


## BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM



W.P.(C) No. 14291 of 2021

Petitioner:Dr. Prathibha. K.,  


Vs.

Respondents:

1. State of Kerala, represented by the Chief Secretary to Government, Secretariat, Thiruvananthapuram – 695 001.
2. Additional Chief Secretary, Home Department, Government Secretariat, Thiruvananthapuram – 695 001.
3. Principal Secretary, Health Department, Government Secretariat, Thiruvananthapuram – 695 001.
4. The Director of Health, Health Directorate, Thiruvananthapuram – 695 035.

The address for service of notice and process on the petitioner is that of her Counsel R. GOPAN, Advocate,   


The address for service of notice and process on the Respondent is as shown above.

**WRIT PETITION FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA**

**STATEMENT OF FACTS**

The petitioner humbly submits as follows:-

1) The petitioner is a Government Doctor working in the Government Hospital, Tanalur Family Health Centre. As per Section 53 of Cr.P.C. arrested accused person should be produced before the Government Medical Practitioner for examination of the accused person and it is the duty of the Medical Practitioner to make such an examination reasonably necessary in order to ascertain the facts. In the above provision there is no direction to the Doctors to conduct various tests for finding the internal injury of the accused person. So if the accused persons are produced before the Medical Practitioner normally he/she will not the external injury in the wound certificate for producing before the Court. Normally there will not be any recommendation for conducting the various test to find out the internal injury, as such now there is no direction to the Doctors to conduct or recommend various test if she/he satisfied that there is a chance of internal injuries to the accused, who was examined by him.

2) In the custody death of Mr. Rajkumar, the Government has appointed Justice Naryana Kurup as the Judicial Commission to conduct the enquiry for the death of said Rajkumar. On 5.1.2021 Justice Narayana Kurup filed report before the Government and made certain recommendation to be followed by the Police, Doctors and Jail Authorities, which is mentioned in Page Nos. 135 to 138 of the Commission Report. The photocopy of Page Nos. 135 to 138 of the Judicial Commission's Report is produced herewith and marked as Exhibit P1.

3) It is respectfully submitted the, recommendation of the Judicial Commission is that Direction to be issued to the Director of Health Services (DHS) and Director of Medical Education (DME) is in Page No. 137, item No.D is that the members of the Medical Community to detect hidden injuries, if they suspect they conduct "Renal profile, Creative Phosphokise (CPK), Urine myoglobin and c-reactive protein (CRP), ultrasound scanning of the abdomen test, etc." in 'E' it is stated full protection to be given to the Doctors from Police harassment. The Honourable Judicial Commission has reported that due to the failure in reporting the internal injuries to accused is the reason for the custodial torture and custodial death, so recommended to implement the recommendations in the Report. The Government has accepted the recommendation and directed to issue Circular as directed by the

Commission. On 4.6.2021 the 4<sup>th</sup> respondent issued Circular without understanding the recommendation of the Judicial Commission. 4<sup>th</sup> respondent directed the Medical Officers to conduct, Renal profile, Creative Phosphokise (CPK), Urine myoglobin and c-reactive protein (CRP), ultrasound scanning of the abdomen test to the examining person. So the Doctors have to conduct all the above said test to the examining person. The recommendation was that, on medical examination if the doctors found or suspect internal injury he/she can conduct or recommend the above test to the Accused. The photocopy of the Circular dated 4.6.2021 issued by the 4<sup>th</sup> respondent is produced herewith and marked as **Exhibit P2.**

4) It is submitted that, pursuant to Ext.P2 Circular, Kannur Jail Superintendent has issued a Circular stating that before admitting the accused in Jail it has to verify Renal profile, Creative Phosphokise (CPK), Urine myoglobin and c-reactive protein (CRP), ultrasound scanning of the abdomen test of the accused. The photocopy of the Circular dated 12.6.2021 issued by the Kannur Jail Superintendent is produced herewith and marked as **Exhibit P3.** On 14.6.2021 the 4<sup>th</sup> respondent issued a circular stating that Ext.P2 Circular is kept in abeyance until further direction. The photocopy of the Circular dated 14.6.2021 issued by the 4<sup>th</sup> respondent is produced herewith and marked as **Exhibit P4.**

