IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

TUESDAY, THE 25TH DAY OF JULY 2023 / 3RD SRAVANA, 1945

CRL.MC NO. 1019 OF 2022

AGAINST THE ORDER/JUDGMENT IN CC No.498/2021 OF JUDICIAL MAGISTRATE OF FIRST CLASS - IX, ERNAKULAM (TEMPORARY)

PETITIONERS/ACCUSED NOS.1,2,4,5,6 & 10:

1 ASTER MEDCITY,KUTTISAHIB ROAD, CHERANELLORE, SOUTH CHITTOOR, ERNAKULAM, REPRESENTED BY ITS AUTHORISED SIGNATORY AND CEO, MRS. AMBILI VIJAYARAGHAVAN., PIN - 682027

2 DR. MATHEW JACOB,SENIOR LEAD CONSULTANT-HEPATOBILARY AND MULTI-ORGAN TRANSPLANT SURGERY, ASTER MEDCITY, KUTTISAHIB ROAD, CHERANELLORE, SOUTH CHITTOOR, ERNAKULAM, PIN - 682027

3 DR. CHARLES PANAKKAL,SENIOR CONSULTANT-HEPATOLOGY AND LIVER TRANSPLANTATION, ASTER MEDCITY, KUTTISAHIB ROAD, CHERANELLORE, SOUTH CHITTOOR, ERNAKULAM, PIN - 682027

4 DR. RAJESH RAJAGOPAL,CONSULTANT-ANESTHESIA AND CRITICAL CARE, ASTER MEDCITY, KUTTISAHIB ROAD, CHERANELLORE, SOUTH CHITTOOR, ERNAKULAM, PIN - 682027

5 DR. SANGEETH P.S,CONSULTANT-ANESTHESIOLOGY AND CRITICAL CARE MEDICINE, ASTER MEDCITY, KUTTISAHIB ROAD, CHERANELLORE, SOUTH CHITTOOR, ERNAKULAM, PIN - 682027

6 DR. SHEJOY P. JOSHUA, NEUROSURGERY, ASTER MEDCITY, KUTTISAHIB ROAD, CHERANELLORE, SOUTH CHITTOOR, ERNAKULAM, PIN - 682027

BY ADVS.
P.JAYABAL MENON
REKHA AGARWAL

RESPONDENTS/STATE AND COMPLAINANT:

1 THE STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULUM, PIN - 682031

2 DR. S. GANAPATHY, S/O LATE ADV .K. SADANANDAN, "ANJALI", MARUTHADI P.O, KOLLAM., PIN - 691003

R2 BY ADVS.
R.RENJITH, SANTHAN V.NAIR(K/1635/2001)
CHRISTEENA P GEORGE(K/001170/2019)
MANJUSHA K(K/000191/2018)

R1 BY SMT.SEENA C., PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 26.06.2023, ALONG WITH Crl.MC.1010/2022, 1995/2022 AND CONNECTED CASES, THE COURT ON 25.7.2023 PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

TUESDAY, THE 25TH DAY OF JULY 2023 / 3RD SRAVANA, 1945

CRL.MC NO. 798 OF 2022

AGAINST THE ORDER/JUDGMENT IN CC No.498/2021 OF JUDICIAL MAGISTRATE OF FIRST CLASS - IX, ERNAKULAM (TEMPORARY)

PETITIONER/ACCUSED NO.11

DR. RAKHI R R
AGED 50 YEARS
D/O RAGHAVAN G, CONSULTANT (GENERAL MEDICINE) GENERAL HOSPITAL, MUVATTUPUZHA, ERNAKULAM- 686 661 RESIDING AT 'KRISHNAKRIPA', MODEL HS ROAD MUVATTUPUZHA, ERNAKULAM, PIN - 686661

BY ADVS.
LAYA MARY JOSEPH
AJAY BEN JOSE

RESPONDENT/STATE AND COMPLAINANT:

1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031

2 DR. GANAPATHY
AGED 73 YEARS
S/O LATE ADV K. SADANANDAN RESIDING AT "ANJALI", MARUTHADI P.O KOLLAM, PIN - 691003

BY ADVS.
R2 BY R.RENJITH
CHRISTEENA P GEORGE
SANTHAN V.NAIR
MANJUSHA K

R1 BY SMT.SEENA C, PUBLIC PROSECUTOR
& VIPIN NARAYAN, SR. PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 26.6.2023 ALONG WITH Crl.MC.1019/2022 AND CONNECTED CASES, THE COURT ON 25.7.2023 PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

TUESDAY, THE 25TH DAY OF JULY 2023 / 3RD SRAVANA, 1945

CRL.MC NO. 1010 OF 2022

AGAINST THE ORDER/JUDGMENT IN CC No.498/2021 OF JUDICIAL MAGISTRATE OF FIRST CLASS - IX, ERNAKULAM (TEMPORARY)

PETITIONER/ACCUSED NO.12:

DR. VIVEK NAMBIAR
AGED 46 YEARS
NEUROLOGIST, AMRITHA INSTITUTE OF MEDICAL SCIENCES, PONEKKARA P.O, KOCHI, PIN - 682041
BY ADV HARIKRISHNAN S.

RESPONDENT/STATE AND COMPLAINANT:

1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULUM., PIN - 682031

2 DR. S. GANAPATHY,
S/O LATE ADV .K.SADANANDAN"ANJALI", MARUTHODI P.O, KOLLAM, PIN - 691003
BY ADVS.
R2 BY R.RENJITH
SANTHAN V.NAIR(K/1635/2001)
CHRISTEENA P GEORGE(K/001170/2019)
MANJUSHA K(K/000191/2018)

R1 BY SEENA C, PUBLIC PROSECUTOR,
& VIPIN NARAYAN, SR. PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 26.06.2023, ALONG WITH Crl.MC.1019/2022 AND CONNECTED CASES, THE COURT ON 25.7.2023 PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

TUESDAY, THE 25TH DAY OF JULY 2023 / 3RD SRAVANA, 1945

CRL.MC NO. 1995 OF 2022

AGAINST THE ORDER/JUDGMENT IN CC No.498/2021 OF JUDICIAL MAGISTRATE OF FIRST CLASS - IX, ERNAKULAM (TEMPORARY)

PETITIONER/ACCUSED NO.8:

DR. RAJ ANDERSON CORREYA
AGED 42 YEARS, WORKING AS
JR. CONSULTANT, TALUK HEAD QUARTERS HOSPITAL, FORT KOCHI, PIN- 682001, RESIDING AT HOUSE NO. 67/6849, MARKET ROAD, ERNAKULAM, COCHIN – 682035.

BY ADVS.
O.V.MANIPRASAD
JOSE ANTONY
S.SHIV SHANKAR
CHERIAN CHACKO MANAYATH
ANITA ANN GEORGE

RESPONDENT/STATE AND COMPLAINANT:

1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM - 682 031.

2 2. DR. S GANAPATHY
AGED 73 YEARS
S/O LATE ADV K SADANANDAN RESIDING AT "ANJALI", MARUTHADI P O, KOLLAM - PIN: 691 003.

BY ADVS.
R2 BY R.RENJITH
SMITHA PHILIPOSE(K/592/2005)
MANJUSHA K(K/000191/2018)
SOUMYA FRANCIS(K/000605/2020)

R1 BY SMT. SEENA C., PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 26.06.2023, ALONG WITH Crl.MC.1019/2022 AND CONNECTED CASES, THE COURT ON 25.7.2023 PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

TUESDAY, THE 25TH DAY OF JULY 2023 / 3RD SRAVANA, 1945

CRL.MC NO. 3048 OF 2022

AGAINST THE ORDER/JUDGMENT IN CC 498/2021 OF JUDICIAL MAGISTRATE OF FIRST CLASS - IX, ERNAKULAM (TEMPORARY)

PETITIONER/ACCUSED NO.13

DR. NOBLE GRACIOUS S.S.
AGED 50 YEARS, S/O. SUNNY,
NODAL OFFICER, KERALA NETWORK FOR ORGAN SHARING (KNOS), SUPER SPECIALITY BLOCK, GOVERNMENT MEDICAL COLLEGE, MEDICAL COLLEGE, P.O, THIRUVANANTHAPURAM DISTRICT, PIN - 695011

BY ADVS.
AJIT JOY
ANEESH JAMES
SAYUJYA

RESPONDENTS/STATE AND COMPLAINANT:

1 STATE OF KERALA
STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031

2 DR. S. GANAPATHY
AGED 73 YEARS
"ANJALI", MARUTHADI P.O KOLLAM, PIN - 691003

BY ADVS.
R2 BY R.RENJITH
SMITHA PHILIPOSE(K/592/2005)
DARSAN SOMANATH(K/150/2007)
P.R.JAYASANKAR(K/1637/2003)
MANJUSHA K(K/000191/2018)

R1 BY VIPIN NARAYAN, SR. PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 26.06.2023, ALONG WITH Crl.MC.1019/2022 AND CONNECTED CASES, THE COURT ON 25.7.2023 PASSED THE FOLLOWING:

O R D E R

These Crl.M.Cs are filed by some of the accused persons in C.C. No.498 of 2021 on the files of the Judicial First Class Magistrate Court-IX Ernakulam. To be precise, Crl.M.C No.1019/2022 is filed by the accused Nos. 1,2,4,5,6 and 10, Crl.M.C No. 1010/2022 is filed by the 12th accused, Crl.M.C No. 3048/2022 is filed by the 13th accused, Crl.M.C No.798/2022 is by 11th accused and Crl.M.C No.1995/2022 is filed by 8th accused. Altogether there are thirteen accused persons, and the said case was instituted based on a private complaint submitted by the 2nd respondent in Crl.M.C No 1019/2022. The prayers sought in all the Cr.M.Cs are to quash all further proceedings in the said Calendar Case, taken cognizance of by the learned Magistrate based on the said private complainant. *(For the sake of convenience, the parties shall be hereinafter referred to as per their respective status in the private complaint. The Annexures shall be hereinafter referred to, as mentioned in Crl.M.C No.1019/2022, unless*

otherwise specifically mentioned).

