitted that sanction of Internal Authorisation Committee for transplantation could not be traced out. Its annexure No-2 is the Malasian Embassy Certificate, in which the wife of the recipient is shown as the donor. In addition to this, I have also looked into the statutes like the Transplantation of Human Organs Act, 1994 and Rules, 1995 (pre-amended), Indian Medical Council (Professional conduct, Etiquette and ethics) Regulations, 2002, The T-C Medical Practitioners Act, 1953, and the Rule, the Indian Medical Council Act, 1956, etc.

13. Before, considering whether there are sufficient materials to commence proceeding under chapter XVI of Cr.P.C, briefly, I may discuss the relevant rulings. Referring to the Judgment in **Sunil Bharti Mittal vs. Central Bureau of Investigation (2015 (4) SCC 609)**, the Hon'ble Apex Court held in **Lalankumar Singh v. State of Maharashtra (AIR 2022 SC 5151)** that the order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a *prima facie* case against the accused. No doubt, that the order need not contain detailed reasons.

14. In the light of the above rulings and the relevant statutes afore mentioned, I have anxiously considered the materials before me like the complaint, Statements of complainant and his witnesses, report of inquiry, Documents etc. and the following grounds were seen emerged.

1. Victim was admitted immediately after the accident at Hospital and significant collection of blood in the cranial cavity due to SAH and SDH were ascertained. Evacuation could have been a life saving procedure. But there was no effort to drain out the blood though victim was examined by Neuro surgeons (R6 and R5) at these two hospitals.
- Soon after admitting the patient, HIV test was conducted though there



was no plan to conduct neurosurgery or blood evacuation.

3. Even prior to the declaration of brain death, Doctors of transplantation team visited patient and Liver function test was conducted.
4. R2, R5, R7, R8 being the members of the 'Board of Medical Experts' have signed the Document No.16- certificate of brain stem death which is not as per the prescribed Form No.8 of Rules, 1995.
5. R2 is a signatory in Document No.16 Certificate; but case sheet does not show that he has visited the patient.
6. R7 has signed the Certificate as a Neurologist nominated by the Hospital. But F.8 prescribes Neurologist/Neuro-surgeon nominated from the panel of names approved by the Appropriate Authority.
7. R8 has signed in the Document No.16 Certificate as an independent Registered Medical Practitioner nominated by Appropriate Authority. But his registration is recorded as 13667 (Karnataka). He cannot be considered as a 'Registered Medical Practitioner' under the Act, as his registration is not as per the T-C Medical Practitioners Act, 1956.
8. R3 and R4 Gastroenterologists despite being members of the 'Board of Medical Experts', have visited the patient and certified brain stem death in the case sheet. They are not authorized to declare so.
9. Apnoea test is not seen conducted as specified in F.8 of the Rule, 1995 before declaring brain stem death.
10. There was no examination of the 'Board of Medical Experts' twice with an interval of about six hours in between, as specified in F.8 of the Rule, 1995 before declaring brain stem death.
11. S.4 of the Act does not authorize removal of human organ in a case where Inquest is required to be held in relation to such body. The case on hand is recorded as RTA in the Admission sheet itself.
12. R6 being the Medical Superintendent not seen ensured the statutory provisions of the TOHO Act and Rule, 1995.
13. Liver is transplanted to a foreign National for which sanction of internal authorization committee is not seen obtained.

14. In the Malasian Embassy Certificate (Doc.No.7), wife of the recipient is

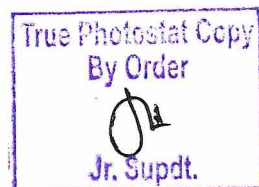
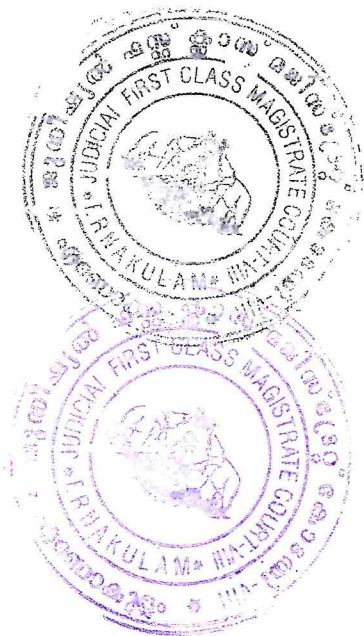


shown as the donor. But the Liver of victim was transplanted to him, the reason there of is suspicious.

15. During the organ harvesting thoracic chamber was opened (sternotomy) and Heart was seen mutilated.

15. On the grounds mentioned in the fore going paragraphs, I find that there is a *prima facie* case and sufficient grounds for proceeding in respect of offences u/s. 18, 20 and 21 of the Transplantation of Human Organs Act, 1994 (pre-amended), against all accused (Respondents-R1 to R9). The complainant has complied with all the requirements u/s. 22(1)(b) of the Act. Hence, case is taken on file as **CC 521/2023**. Accordingly, it is directed that summons shall be issued to all accused.

Judicial First Class Magistrate-VIII, Ernakulam



COURT OF THE JUDICIAL FIRST CLASS
MAGISTRATE - VIII, ERNAKULAM

1. Copy application No. CA 703/2023
2. Year & No. of the case. CMP 1004/2021
3. Name of applicant Adv. Santhan V Nair
4. Date of application 09.06.2023
5. Date of calling of stamp 12.06.2023
6. Date of Production of stamp 13.06.2023
7. Date of calling for addl. stamp
8. Date of production of addl. stamp
9. Date When copy ready 13.06.2023
10. Date notified for appearance
to receive the copy 4
11. Date of delivery of copy 4
12. No. of sheets 9 Rs. 13.50/-


Examiner


Jr. Superintendent