

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.07.2015

Delivered on : 09.07.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.O.P.No.15715 of 2015
and M.P.No.1 of 2015

Mathiyazhagan

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Petitioner

Versus

State through the
Inspector of Police,
All Women Police Station,
Ulundurpet.

...

Respondent

Criminal Original petition filed under Section 482 of the Criminal Procedure Code praying to set aside the order dated 13.05.2015 made in C.M.P.No.232 of 2015 in S.C.No.538 of 2013 on the file of the Sessions Judge, Magalir Neethi Mandram [Fast Track Mahila Court], Villupuram by allowing this Criminal Original Petition.

For Petitioner : Mr.C.Munusamy

For Respondent : Mr.C.Emalias, Addl. Public Prosecutor

O R D E R

This petition has been filed to set aside the order dated 13.05.2015 in C.M.P.No.232 of 2015 in S.C.No.538 of 2013 on the file of the learned Sessions Judge, Magalir Neethi Mandram [Fast Track Mahila Court], Villupuram.

2. Heard the learned counsel for the petitioner; the learned Additional Public Prosecutor appearing for the respondent and perused the materials placed on record.

3. It is the case of the prosecution that the petitioner herein enticed a juvenile into having sex with him on the promise of marrying her on account of which, she conceived. It later transpired that the petitioner is already a married person with children suppressing which, he has had physical relationship with the minor girl.

4. On a complaint lodged by the victim, the respondent police registered a case in Crime No.2 of 2012 under Section 376, 417 IPC

and after completing the investigation, filed a Final Report against the petitioner for the aforesaid offences. The case is now under trial in SC.No.538 of 2013 before the Sessions Court Magalir Neethimandram [Fast Track Mahila Court], Villupuram. The victim girl was examined as PW1 and someother witnesses were also examined by the Trial Court. At that juncture, the learned Public Prosecutor in charge of the case filed an application before the Trial Court for a direction to have DNA profiling of the petitioner/accused in order to determine the paternity of the child. After hearing the petitioner/accused, the Trial Court allowed the petition in CMP.No.232 of 2015 on 13.05.2015. Challenging which, the petitioner/accused is before this Court.

5. Mr.C.Munusamy, learned counsel appearing for the petitioner submitted that the accused cannot be subjected to DNA profiling at this stage and he relied upon the judgment of Hon'ble Supreme Court in Bhabani Prasad Jena etc. Vs Convenor Secretary, Orissa State Commission for Women [SC] reported in 2010 [8] SCC 633.

6. The aforesaid judgment arises in a matrimonial dispute, where State Women Commission had ordered the conduct of DNA test. Under those circumstances, the Hon'ble Supreme Court had only cautioned that orders for DNA profiling should not be done as a matter of course and there should be a strong prima facie case. Here, the petitioner/accused is facing a charge under Section 375 IPC for having sexually abused minor girl.

7. The victim girl had delivered a child and it is alleged by the prosecution that this petitioner had fathered her. The Trial Judge while allowing the application filed by the prosecution has rightly stated that if DNA test is done, it can also lead to exoneration of the petitioner/accused. Section 53[2] of Cr.P.C authorises conduct of DNA profiling. The police were not able to do DNA profiling at the time of the arrest of the accused, because the foetus in the womb of the victim girl was only four months old. Only after she delivered and when the child is little older, it would be possible for performing the test. In Selvi Vs State of Karnataka [2010] 7 SCC 263, the Hon'ble Supreme Court has held that drawal of blood samples, etc. for DNA profiling is not illegal. Under such circumstances, when the prosecution request for DNA profiling, the same cannot be denied.

8. In the result, this petition is devoid of merits and stands dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

gya

To

1.The Inspector of Police,
All Women Police Station,
Ulundurpet.

2.The Public Prosecutor,
High Court, Madras.

+1 cc to Mr. C. Munusamy, Advocate, SR 34406

CRL.O.P.No.15715 of 2015

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kra(23/07)



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