2. The learned Magistrate has taken cognizance of the offences based on the private complaint, which is produced as Annexure-I, for the offences punishable under 18, 20 and 21 of the Transplantation of Human Organs and Tissues Act, 1994 (hereinafter referred to as the TOHO & T Act) and sections 109,120B, 420, 468 read with section 34 of the Indian Penal Code. The issues in these cases are in connection with the declarations of brain death made by the medical practitioners in the 1st petitioner Hospital with the help of the other doctors empaneled by Appropriate Authority constituted under the provisions of the TOHO & T Act, of two patients named Sri Ajay Johny, aged 19 years, and Adv Suresh, and the transplantation of liver of the said Ajay Johny, initially to Adv. Suresh and later to another patient.

3. The private complaint was submitted by the 2nd respondent, with the following allegations: Adv Suresh was a practicing lawyer before the High Court of Kerala and was under treatment for Liver Cirrhosis at the

Aster Medcity Hospital, the 1st petitioner, since June, 2018. As a result of the treatment, he attained normal liver functions. However, at 3.30 P.M on 4.03.2019, the said Suresh and his wife were contacted over phone by the 1st petitioner Hospital authorities, informing that the liver of Sri.Ajay Johny was available for transplantation and, therefore, the said Suresh was required to get admitted in the hospital for the purpose of transplantation of the liver to his body. Ajay Johny was admitted to the hospital at 7 P.M on 2.03.2019 due to a road traffic accident as he sustained serious head injuries. At the relevant time, Adv. Suresh was at Changanasserry, and immediately, he himself came to Ernakulam along with his wife and one Sibichan, after driving his car, covering about 120 Kms thereby reached Ernakulam and got admitted to the Hospital. Upon getting admitted, Adv Suresh was asked to deposit an amount of Rs 22,00,000/- Rupees twenty two lakhs only) for liver transplantation. Accordingly, they immediately deposited Rs.1,00,000/- and issued a signed undated cheque for Rs.21,00,000/-.

4. Accused 2 to 7 and 10 are the doctors of the 1st petitioner hospital, and they discussed the case of Adv. Suresh, and accordingly, he was admitted to the hospital at 8.50 P.M. on 4.03.2019. According to the complainant, the doctors, i.e. Accused Nos 2 to 7 and 10, knew that Adv Suresh did not require liver transplantation and was leading a normal life. According to the complainant, compelling such a person to undergo liver transplantation amounted to cheating. It was also alleged that, at the time when Adv Suresh was informed of the availability of the liver of Sri. Ajay Johny, i.e. at 3.30. P.M. on 4.03.2019, the said Ajay Johny was not declared brain dead and was declared so only at 3.45 AM on 5.03.2019. Thus, Adv Suresh was informed of the brain death of the said Ajay Johny 12 hours before the declaration of his brain death. According to the complainant, the same amounts to the violation of the provisions of the TOHO & T Act, the rules made thereunder, the decision taken at high level meetings of the competent officers and the Government orders issued in this regard,

including GO(MS) No.53/2018/2018/P7FWD dated 3.04.2018.

5. According to the complainant, the doctors who certified the brain death of the said Ajay Johny was not empowered to do so, and the certification issued by them in this regard was invalid. The complainant also points out certain shortcomings in carrying out the tests for the purpose of declaration of brain death of the said Ajay Johny. In short, the case of the complainant in respect of the transplantation of the liver of Sri.Ajay Johny is that the accused persons hatched a conspiracy to remove the liver and his other organs before his death to transplant the same to Adv.Suresh, who did not require any liver transplantation.

6. After the admission of Adv.Suresh, he was taken to the operation theatre in the early morning of 5.03.2019 for transplantation surgery. It is averred in the complaint that before he was taken, he suffered a stroke close to midnight on 4.03.2019, and he was not conscious when he was taken to the operation theatre. Thereafter, the surgery was performed, but later when

Adv. Suresh was under observation in the post-operative room, some medical complications developed and Suresh died. The 2nd accused informed the wife of Adv. Suresh at 2.30.PM on 6.03.2019 that he is brain dead and persuaded her to donate the organs of her husband. However, the said Suresh was declared brain dead only at 6.46 PM, on 7.03.2019, and thus Adv.Suresh was declared dead 16 hours before the actual declaration of brain death. Thereafter the organs of the deceased Suresh, including the liver, which was transplanted from Ajay Johny, were again transplanted to another patient. The complainant alleged various illegalities and discrepancies in the brain death certification process of the said Suresh, mainly in the conduct of the Apnea test, which is one of the most important tests in the brain death certification process, as according to the complainant, the same was conducted by incompetent persons and without following the proper procedure. The procedure and the preparation of the brain death certificate in Form 10, were not in a proper manner. The allegations in brief, according to

the complainant, are that the declarations of brain deaths of both the abovenamed persons were part of a conspiracy between the accused persons, and the transplantation surgery of Adv Suresh was unwanted as he did not require any translation. Proper procedure as contemplated under the TOHO & T Act, rules made thereunder and other guidelines/directions issued by the Government were also not complied with while carrying out the process of tests for brain deaths and the certifications thereof, which were also formed part of the said conspiracy for the purpose of unlawful gains, and thus all the accused have committed the offences mentioned above.

7. The accused Nos 8 and 11, the petitioners in Crl.MC No.1995/2022 and Crl.MC No.798/2012, respectively, are Government Doctors and are also empanelled doctors for conducting the brain death tests and the certification thereof. The 13th accused is also a Government Doctor and the Nodal Officer of Kerala Networking for Organ Sharing (KNOS), who has to oversee the brain death tests and the certification process.

KNOS is a system established to coordinate the organ transplantation and they used to maintain the list of persons who require organ transplantation and thereby to ensure transparency in the matter of allotment of organs. The 12th accused, the petitioner in Crl.MC No. 1010/2012 is a Neurologist of Amritha Hospital and Medical Sciences, Ernakulam, and was a member of the Board of Experts who certified the death of Ajay Johny.

8. The learned Magistrate, as part of the inquiry, recorded the sworn statements of the complainant and the wife of the deceased Suresh. Thereafter passed Annexure 2 order, taking cognizance of the complaint for the offences mentioned above, and issued summons to the accused persons. These Crl.M.Cs are filed in such circumstances by the petitioners herein for quashing the proceedings. In response to the averments in the Crl.MCs, detailed counter affidavits were also submitted by the complainant.

9. Heard, Sri. S.Sreekumar, the learned Senior Counsel, assisted by Sri.P.Jayabal Menon, learned Counsel appearing for the petitioners in Crl.MC,

1019/2022, Sri. O.V. Maniprasad, the learned Counsel for the petitioner in Crl.M.C No 1995/2022, Sri. Ajith Joy, the learned counsel for the petitioner in Crl.MC 3048/2022, Sri.Harikrishnan S., the learned Counsel for the petitioner in Crl.MC No.1010/2022, Adv. Laya Mary Joseph, the learned Counsel for the petitioner in Crl.MC No.798/2022, Sri.R.Renjith, the learned counsel appearing for the 2nd respondent/complainant in all the said cases, and Sri. Vipin Narayan and Seena C., the learned Public Prosecutors appearing for the State.

10. In support of the prayer to quash the complaint and all further proceedings pursuant to it, several contentions have been raised by the respective counsels, which shall be dealt with one by one in the following part of this order. On the other hand, the learned counsel for the complainant stoutly opposed all the contentions raised by the petitioners.

11. Since one of the crucial contentions raised on behalf of the accused was related to the maintainability of the complaint, I deem it fit to consider the said question first. The petitioners are

raising the said contention by placing reliance upon the statutory stipulations contained in section 22 of the TOHO and T Act. The said provision reads as follows:

> *"Section 22 : Cognizance of offences:*
> *(1) No Court shall take cognizance of an offence under this Act except on a complaint made by*
>
> *(a) the Appropriate Authority concerned, or any officer authorised in this behalf by the Central Government or the State Government or, as the case may be, the Appropriate Authority; or*
>
> *(b) a person who has given notice of not less than sixty days, in such manner as may be prescribed, to the Appropriate Authority concerned, of the alleged offence and of his intention to make a complaint to the court.*
>
> *(2) No Court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.*
>
> *(3) Where a complaint has been made under clause (b) of sub-section (1), the Court may, on demand by such person, direct the Appropriate Authority to make available copies of the relevant records in its possession to such person."*

It is pointed out that, as per the stipulation therein, a person has to give notice of less than sixty days, as may be prescribed, to the Appropriate Authority of the alleged offence of his intention to make a complaint to the court and in this case, that requirement has not been fulfilled. In response to the said contention, it

was pointed out by the learned counsel for the complainant that, initially complaint/notice dated 14.05.2019 (Annexure A11) was submitted by the complainant before the Appropriate Authority, highlighting the acts committed by the accused persons and the said copy is produced as Document NO 10 along with the Annexure 1 complaint. Since there was no action from the Appropriate Authority, a reminder dated 26.08.2019 has been sent, which is produced as Document No 11 along with the complaint. Again, a further notice was issued on 24.12.2019, which is Document No 12 in the complaint. Later a fresh notice dated 6.01.2020 was issued to the Appropriate Authority conveying his intention to move the court, which is Document No 13 in the complaint. Annexure 1 complaint is dated 13th July, 2021. The copies of the said documents were made available for perusal of this court, and I have examined the same. From the said documents, it is evident that the complaint was submitted by the 2nd respondent after fulfilling the stipulation contained in section 22(1)(b) of the TOHO & T and Act, and

therefore, the contention raised by the petitioners regarding the maintainability of the complaint is liable to be rejected, and I do so.