5) It is submitted that, after Ext.P4 Circular the Medical Practitioner are in dilama. Even if in the medical examination they suspect serious internal injury they may not conduct various test to find out the same or reference to the Medical Board for detailed examination, due to the absence of specific direction or circular from the Health Department. The Police will insist for noting the external injuries only otherwise they will harass the medical practitioners due to that reason. on 8.7.2021, the petitioner filed representation before the respondents 2 to 4 requesting to issue circular clarifying that Ext.P4 circular is not a bare in conducting various test if the Doctor found it necessary in the preliminary examination of the accused person. The photocopy of the representation dated 10.,7.2021 submitted by the petitioner before the 2<sup>nd</sup> respondent is produced herewith and marked as Exhibit P5. Photocopy of representation dated 9.7.2021 submitted by the petitioner before the 3<sup>rd</sup> respondent is produced herewith and marked as Exhibit P5(a). The photocopy of representation dated 8.7.2021 submitted by the petitioner before the 4<sup>th</sup> respondent is produced herewith and marked as Exhibit P5(b).

6) On 12.7.2021 the petitioner submitted representation before the 1<sup>st</sup> respondent stating that the 4<sup>th</sup> respondent has issued Ext.P2 Circular

without incorporating the recommendation of the Honourable Judicial Commission and requested to issue Circular incorporating the recommendation of the Judicial Commission as such in clear and unambiguous terms. The photocopy of the representation dated 12.7.2021 submitted e-mail of the petitioner before the 1<sup>st</sup> respondent is produced herewith and marked as Exhibit P6.

Aggrieved by which, the petitioner has no other alternative and efficacious remedy than to approach to this Honourable court under Article 226 of the Constitution of India, on the following among other:-

#### GROUND S

A) The delay in disposing Exts.P5 and P6 are denial of justice to the petitioner.

B) The internal injuries to the vital parts like Kidney, Spinal cord, liver or intestines can be made without causing any external injuries to the body. On examination of an accused person under Section 53 of Cr.P.C., if the medical practitioners are satisfied that the accused is suffering from serious internal injuries, the prevailing law does not mandate medical practitioner to do various tests to find out the internal injury or for referring it to the medical board for conducting and detecting nature of internal injuries caused to the accused while he is in custody. Due to the absence of the specific directions to the medical practitioner their hands are tied up

and act according to the tune of police officer, which are the reasons for the custodial torture and custodial death. The only way to prevent the custodial torture is by enacting new provision by coordinating police, Doctors and Jail Authorities, which shall be applicable to them and bound by the same.

C) The internal head injuries and bleeding can be detected after conducting CT Scan, skull-x-ray, and MRI Scan, USG Chest, and CT Scan chest, and the general injury by ultra sound pelvis and perineum contrast x-ray, CT scan and MRI Scan, etc. only after conducting necessary test proper medicine can be administer to the patient and save his life. But there is no law prevailing to conduct or recommend the necessary test by the medical practitioner, who conducted primary examination of the accused.

D) Ext.P4 create restriction to the doctors to conduct necessary test and recommend for the time being.

E) The criteria and yardstick of treatment will vary from person to person. So the discretion should be given to the Doctors by enacting law.

F) In some cases there may influence and pressurize to the Doctors from the outside, which shall be prevented and responsibility should be vested to the Doctors by incorporating specific provisions.

Therefore on these and other grounds to be submitted at the time of hearing, this Honourable Court may be pleased to issue:

**RELIEF**

- i) issue a writ of mandamus or any other appropriate order or direction directing the 4<sup>th</sup> respondent to issue direction that Ext.P4 is not a bar is conducting necessary medical test to the accused person as the examining Doctor deemed fit and proper.
- ii) issue a writ of mandamus or any other appropriate writ order or direction directing the 1<sup>st</sup> respondent to dispose of Ext.P6.
- iii) such other writ, direction or order this Honourable Court may deem fit and proper for the circumstances in this case.

**INTERIM RELIEF**

For the reasons stated in the writ petition and accompanying affidavit, it is most humbly prayed that this Honourable Court may be pleased to direct 4<sup>th</sup> respondent to issue direction that Ext.P4 is not a bar is conducting necessary medical test to the accused person as the examining Doctor deemed fit and proper, pending disposal of the Writ Petition (Civil).

Dated this the 14th day of July 2021.

PETITIONER:

COUNSEL FOR THE PETITIONER.