12. Before going to the merits of the case, I deem it proper to consider yet another contention raised by the petitioners in Crl.MC Nos.3048/2022, Crl.M.C No. 798/2022 and Crl MC No.1995/2022. All the petitioners in these Crl.MCs are Government Doctors who were roped in as the accused in the said complaint in connection with the acts during their discharge of official duties as public servants. Therefore, before taking cognizance of the offences against them, sanction from the Government as contemplated under section 197 of the Cr.P.C should have been taken. It is to be noted that the 8th and 11th accused, the petitioners in Crl.MC Nos.1995 and 798 of 2022 were implicated as they were members of the Board of Medical Experts in their capacity as empanelled doctors for the conduct and certification of the brain death test of Advs. Suresh and Ajay Johny, respectively. It is pointed out that they were empanelled as competent doctors for the

certification process as per the notification published by the Appropriate Authority under the TOHO and T Act, as evidenced by Annexure 4(a). As far as the 13th accused is concerned, he was implicated as he allegedly failed to carry out his duties as the Nodal Officer of KNOS. Thus, it was contended that, as they were implicated for doing some act in the discharge of their official duties as a public servant, sanction under section 197 Cr.P.C was a mandatory requirement before taking cognizance, which was not complied with.

13. In response to the said contention, the learned counsel for the complainant argued that, as per section 197 of the CrPC, the sanction is required only in respect of public servants not removable from their office save by or with the sanction of the Government. According to the complainant, none among the accused Nos 8, 11 and 13, would come under the said category, and to substantiate the same certain appointment orders of the Government Doctors were relied on to show that the said orders were issued by the Director of the Health Services. Besides the same, it was also

contended that, considering the fact that the offences alleged against the said petitioners were for committing criminal conspiracy to commit the offences, under no circumstances it can be concluded that the said act would come within the purview of the discharge of their official duties. The learned Counsel for the petitioner relies on the decisions rendered by the Honourable Supreme Court in **Harihar Prasad v. State of Bihar [(1972) 3 SCC 89], S.B.Saha and others v. M.S Kochar [(1979) 4 SCC 177] and R. Balakrishnan Pillai v State of Kerala and another [(1996) 1 SCC 478].**

14. In reply to the said contention, the learned Counsel for the petitioner in Crl.MC 1995/2022, brought the attention of this court to the provisions of Kerala Health Service(Medical Officers) Special Rules 2010, which was formulated by the State Government in the exercise of its powers under section 2(1) of the Kerala Public Services Act, 1968, wherein various posts of Medical Officers are mentioned. The Government Doctors involved in this case are governed by the said Special Rules. The learned Counsel also relies on

Kerala Civil Services(Classification, Control & Appeal) Rules 1960 (hereinafter referred to as KCS(CC&A) Rules), constituted by the State Government invoking its powers under Article 309 of the Constitution of India. As per rule 7 of the KCS (CC&A) Rules, the State services shall consist of the services included in Schedule-I of the said rules. As per entry 15 of Schedule-1 thereof, the Kerala Health Service is included in the State Service. It is evident that, as per rule 9 of thereof, all appointments to the State and Subordinate services, shall be made by the Government. Rule 11(1) of Part V of the KCS (CC&A) Rules, deals with the penalties that can be imposed upon the Government servant in which sub clause (viii) thereof mentions the termination of services. Rule 13(1) thereof contemplates that the Government may impose penalties specified in terms (i) and (iii) to (viii) of rule 11(1). Thus, it is evident that, the removal of the doctors, who are Government Servants, are removable from the service by the Government, and therefore, the contention raised by the learned counsel

for the complainant, in this regard is liable to be rejected.

15. The next contention raised by the complainant in this regard is that since the offence alleged against the Government Doctors is for criminal conspiracy, the same cannot be treated as an act committed in the discharge of their official duty and, therefore, no protection under section 197 of the Cr. P.C can be extended to them. The learned counsel for the complainant placed reliance on the observations made by the Honourable Supreme Court in para 66 of **Harihar Prasad's** case (supra), a case wherein it was observed that it is no part of the duty of a public servant while discharging his official duties, to enter into a criminal conspiracy or to indulge in criminal misconduct. In **R. Balakrishna Pillai's** case (Supra), the aforesaid observations were followed. However, both said issues dealt with the misappropriation of Government funds under the Prevention of Corruption Act. In **Harihar Prasad's** case (supra), a clear distinction has been made by observing that, "*As far*

as the offence of criminal conspiracy punishable under section 120B read with section 409 of Indian Penal Code is concerned, and also Section 5(2) of the prevention of Corruption Act are concerned they cannot be said to be of the nature mentioned in Section 197 of the Code of Criminal Procedure…." Similarly, in **S.B Saha's case** (supra), it was observed as follows:

> *"18. In sum, the sine qua non for the applicability of this section is that the offence charged, be it one of commission or omission, must be one which has been committed by the public servant either in his official capacity or under colour of the office held by him.*
>
> *19. While the question whether an offence was committed in the course of official duty or under colour of office, cannot be answered hypothetically, and depends on the facts of each case, one broad test for this purpose, first deduced by Varadachariar, J. of the Federal Court in Dr Hori Ram v. Emperor [1939 FCR 159 : AIR 1939 FC 43] , is generally applied with advantage. After referring with approval to those observations of Varadachariar, J., Lord Simonds in H.H.B. Gill v. King [AIR 1948 PC 128] tersely reiterated that the "test may well be whether the public servant, if challenged, can reasonably claim, that what he does, he does in virtue of his office"*
>
> *20. Speaking for the Constitution Bench of this Court, Chandrashekhar I Aiyer, J., restated the same principle, thus:*
>
> > *In the matter of grant of sanction under Section 197, the offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty .... There must be a* ***reasonable connection*** *between the act and the dis-. charge of official duty; the* ***act must bear such relation to the duty that the***

> ***accused could lay a reasonable but not a pretended or fanciful claim, that he did it in the course of the performance of his duty.*** *(emphasis supplied)*

16. Similarly, in **Pukhraj v State of Rajasthan [(1973) 2 SCC 701],** it was observed by the Honourable Supreme Court in paragraph 2 as follows:

> *"2.The law regarding the circumstances under which sanction under Section 197 of the Code of Criminal Procedure is necessary is by now well settled as a result of the decisions from Hori Ram Singh's case[AIR 1939 FC 43 : 1939 FCR 159 : 40 Cri LJ 468] to the latest decision of this Court in Bhagwan Prasad Srivastava v. N.P. Misra[(1970) 2 SCC 56 : (1971) 1 SCR 317] . While the law is well settled the difficulty really arises in applying the law to the facts of any particular case. The intention behind the section is to prevent public servants from being unnecessarily harassed. The section is not restricted only to cases of anything purported to be done in good faith, for a person who ostensibly acts in execution of his duty still purports so to act, although he may have a dishonest intention. Nor is it confined to cases where the act, which constitutes the offence, is the official duty of the official concerned. Such an interpretation would involve a contradiction in terms, because an offence can never be an official duty. The offence should have been committed when an act is done in the execution of duty or when an act purports to be done in execution of duty. The test appears to be not that the offence is capable of being committed only by a public servant and not by anyone else, but that it is committed by a public servant in an act done or purporting to be done in the execution of duty. The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty. Nor need the act constituting the offence be so inseparably connected with the official duty as to form part and parcel of the same transaction. What is necessary is that the offence must be in respect of an act done or*

purported to be done in the discharge of an official duty. It does not apply to acts done purely in a private capacity by a public servant. Expressions such as the "capacity in which the act is performed", "cloak of office" and "professed exercise of the office" may not always be appropriate to describe or delimit the scope of section. An act merely because it was done negligently does not cease to be one done or purporting to be done in execution of a duty. In Hori Ram Singh case Sulaiman, J. observed:

> *"The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty. Nor is it necessary to go to the length of saying that the act constituting the offence should be so inseparably connected with the official duty as to form part and parcel of the same transaction."*

In the same case Varadachariar, J. observed: "there must be something in the nature of the act complained of that attaches it to the official character of the person doing it". In affirming this view, the Judicial Committee ofthe Privy Council observed in Gill [AIR 1948 PC 128 : 1948 LR 75 IA 41 : 49 Cri LJ 503] case:

> *"A public servant can only be said to act or purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty…. The test may well be whether the public servant, if challenged, can reasonably claim that, what he does in virtue of his office."*

In Matajog Dobey v. H.C. Bhari[AIR 1955 SC 44 : (1955) 2 SCR 925 : 1956 Cri LJ 140] the Court was of the view that the test laid down that it must be established that the act complained of was an official act unduly narrowed down the scope of the protection afforded by Section 197. After referring to the earlier cases the Court summed up the results as follows:

> *"There must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended or*

> *fanciful claim, that he did it in the course of the performance of his duty."*
>
> *Applying this test it is difficult to say that the acts complained of i.e. of kicking the complainant and of abusing him, could be said to have been done in the course of performance of the 2nd respondent's duty. At this stage all that we are concerned with is whether on the facts alleged in the complaint it could be said that what the 2nd respondent is alleged to have done could be said to be in purported exercise of his duty. Very clearly it is not. We must make it clear, however, that we express no opinion as to the truth or falsity of the allegations."*

In ***State of Madhya Pradesh v. Sheetla Sahai and others [(2009) 8 SCC 617],*** *it was observed by the Honourable Supreme Court that " The offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty. No question of sanction can arise under section 197, unless the act complained of is an offence; the only point to determine is whether it was committed in discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceed what is strictly necessary for the discharge of the duty as this question will arise only at a later stage when the trial proceeds on the merits."*

17. From the observations above, it is evident that anything done by a public servant in the discharge of his duty or in the purported discharge of the duty would come under the protective umbrella of section 197 of the Cr.P.C. In this case, as mentioned above, accused Nos 8 and 11 were members of the Board of

Medical Experts formed for certifying brain death, and they were entrusted with the said task as they were doctors empanelled for the said purpose by a statutory authority. Similarly, the 13th accused was the Nodal Officer for KNOS, who was entrusted with the task of monitoring the brain death certification process. The offences alleged to have been committed by them while they were in discharge of the said duties, and therefore, they are entitled to protection as contemplated under section 197 of the Cr.P.C. In this case, admittedly, the learned Magistrate has taken cognizance of the offences against the said accused without obtaining permission from the Government under section 197 of the Cr.P.C. Therefore, the order of taking cognizance is without following the mandatory requirement of section 197 and hence all further proceedings against the accused Nos 8,11 and 13, are liable to be quashed on that sole ground.

18. Now, when coming to the other contentions of the petitioners/accused, it is to be noted that one of the crucial contentions raised by the learned Senior

counsel for the petitioners is that the offence under section 18 of the TOHO & T Act, would not be attracted in this case, as the said provision prohibits transplantation without the authority. It is pointed out that the 1st petitioner hospital has got the registration for conducting the organ transplantation surgeries as contemplated under sections 14 and 15 of the Human Organs Act. The registration certificate of the Hospital is produced as Annexure 15. Moreover, section 3 of the TOHO & T Act, provides for the 'authority' for removal of human organs and tissues or both. It can be seen that a detailed procedure has been contemplated therein through which the consent of the donor is to be obtained for organ removal, which constitutes the authority. Sub-section 6 of section 3 deals with the removal of the organ from a body of a person in the event of a brain-stem death. The said provision reads as follows:

> ***"Section 3; Authority for removal of human organs or tissues or both***
>
> ……
>
> ***(6)*** *Where any [human organ or tissue or both] is to be removed from the body of a person in the event of his brain-stem death, no such removal shall be undertaken unless such death is certified, in such form and in*

> *such manner and on satisfaction of such conditions and requirements as may be prescribed, by a Board of medical experts consisting of the following, namely :--*
>
> *(i) the registered medical practitioner in charge of the hospital in which brain-stem death has occurred;*
>
> *(ii) an independent registered medical practitioner, being a specialist, to be nominated by the registered medical practitioner specified in clause (i), from the panel of names approved by the Appropriate Authority;*
>
> *(iii) a neurologist or a neurosurgeon to be nominated by the registered medical practitioner specified in clause (i) from the panel of names approved by the Appropriate Authority;*
>
> *[Provided that where a neurologist or a neurosurgeon is not available, the registered medical practitioner may nominate an independent registered medical practitioner, being a surgeon or a physician and an anaesthetist or intensivist subject to the condition that they are not members of the transplantation team for the concerned recipient and to such conditions as may be prescribed;]*
>
> *(iv) the registered medical practitioner treating the person whose brain-stem death has occurred."*

Thus, it is evident that, in order to constitute the offence under section 18 of the Act, the transplantation must have been conducted without the authority. Lack of authority can be on account of two reasons, i.e. at first, the transplantation is conducted in a hospital without registration. Since a transplantation by a hospital without registration under section 15 is specifically prohibited under 14 of the Act, a transplantation in such a hospital without

registration would attract the offence under section 18 of the Act. In this case, it is an undisputed fact that the 1st accused hospital is a registered hospital under section 15 of the Act, and hence, the lack of authority on that ground cannot be alleged against any of the accused. The second instance is lack of authority as contemplated under section 3, in this case particularly, under sub-section (6) thereof. The said provision contemplates a detailed procedure for certification of brain death, which is a mandatory pre-requisite for the transplantation of the organs. Therefore, the question that emerges in this case is as to whether the certification as contemplated under the Act and the rules were conducted or not. If a valid brain-stem death certification was not conducted, the transplantation of organs based on such certification could be treated as an instance of doing it without authority, warranting a prosecution under section 18 of the Act.

19. In this case, the brain-stem death certification was done on two occasions, i.e. initially

that of Ajay Johny and secondly that of Adv. Suresh. It is evident from the records that, for the purpose of certification of the brain-stem death of Ajay Johny, a Board of Expert Panel of four members as contemplated under section 3 (6) of the Act was constituted with the following members:

i) Dr. Arun RMP in charge of Aster Medcity, Ernakulam (3rd accused)

ii) Dr.Vivek Nambiar, Clinical Associate Professor, Amrita Institute of Medical Sciences, Ernakulam (12th accused)

(iii) Dr. Shejoy.P.Joshua, Consultant-Neuro Surgery, Aster Medcity, Ernakulam (10th accused)

(iv) Dr. Rakhi R.R, Consultant (General Medicine), General Hospital, Muvattupuzha (11th accused)

The brain stem death was certified by the said medical practitioners, and all of them are competent for the said purposes. The accused nos 10, 11 and 12, are doctors included in the panel published by the appropriate authority for the purpose of brain death certification. It is to be noted in this regard that,

as per Annexure-3, the State Government issued a Government order stipulating the guidelines to be followed while certifying brain death. It is the specific case of the petitioners that the expert panel conducted all the tests contemplated under section 3 (6) of the Act, read with Rule 5 (4) (c) and (d) of Transplantation of Human Organs and Tissues Rules 2014 and issued a certificate under Form 10, which was signed by all the members of the Board of Experts by entering all the details as required in the form of certification. Annexure 5 is the brain death certificate of Sri. Ajay Johnny in Form 10. The said form contains all the parameters mentioned in the said Act and rules. It is also signed by all the members of the Board of Experts.

20. The complainant is pointing out certain discrepancies in the test and certification process of the brain death of Ajay Johny. One of the crucial aspects pointed out by the complainant is that Dr. Rakhi, the 11th accused, who was Government Doctor who participated in the test, was not competent to certify

brain death, as she is not a neurologist. However, it is a fact that she was included in the panel prepared by the Appropriate Authority for brain death certification, and therefore, the 1st accused hospital or any other accused cannot be found at fault for availing her services. Another aspect highlighted is that the complainant expresses surprise and suspicion in bringing the 11th accused, who was working at Muvattupuzha, which is 35 Km away from the 1st accused Hospital, to certify the brain death, even though there were several other empanelled doctors in Ernakulam. However, it is evident from the proceedings of the District Medical of Health Ernakulam dated 01.01.2019 (Order No C6-5165/17/DMOH/EKM), a copy of which is produced as Annexure 1 in Crl.M.C 1995/2022 that, each empanelled doctors were assigned with the duty in relation to brain death certification, for a continuous period of 24 hours on various dates as per the schedule contained therein. As per the said schedule, the empanelled doctor on duty for Ernakulam was the 11th accused for the period from 4.03.2019 at 8 am to 8.AM

on 5.03 2019 and this case the certification took place during the said time. This explains the reason why the 11th accused was included as one of the members of the Board of Experts for the brain death certification of Ajay Johny, which took place in the early hours of 05.03.2019. Thus, it is evident that the 11th accused was not a conscious choice of the other accused/doctors for the brain death certification, but she was their only option as per the schedule prescribed by the authorities concerned. Other discrepancies are with regard to the documentation of Form 10, such as the signature of doctors were not found on all the pages of the Form 10, lack of official seal of the 11th accused, failure to fill up a column in "Coma" in the Form 10, non-mentioning of the time of death, etc. I do not find those discrepancies as something of much significance, particularly when it comes to the question of the necessity of prosecution for any of the offences under the TOHO & T Act. When it is shown that the transplantation was done in a Hospital having registration under section 15 of the Act, and after the

declaration of the brain death of the donor by conducting the tests as contemplated under the Act and rules by the Board of Experts mentioned in Subsection (6) of Section 3 of the Act, and certified in Form 10 signed by all the members of the Board of Experts, it cannot be concluded that the transplantation was conducted without any authority. It is to be noted in this regard that the offence under section 18 of the TOHO & T Act would be attracted only if the transplantation was done without the authority. Therefore, as far as the discrepancies highlighted by the complainant with regard to the certification process of the brain death of Ajay Johny are concerned, I do not find any reasonable grounds for attracting the offence under section 18 of the Act.

21. The next point to be considered is with respect to the allegations relating to the brain death certification of Adv.Suresh, for attracting the offences under the provisions of the TOHO & T Act. One of the crucial discrepancies highlighted by the complainant is that the Hospital authorities contacted

Adv Suresh at 3.30 PM on 4.03.2019 and was informed that the liver of Sri. Ajay Johny was available for transplant and he was required to get himself admitted to the hospital urgently to undergo surgery. However, Sri. Ajay Johny was declared brain dead only at 3.45 AM on 5.03.2019, and thus, Adv. Suresh was informed of the availability of liver of Ajay Johny before he was declared brain dead.

22. The contention of the petitioners in response to the said allegation is as follows; Sri. Ajay Johny was admitted to the hospital in a coma stage due to a road accident that occurred on 2.03.2019 at 7.00 PM. On 3.03.2019 at 9.16 A.M, a non-reversible coma was detected. The same was informed to relatives of the said Ajay Johny, and they were also informed of their option to grant permission to donate the organs of the said Ajay Johny. Since the relatives expressed their consent to donate the organs, the process of certification was initiated by following the procedure in this regard. It is to be noted that Adv. Suresh was a patient of the 1st petitioner hospital and was on the

waiting list maintained by the Kerala Network for Organ Sharing (KNOS), constituted by the Government to supervise and coordinate organ transplantations. Therefore, Adv. Suresh was informed of a possible offer for transplantation of liver from KNOS, in advance, with the intention to commence the procedure for transplant without delay once the brain death certification process of Ajay Johny was over. Therefore, it was pointed out by the learned counsel for the petitioners that merely because of the fact that, Adv Suresh was informed in advance, anticipating the brain death declaration of Ajay Johny, the offences under the TOHOT Act would not be attracted.

23. On evaluating the materials, I find some force in the said contention. This is mainly because the complainant does not have a case that the procedure for removal of the liver of Ajay Johny and transplantation of the same to Adv. Suresh were commenced before the brain death certification process of Sri. Ajay Johny was over. It is an undisputed fact that Ajay Johny was declared brain dead as per Form 10 at 3.45 A.M. on

5.03.2019, and the surgery of Adv. Suresh took place thereafter. The stipulation in section 3 (6) of the Act is to the effect that no removal of an organ shall be undertaken unless the brain death is certified in such manner and on the satisfaction of such conditions and requirements as may be specified. In this case, as far as the certification of the brain death of Ajay Johny is concerned, it is evident that brain death was duly certified by competent members of the Board of Experts as contemplated under section 3(6) and a certificate in Form 10 (Annexure 5) signed by all the said members was also issued. In the said Form 10, all the details of the tests required to be made as per the Act, rules and the Government Order issued in this regard (Annexure 3) are incorporated. There is nothing to indicate that no such tests were carried out, and the organ was removed before the said tests were conducted.

24. Now, when coming to the brain death certification of Adv Suresh, another crucial contention raised by the complainant is that the same was conducted by persons not competent in this regard. The

said contention was raised mainly in respect of the Apnea test of Adv Suresh. It is to be noted in this regard that as per Annexure A3 Government Order, a detailed procedure has been prescribed for brain death certification, which contains three steps. The Apnea test is the third and final step of the said test. It is for confirming brain death because it provides an essential sign of definitive loss of brain-stem functions. In the case of Adv Suresh, three Apnea tests were conducted, whereas, as per the certification process, two such tests with a minimum interval of six hours are to be conducted. Annexure 9 is the brain death certificate in Form 10 of Adv Suresh, wherein two tests were reportedly conducted; the 1st one at 8.30 P.M. on 6.03.2019 and the 2nd one at 6.46 A.M. on 7.03.2019. The said tests were conducted by the members of the Board of Experts, consisting of the following persons;

i) Dri Deepak Venugopal, RMP in charge of Aster Medcity (7th accused)

ii) Dr Raj Anderson Correya, Junior Consultant,

Taluk head Quarter Hospital, Fort Kochi (8th accused)

iii) Dr. Prthvi Varghese, Consultant Neurologist, Lakeshore Hospital (9th accused)

iv) Dr. Shejoy.P.Joshua Consultant- Neuro Surgery, Aster Medcity (10th Accused)

However, as per the records of the Hospital, three Apena tests were seen conducted, as evidenced by Annexure 19 series documents. The 1st test was conducted by Dr Sangeeth, the 6th accused, at 1.25 P.M on 6.03.2019, the 2nd and 3rd tests by Dr Rajesh Rajgopal, the 5th accused, at 8.40 P.M on 6.03.2019 and at 6.59 A.M on 7.03.2019. Thus, by placing reliance upon the same, it was pointed out by the learned counsel for the complainant that none of the said doctors was competent to carry out the Apnea tests, and they were not the members of the Board of Experts constituted for the brain death certification of Adv Suresh. It was also pointed out that, even though, as per Form 10, the tests were reportedly conducted on two occasions by the members of the Board of Experts, as per Annexure 19, the Apnea tests were conducted with differences in

timing, extending only certain minutes. According to the complainant, this indicates some foul play on the part of the accused, and according to him, no proper test as stipulated in the Act and rules were conducted.

25. In response to the said contention, the learned counsel for the petitioners/accused submits that the 1st test conducted by Dr Sangeeth was to ascertain the condition of the said Suresh, by the Hospital. The 2nd and 3rd tests were conducted by members of the Board of Experts, and the Annexure 19 documents were maintained for the purpose of records of the Hospital. According to them, as regards 2nd and 3rd tests, no separate tests other than what is conducted by the Board of Experts were conducted. It is also pointed out that, as per the guidelines issued by the Government in this regard, the entire tests conducted were recorded in video. The learned counsel also made available the pen drive containing the video footage of the same for examination by this court. With regard to the competence of the 5th and 6th accused to conduct Apnea tests, it was pointed out that both of them were

empanelled doctors, as is discernible from Annexure 4(b) list prepared by the Appropriate Authority wherein they were shown as Serial Nos 52 and 48 respectively.

26. After considering all the said materials in connection with the same, I am of the view that,the contention raised by the learned counsel for the petitioners cannot be brushed aside. It is true that there is some difference in the timings of Apnea tests mentioned in Annexure 19 and Annexure 9. However, the difference is not very significant. It is to be noted that as per Annexure 9, the timings of the tests are; the 1st test 8.30 P.M. on 6.03.2019 and the 2nd one at 6.46 A.M. on 7.03.2019. As per A19, as regard the test referred to Annexure 9, time of pre-test was conducted on 6.03.2019 at 8.25 PM, the commencement of the test is shown as 8.40 P.M and the end of the test was shown as at 8.50 P.M. Similarly, in Annexure A19, with regard to the 2nd test referred to Annexure 9, the time of pre-test is shown as at 6.45 A.M on 7.03.2019, the time of commencement of the test was shown as 6.57 A.A, and the time of end of the test is shown as 7.11 A.M. By

placing reliance upon the same it was contended by the learned counsel for the petitioners that, the mandatory interval of six hours was not maintained between the two tests, as contemplated. However, I do not find any justifiable reason to accept the said contention. It is true that, as per the timings mentioned in Annexure A9 and A19 there is some marginal difference. However, as far as the Annexure 9 document is concerned, the specific case of the petitioners is that, it was something maintained by the hospital for their purposes. The exact timings are that mentioned in the Annexure A9 (Form 10),which is the official certification made by competent persons. It is also asserted by the petitioners, including the independent members of the Board of Medical Experts,that, they have conducted the tests by following the guidelines and the protocols in this regard and the entire procedure has been videographed. In this regard it is to be noted that, even if it is assumed for argument's sake that there is some discrepancy in the above, that cannot lead to the

conclusion that, no Apnea tests at all were conducted. On the other hand, there are ample materials, to show that Board of Medical Experts have conducted the tests and certified the same in the prescribed form. Moreover, the difference in the timings between Annexure A9 and A19 are very small, (only some minutes) and therefore, it can only be treated as a minor discrepancy in the recording of the process of the certification procedure, in the absence of any other materials. Since such tests were conducted in the presence of a Board of Medical Experts, as stipulated in the Act, by the Appropriate Authority, constituted by the very same statute, consists of the independent doctors, including a Government Doctor specifically empowered on this behalf, I do not find any justifiable reason to accept such a minor discrepancy as something which would warrant a prosecution for the offences punishable under any of the provisions of the TOHO & T Act. Another crucial aspect to be noted in this regard is that, the complaint of the 2nd respondent/complainant as to the alleged irregularities was already considered

by the Appropriate Authority, and they arrived at the finding that, in the certification of Sri Suresh, they could not find any malpractices. This is an aspect which fortifies the view that, there is no scope for prosecution with regard to the conduct of the Apnea tests

27. Apart from the above discrepancies in the conduct of Apnea tests, the complainant also raised certain other aspects highlighting non-compliance with the procedure contemplated in the Act, rules and Government order. The said aspects are mainly related to the method of certification, lack of official seal of the doctor, lack of signature on all the pages of the report, and lack of time of death in Form 10; the difference in the signature of Dr Shijoy P.Joshua(10th accused), on the different places of Form 10 etc. On careful scrutiny of the same, those are also minor discrepancies in carrying out the paperwork relating to the certification process. Under no circumstances would the same attract any culpability under sections 18 or 20 of the Act. As regards the contention of non-

recording of time of death in the certificate, I find that in Form 10, no column is specified for the said purpose. It is pointed out in this regard that, for all purposes, the time of completion of the 2nd Apnea test is treated as the time of death. Hence the same cannot be treated as a major discrepancy, warranting a prosecution.

28. In this regard, it is also to be noted that, in response to the complaint submitted by the complainant before the Appropriate Authority (Annexure 11(a)), all the above discrepancies are highlighted. Based on the same, an inquiry was conducted by the Core Committee constituted by the Appropriate Authority and Annexure A11(b) report was submitted, answering all the points raised by the complainant in respect of the procedure conducted for certification of brain deaths of Ajoy Johny and Adv Suresh. However, even though said report finding on all the issues raised by the complainant were recorded, they did not suggest any prosecution against any of the Medical professionals involved. Further, based on the said inquiry report, Appropriate

Authority issued Annexure 11 (c) to the 1st petitioner hospital. In the said communication, even though certain minor discrepancies were found in the documentation, it was specifically observed that the Appropriate Authority could not find any malpractice in the liver transplantation of Adv Suresh. Therefore a warning was issued to the 1st respondent by stating that if any irregularities were found in future, the registration would be cancelled. Thus in the light of the finding of the Appropriate Authority also, the contentions raised by the complainant are liable to be rejected.

29. It is to be noted that one of the offences alleged against the petitioners is under section 20 of the TOHO & T Act, which reads as follows:

> ***"Section 20-Punishment for contravention of any other provision of this Act:*** *Whoever contravenes any provision of this Act or any rule made, or any condition of the registration granted, thereunder for which no punishment is separately provided in this Act, shall be punishable with imprisonment for a term which may extend to 1[five years or with fine which may extend to twenty lakh rupees]."*

While considering the nature of the allegations raised in the complaint, and also in the light of the findings in Annexure A11 (b) and (c) of the Appropriate

Authority, I am of the view that there are no materials justifying the prosecution for the said offence. From the materials placed on record, I am unable to find any specific instances of non-compliance with any provisions of the TOHO & T Act, or rules made thereunder, apart from certain discrepancies in the documentation of the certification process. Therefore, under no circumstances the same would warrant a prosecution either under section 18 or under section 20 of the TOHO & T Act.

30. In Annexure 2 order, the learned Magistrate took cognizance of the offence under sections 109, 120B, 420, 468, read with 34 of the Indian Penal Code. One of the grounds for attracting the offence under section 420 of the IPC is that, according to the complainant, Adv Suresh did not require the liver transplant, as he attained normal liver functions due to treatment. The only materials supporting the allegation are the statements of the complainant and the wife of the said Suresh. On the contrary, it is an undisputed fact that Adv. Suresh has been undergoing

treatment for liver cirrhosis since 2015, and in the year 2018, doctors suggested transplantation of their liver. The details of the tests undergone by him are contained in Annexure 6. According to the petitioners, even though the wife of the said Suresh came forward as a potential donor, it was not suitable for Sri Suresh. Therefore, as no viable living donors were available, Sri Suresh got himself registered with Kerala Network for Organ Sharing (KNOS), constituted by the Government of Kerala and also with "Jeevasarthakathe" constituted by the Government of Karnataka and was awaiting his turn for transplantation. Upon being informed of a possible offer for a liver transplant, he got himself admitted to the 1st accused Hospital and underwent surgery. These aspects are not disputed by the complainant, and even though, medical reports of Sri Suresh were produced as Annexure A6, no contentions in relation to the said document were raised by the complainant before this court, to substantiate his contention that, the said Suresh actually never required Liver transplant. Moreover, before undergoing

the procedure, Sri. Suresh and his wife, who was examined as PW2 before the learned Magistrate, signed all the necessary consent forms for the said purpose. In the light of the above, the aforesaid contention is only to be rejected.

31. Now, when coming to the other allegations for attracting the offence under section 420 of the IPC raised by the complainant are that, as the certification of brain deaths of both Ajay Johny and Suresh was not properly conducted, they were actually not brain dead at the relevant time, and since the transplantation of organs was done by making a false impression upon the relatives of the patients that they were brain dead, it amounts cheating. In this regard, I have already found that, apart from some minor discrepancies in the documentation of the certification process, there is nothing to indicate that the brain death tests were not conducted. Therefore on that grounds, the offence under section 420 of IPC would not be attracted.

32. The offence under section 468 is mainly alleged against the 6th accused, as the said certification of the brain death of Sri Suresh was signed by him without his initial surname qualification and TMC Registration numbered. The official seal was also not mentioned. Therefore it is alleged that the said certificate is forged, and since the same allegedly relied on by him to persuade the relatives of the patient, he is alleged to have committed the offence under section 468 of the IPC. However, the crucial aspect to be noticed in this regard is that the Apnea test and other tests were certified by the members of the Board of Experts specifically constituted for the said purpose in Form 10. Therefore the certificate allegedly issued by the 6th accused has no significance at all. Moreover, even otherwise the issuance of the certificate would not attract the offence under section 468 of the IPC. "Forgery" is defined under section 463 of the IPC, which reads as follows:

> *Section 463 – Forgery:*
> *Whoever makes any false documents or false electronic record or part of a document or electronic record with intent to cause damage or injury], to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express*

> *or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.*

The essential ingredient for forgery is the making of false documents, which is defined in section 464. The said provision reads as follows:

> ***"464. Making a false document.**-[A person is said to make a false document or false electronic record -*
>
> ***First.**- Who dishonestly or fraudulently -*
>
> *(a) makes, signs, seals or executes a document or part of a document;*
>
> *(b) makes or transmits any electronic record or part of any electronic record;*
>
> *(c) affixes any [electronic signature] on any electronic record;*
>
> *(d) makes any mark denoting the execution of a document or the authenticity of the [electronic signature].*
>
> *With the intention of causing it to be believed that such document or part of document, electronic record or [electronic signature] was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or*
>
> ***Secondly.**- Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with[electronic signature] either by himself or by any other person, whether such person be living or dead at the time of such alteration; or*
>
> ***Thirdly.**- Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his [electronic signature] on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.]"*

An act could be treated as making a false document when the same was dishonestly or fraudulently created with

the intention of causing to be believed that such document or part of the document was made, signed, sealed or executed, transmitted or affixed by or by the authority of a person, by whom or by whose authority he knows that it was not made signed or sealed executed or affixed. Thus there must be impersonation, i.e. a claim that the same was issued by someone else or with the authority of someone else. In this case, there are no such averments in the complaint. On the other hand, the allegation is that, while issuing the Apnea test certificate, he did not mention his initials, surname, qualification, TCMC registration certificate, etc. That allegation is also not something which would make out the offence under section 464 of the IPC, as even as per the allegations, he never claimed that the same was executed by someone else; thus the question of impersonation does not arise. Therefore, the offence of section 468 of IPC would not be attracted.

33. Similarly, the accused No 7 to 10 were arraigned as accused on the mere allegation that they, being the members of the Board of Experts, did not

conduct the Apnea test. It was also averred in the complaint that, even if they have conducted it, it was done in total violation of the provisions of the Act. Thus it is evident that the complainant has no consistent case concerning the question whether they have conducted the Apnea test or not. Moreover, I have already found that, from the materials, only minor discrepancies in the documentation of the tests alone are revealed. The materials produced before this court include the certification in Form 10, conducted by competent members of the Board of Medical Experts specifically constituted in this regard. In both the said certification processes, one of the members was Government Doctors (Accused Nos 11 and 8 respectively), who happened to be included in the Board of Experts not by choice of the other accused but because they happened to be on duty as per schedule published by the authorities concerned in this regard, for the relevant dates. The statutory complaint submitted by the complainant before the Appropriate Authority was considered, and all the points raised by the

complainant were answered, but despite such an inquiry, no prosecution was suggested. On the contrary, a specific finding was entered into, to the effect that there were no malpractices. In such circumstances, the contention raised by the learned counsel for the petitioner that no tests were conducted cannot be accepted, as there is nothing to disbelieve the said documents and the declaration contained therein. The veracity of the same need not be doubted merely because the complainant raised certain allegations in this regard, when there are no materials to substantiate the same.

34. The complainant, although raised another allegation that, before Sri Suresh was taken to the surgical proceedings, he suffered a stroke and was unconscious. It was alleged that the Doctors proceeded with the transplantation procedure, despite the same. However, apart from mere allegation, there is nothing on record to show the same, and in the absence of any materials to establish the same even prima facie, I am not inclined to accept the same.

35. The learned Counsel for the complainant

vehemently contended that the complaint is only in its preliminary stage, and no interference at this stage by this court be made invoking the powers under section 482 of the Cr.P.C. It was pointed out that the learned Magistrate applied his mind and found a prima facie case, and the cognizance of the offences was taken. The veracity of the allegations is to be considered at the time of trial based on evidence adduced, and it cannot be considered at this stage. He relies on the observations made by the Honourable Supreme Court in **Neeharika Infrastructure Pvt Ltd (M/s) v. State of Maharashtra and Others [AIR 2021 SC 1918]**

36. It is true that in **Neeharika's** case, the Honourable Supreme Court framed certain guidelines with regard to the exercise of the powers under section 482 of Cr.P.C in the matter of quashing the FIR/complaints. It was also observed that when examining the FIR/complaint, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegation made in the FIR/Complaint. It is also observed in the said decision that"*However, at the same*

time, the Court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P Kapur(supra) and Bhajan Lal (Supra) has the jurisdiction to quash the FIR/complaint."

37. In this regard, one important aspect to be noted is that since the accused in this case are Medical Professionals and the allegations are intrinsically connected with the discharge of their official/professional duties, a different yardstick is to be applied. In **Jacob Mathew v. State of Punjab [(2005) 6 SCC 1],** yet another three judges bench of the Honourable Supreme Court observed about the protection to be given to the medical professionals when it comes to the question of prosecution; in para 34 it was observed as follows;

> ***Medical professionals in criminal law***
>
> ***34.****The criminal law has invariably placed medical professionals on a pedestal different from ordinary mortals. The Penal Code, 1860 enacted as far back as in the year 1860 sets out a few vocal examples. Section 88 in the Chapter on General Exceptions provides exemption for acts not intended to cause death, done by consent in good faith for person's benefit. Section 92 provides for exemption for acts done in good faith for the benefit of a person without*

> *his consent though the acts cause harm to the person and that person has not consented to suffer such harm. There are four exceptions listed in the section which are not necessary in this context to deal with. Section 93 saves from criminality certain communications made in good faith. To these provisions are appended the following illustrations:*
>
> ***Section 88***
>
> *"A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under a painful complaint, but not intending to cause Z's death, and intending, in good faith, Z's benefit, performs that operation on Z, with Z's consent. A has committed no offence."*
>
> ***Section 92***
>
> *"(a) Z is thrown from his horse, and is insensible. A, a surgeon, finds that Z requires to be trepanned. A, not intending Z's death, but in good faith, for Z's benefit, performs the trepan before Z recovers his power of judging for himself. A has committed no offence.*
>
> *(c) A, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is no time to apply to the child's guardian. A performs the operation in spite of the entreaties of the child, intending, in good faith, the child's benefit. A has committed no offence."*
>
> ***Section 93***
>
> *"A, a surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence, though he knew it to be likely that the communication might cause the patient's death."*

Similarly, in the said decision itself, while framing the guidelines to be followed before prosecuting Medical Professionals, it was observed by the Honourable Supreme Court as follows:

> ***Guidelines — Re: prosecuting medical professionals***
>
> ***50.****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 the 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 a rash or negligent act within the domain of criminal law under Section 304-A 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 to his reputation cannot be compensated by any standards.

51.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 emphasise 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 prefer recourse to criminal process as a tool for pressurising the medical professional for extracting uncalled for or unjust compensation. Such malicious proceedings have to be guarded against.

52.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 the Bolam [(1957) 1 WLR 582 : (1957) 2 All ER 118 (QBD)] 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 investigating officer feels

> *satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld.*

38. Indeed, the said observations were made by the Honourable Supreme Court in the matter of prosecution of medical professionals for medical negligence, and in this case, that is not the scenario. However, still, the medical professional deserves a different kind of treatment when being prosecuted, in the light of the spirit of the principles laid down in **Jacob Mathew's** case (supra). This is mainly because medical professionals, on account of the peculiar nature of their profession, are bound to explore and experiment, with the ultimate object of ensuring the welfare of the patient. More often, they will have to take momentarily decisions under distressed conditions and take risks, depending on their skills and abilities. There may not be much time to think before taking the decisions, and they have to proceed further on mere calculations. So long as such decisions are intended for the ultimate betterment of the patient, no prosecution can be permitted against them, even if

something goes wrong during the said process. Besides the above, as observed in **Jacob Mathew's case,** when the allegations raised are mainly in connection with the medical procedure adopted by them or the decision taken, the courts may not be in a position to understand the true impact or consequences of such procedures. Therefore, unless the materials based on which such allegations are raised were examined by the expert persons in the subject, it is not proper to initiate further proceedings by the court on its own. The Honourable Supreme Court emphasized the assistance of medical experts in the matter of prosecution for medical negligence in **Jacob Mathew's case (supra).** Similarly, the Government of Kerala has issued various Government orders and circulars requiring the police officers, to refer the materials to an Expert Panel of Doctors before proceeding with the investigation against medical professionals in connection with the prosecution for medical negligence.

39. Going by the scheme of the TOHO & T Act also, such special protection to Medical professionals in

respect of the prosecution for the offences under the said Act can be seen. It is evident from the said provision that, the right to prosecute for the offences is primarily vested in an Appropriate Authority constituted under section 13 of the Act, which is supposed to be the expert body of medical professionals. Even though an individual is also permitted to file a complaint under the said provision, the said right can be exercised, only after giving a notice of his intention to do so, to the Appropriate Authority. Thus, the important role assigned to the Appropriate Authority in the matter of prosecution, clearly indicates the protection intended to be given to the Medical Professionals in respect of the prosecution of the offences contemplated under the Act. The said aspect also indicates the emphasis on the need to have a preliminary assessment of the allegations by a body of independent professionals having expertise, before a complaint is filed for criminal prosecution and the medical professionals are brought before the court of law as part of such

prosecution. It is to be noted in this regard that, in this case, in response to the statutory notice issued by the complainant, an inquiry was caused to be conducted by the Appropriate Authority through a Core Committee constituted for the said purpose, and a report was obtained. In the said report, no malpractices were found, and no decision to file a complaint under section 22 (1) (a) of the TOHO & T Act was taken, but only a warning to the 1st accused was issued, requiring them strictly adhere to the procedural formalities. Therefore, the scope for prosecution on the matters already considered by the Appropriate Authority, which is an expert body, is very much limited. Such a prosecution can be permitted if it is shown that the conclusion arrived by the Appropriate Authority is patently illegal, perverse and, prosecution at the instance of a private individual is absolutely necessary. In this case, despite scanning through the entire materials carefully, I am unable to arrive at any such conclusion.

40. There is yet another aspect which fortifies the

importance of the decision of the Appropriate Authority. Section 23(1) contemplates yet another protection for the action taken in good faith in pursuance of the provisions of this Act. The said provision reads as follows;

> *"Section 23 - Protection of action taken in good faith*
>
> *(1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act."*

Thus, the action taken in good faith by a person is given protection for the prosecution. In a given case under this Act, in order to understand whether a particular step taken by a Medical Professional was in good faith or not, experience or expertise in the subject matter is required. The said question, as such, cannot effectively be decided by a Judicial officer without the help of an expert, as the judicial officer may not have the machinery, knowledge or techniques to understand the actual consequences of the acts committed by a medical practitioner accused of the offences under this Act. Here also, the decision taken by the Appropriate Authority has its own value and importance. In short, before taking cognizance of the

offences under the TOHO & Act, there must be some material on record showing the expert opinion of a independent medical practitioners touching upon the issues involved. Since section 22 of the Act contemplates a prior notice to the Appropriate Authority as a condition precedent for taking cognizance, the views of such authority on the issues should be called for as part of the pre-cognizance inquiry.

41. In this case, it is seen from Annexure 2 order that, apart from the statements of two witnesses, i.e. the complainant and the wife of Sri Suresh, no independent expert opinion was called for. The decision taken by the Appropriate Authority was also not before the said court, and therefore, the learned Magistrate did not have the advantage of perusing the finding of the said Authority. *(It is to be clarified in this regard, the complainant cannot be blamed for not placing the said before the learned magistrate as the said copy of the inquiry report of the Authority was never served upon him, and he came to know about the*

same only when the petitioners produced the same along with the Crl.M.C)

42. Thus, after perusing the entire materials placed before this court, including the finding of the Appropriate Authority constituted under section 13 of the TOHO&T Act, I am of the view that Annexure 2 order of taking cognizance of the offences by the learned Magistrate based on the Annexure 1 complaint is liable to be interfered with. The prosecution, based on the Annexure 1 complaint, is an abuse of the process of law due to the abovementioned reasons.

In such circumstances, these Crl.M.Cs. are allowed, Annexure 1 complaint, Annexure 2 order dated 16.11.2021 passed in CMP No.797/2021 by the Judicial First Class Magistrate Court-IX, Ernakulam and all further proceedings pursuant to it, including the proceedings in C.C. No.498/2021 on the files of the said court are hereby quashed.

Sd/-
ZIYAD RAHMAN A.A.
JUDGE

pkk

APPENDIX OF CRL.MC 1010/2022

PETITIONER'S ANNEXURES

Annexure1	TRUE COPY OF THE COMPLAINT, C.C NO. 498/2021 DATED 13/07/2021, PENDING BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-IX, ERNAKULAM
Annexure2	TRUE COPY OF THE ORDER IN CMP 797/2021 DATED 16/11/2021 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-IX, ERNAKULAM
Annexure3	TRUE COPY OF THE LIST OF EMPANELLED DOCTORS AUTHORISED TO CERTIFY BRAIN DEATH IN THE PRIVATE SECTOR
Annexure4	TRUE COPY OF THE G.O.(M.S).NO.53/2018/H&FWD DATED 03/04/2018
Annexure5	TRUE COPY OF THE BRAIN-STEM DEATH CERTIFICATE OF AJAY JOHNY
Annexure6	TRUE COPY OF THE G.O(M.S)NO.37/2012/H&FWD DATED 04/02/2012

RESPONDENT EXHIBITS

Annexure R2(a)	TRUE PHOTOSTAT COPY OF THE MINUTES OF THE MEETING OF THE HIGH POWER COMMITTEE HELD ON 22-1-2017 WHICH WAS PRESIDED OVER BY THE ADDITIONAL CHIEF SECRETARY, DEPARTMENT OF HEALTH AND FAMILY WLFARE , GOVERNMENT OF KERALA
Annexure R2(b)	TRUE PHOTOSTAT COPY OF THE G.O (MS)NO. 53/2018 /H FWD DATED 3-4-2018

APPENDIX OF CRL.MC NO.798/2022

PETITIONER'S ANNEXURES:

ANNEXURE A1	TRUE COPY OF THE ORDER NO.C4-5165/17/DMOH/EKM DATED 31.3.2020 ISSUED BY THE DISTRICT MEDICAL OFFICER, ERNAKULAM
ANNEXURE A2	TRUE COPY OF THE COMPLAINT DATED 16.4.2021 FILED BY CMP NO.797/2021 BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-IX, ERNAKULAM
ANNEXURE A3	TRUE COPY OF THE SUMMONS ISSUED BY THE JUDICIAL FIRST CLASS MAGISTRATE COURT-IX, ERNAKULAM IN C.C.NO.498/2021

RESPONDENT'S EXHIBITS:

ANNEXURE R2(a)	TRUE PHOTOSTAT COPY OF THE MINUTES OF THE MEETING OF THE HIGH POWER COMMITTEE HELD ON 22-1-2017 WHICH WAS PRESIDED OVER BY THE ADDITIONAL CHIEF SECRETARY, DEPARTMENT OF HEALTH AND FAMILY WLFARE , GOVERNMENT OF KERALA
ANNEXURE R2(b)	TRUE PHOTOSTAT COPY OF THE G.O (MS)NO. 53/2018 /H FWD DATED 3-4-2018

APPENDIX OF CRL.MC 1995/2022

PETITIONER'S ANNEXURES

Annexure I	TRUE COPY OF THE PROCEEDINGS OF THE DISTRICT MEDICAL OFFICER OF HEALTH, ERNAKULAM NO. C6-5165/17/DMOH/EKM DATED 01.01.2019.
Annexure II	TRUE COPY OF THE GOVERNMENT ORDER (MS) NO. 53/2018/H&FWD DATED 03.04.2018.
Annexure III	TRUE COPY OF THE SUMMONS ISSUED BY THE JUDICIAL FIRST CLASS MAGISTRATE COURT -IX, ERNAKULAM IN CC NO. 498 OF 2021 FOR OFFENCES UNDER SECTIONS 109, 120B, 420, 468 R/W 34 IPC, SECTIONS 18, 20 & 21 OF THE TRANSPLANTATION OF HUMAN ORGANS AND TISSUES ACT, 1994
Annexure IV	THE CERTIFIED COPY OF THE COMPLAINT DATED 16.04.2021 IN CC NO. 498 OF 2021 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT- IX, ERNAKULAM FILED BY THE 2ND RESPONDENT
Annexure V	TRUE COPY OF THE ORDER DATED 04.02.2022 IN CRL.M.A. NO. 1 OF 2022 IN CRL.M.C. NO. 798 OF 2022 OF THIS HON'BLE COURT

RESPONDENT'S ANNEXURES

Annexure R2(b)	True Photostat copy of the G.O (MS)No. 53/2018 /H FWD dated 3-4-2018
Annexure R2(c)	Certified copy of the order passed by the Learned Magistrate on 16-11-2021 in CMP No. 797 of 2021
Annexure R2(a)	True Photostat copy of the minutes of the meeting of the High power committee held on 22-1-2017 which was presided over by the Additional Chief Secretary, Department of Health and Family Wlfare , Government of Kerala

APPENDIX OF CRL.MC 3048/2022

PETITIONER'S ANNEXURES

Annexure A-1	A TRUE COPY OF THE COMPLAINT DATED 16.04.2021 FILED AS CMP NO.797/2021 BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-IX, ERNAKULAM
Annexure A- 2	A TRUE COPY OF THE G.O.(MS) NO.53/2018/H & FWD DATED 03-04-2018 ISSUED BY THE HEALTH AND FAMILY WELFARE (B) DEPARTMENT
Annexure A-3	TRUE COPY OF THE ORDER OF THE HON'BLE JUDICIAL FIRST CLASS MAGISTRATE COURT-IX, ERNAKULAM IN C.C.NO.498/2021 DATED 16.11.2021
Annexure A-4	A TRUE COPY OF THE SUMMONS ISSUED BY THE JUDICIAL FIRST CLASS MAGISTRATE COURT-IX, ERNAKULAM IN C.C.NO.498/2021
Annexure A-5	A TRUE COPY OF THE LETTER DATED 16.02.2022 FROM PRINCIPAL SECRETARY HEALTH TO THE DEPUTY DIRECTOR OF PROSECUTION
Annexure A-6 (a)	A TRUE COPY OF THIS HON'BLE COURTS ORDER IN CRIMINAL MC NO. 798 OF 2022 DATED 04.02.2022 ORDER DATED CRIMINAL MC NO. 1995 OF 2022 DATED 24.03.2022
Annexure A-6 (b)	A TRUE COPY OF THIS HON'BLE COURTS ORDER IN CRIMINAL MC NO. 1995 OF 2022 DATED 24.03.2022
Annexure A-7	A TRUE COPY OF THE ORDER NO. K3/26980/2018/DME DATED 28.02.2019 ISSUED BY THE DME

RESPONDENT'S ANNEXURES

Annexure R2(b)	True Photostat copy of the G.O MS No. 53/2018 H FWD dated 3-4-2018
Annexure R2(a)	True Photostat copy of the minutes of the high power committee meeting held on 22-1-2017 presided over by the Additional Chief Secretary, Department of Health and Family Welfare, Government of Kerala

APPENDIX OF CRL.MC 1019/2022

PETITIONER'S ANNEXURES

Annexure1	CERTIFIED COPY OF THE COMPLAINT, C.C NO. 498/2021 DATED 13/07/2021, PENDING BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-IX, ERNAKULAM
Annexure2	TRUE COPY OF THE ORDER IN CMP 797/2021 DATED 16/11/2021 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-IX, ERNAKULAM
Annexure3	TRUE COPY OF THE G.O.(M.S).NO.53/2018/H&FWD DATED 03/04/2018
Annexure4 (a)	TRUE COPY OF THE LIST OF EMPANELLED DOCTORS AUTHORISED TO CERTIFY BRAIN DEATH IN THE GOVERNMENT SECTOR
Annexure 4(b)	TRUE COPY OF THE LIST OF EMPANELLED DOCTORS AUTHORISED TO CERTIFY BRAIN DEATH IN THE PRIVATE SECTOR
Annexure 5	TRUE COPY OF THE BRAIN-STEM DEATH CERTIFICATE OF AJAY JOHNY
Annexure 6	TRUE COPY OF THE TEST REPORTS OF SURESH
Annexure 7	TRUE COPY OF THE CONSENT FORM SIGNED BY SURESH DATED 05/03/2019
Annexure 8	TRUE COPY OF THE BRAIN STEM VIABILITY TEST REPORT OF SURESH, DATED 06/03/2019
Annexure 9	TRUE COPY OF THE BRAIN-STEM DEATH CERTIFICATE OF SURESH
Annexure 10	TRUE COPY OF THE JUDGEMENT IN W.P(C) NO. 5552/2017 DATED 28/06/2017 OF THE HONOURABLE HIGH COURT OF KERALA
Annexure 11(a)	TRUE COPY OF THE COMPLAINT FILED BY THE 2ND RESPONDENT ON 14/05/2019 BEFORE THE DME
Annexure11(b)	TRUE COPY OF THE ENQUIRY REPORT OF THE CORE COMMITTEE, DEPUTED BY THE DME
Annexure11 (c)	TRUE COPY OF THE ORDER OF THE DME DATED 14/06/2021
Annexure11(d)	TRUE COPY OF THE REPLY ISSUED BY THE 1ST PETITIONER ON 01/07/2021TO THE DME
Annexure 12(a)	TRUE COPY OF THE LETTER FROM TMC DATED 25/11/2019
Annexure12(b)	TRUE COPY OF THE COMPLAINT FILED BY THE 2ND RESPONDENT BEFORE THE TMC ON 27/08/2019
Annexure13	TRUE COPY OF THE JUDGMENT IN W.P(C) NO. 34537/2019 OF THE HONOURABLE HIGH COURT OF

	KERALA DATED 27/05/2020
Annexure14(a)	TRUE COPY OF THE COMPLAINT FILED BY THE 2ND RESPONDENT BEFORE THE IMA ON 30/08/2019
Annexure 14(b)	TRUE COPY OF THE ORDER OF THE IMA DATED 05/06/2020
Annexure 15	TRUE COPY OF THE CERTIFICATE OF REGISTRATION UNDER THE THO&T ACT, OF THE 1ST PETITIONER
Annexure 16	TRUE COPY OF THE APPOINTMENT LETTER OF THE TRANSPLANT CO-ORDINATORS OF THE 1ST PETITIONER
Annexure 17	TRUE COPY OF THE G.O(M.S) NO.37/2012/H&FWD DATED 04/02/2012
Annexure 18	TRUE COPY OF THE LETTER ISSUED BY THE 2ND RESPONDENT TO THE DME
RESPONDENT EXHIBITS	
Annexure R2(a)	TRUE PHOTOSTAT COPY OF THE MINUTES OF THE HIGH POWER COMMITTEE MEETING HELD ON 22-1-2017 PRESIDED OVER BY THE ADDITIONAL CHIEF SECRETARY, DEPARTMENT OF HEALTH AND FAMILY WELFARE, GOVERNMENT OF KERALA
Annexure R2(h)	TRUE PHOTOSTAT COPY OF THE OPINION TENDERED BY DR.DIMITAR TONEY OF SOFIA MEDICAL ACADEMY, LONDON.
Annexure R2(i)	TRUE PHOTOSTAT COPY OF THE SWORN STATEMENT GIVEN BY THE 2ND RESPONDENT ON 29.7.2021
Annexure R2(B)	TRUE PHOTOSTAT COPY OF THE G.O. (MS)NO.53/2018/H & FWD DATED 3.4.2018
Annexure R2(c)	TRUE PHOTOSTAT COPY OF THE OPINION TENDERED BY DR.HERMIEN HARTOG OF NETHERLANDS.
Annexure R2(d)	TRUE PHOTOSTAT COPY OF THE OPINION TENDERED BY PROF WAEL SAAD OF WASHINTON DC
Annexure R2(e)	TRUE PHOTOSTAT COPY OF THE OPINION TENDERED BY PROF NANCY REAU OF JOHN HOPKINS MEDICAL CENTRE
Annexure R2(f)	TRUE PHOTOSTAT COPY OF THE OPINION TENDERED BY DR.BERNARD SEBASTIAN KAMPS OF UNIVERSITY OF COLOGNE, GERMANY.
Annexure R2(g)	TRUE PHOTOSTAT COPY OF THE OPINION TENDERED BY PROF JOHN M VIERLING OF AMERICA
Annexure R2(j)	TRUE PHOTOSTAT COPY OF THE SWORN STATEMENT GIVEN BY THE WIFE OF ADV.SURESH ON 26.8.2021