

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2015

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THE HONOURABLE MR.JUSTICE S.MANIKUMAR

CRL.R.C.No.169 of 2015
and
M.P.No.1 of 2015

Ramesh @ Ramesh Kumar

...Petitioner

vs.

State by
The Inspector of Police,
A.W.P.S. Police Station,
Pollachi,
Coimbatore.

...Respondent

PRAYER: Criminal Revision Case filed under Sections 397 and 401 of Criminal Procedure Code to set aside the order dated 30.12.2014 in Crl.M.P.No.670 of 2014 in Spl.C.C.No.3 of 2014 on the file of the learned Mahila Judge, Coimbatore.

For Petitioner : Mr.K.Gangadaran

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor

JUDGMENT

Being aggrieved by the order returning the petition, Crl.MP.No.670 of 2014 filed for a fresh DNA Test, the present revision case is filed by the petitioner/accused.

2.The impugned order dated 30.12.2014 in Crl.MP.No.670 of 2014, is as follows:

"Heard the petitioner. The DNA Expert PW9 was already examined in fully and cross examined. Nothing in the cross examination suspected that the samples was in suggestion transfer put to the witness with regard to the doubt raised in the petition. Hence, this petition is returned to

stating how this petition is maintained in this case for collecting fresh samples at this juncture.”

3. Material on record discloses that on the complaint, a case in Crime No.45 of 2010, has been registered against the petitioner/accused under Sections 376(i) and 506(i) IPC. The alleged victim Kanaka is aged 14 years. Charge sheet has been filed on 27.11.2013 against the petitioner/accused. Prosecution has intended to mark nine documents, including the copy of the DNA Test report of the victim. About 17 prosecution witnesses have been cited. Dr.Kalaiselvi, M.S., Assistant Surgeon, Government Hospital, Pollachi, has been cited as prosecution witness 14, to speak about the DNA Test. Ms.D.Thilaka, M.Sc., Assistant Director, Directorate of Forensic Sciences, Chennai, has been cited as prosecution witness 15, to speak about the DNA Test, conducted on the victim and issuance of Certificate thereof.

4. Material on record further discloses that during the trial, Dr.Kalaiselvi, M.S., Assistant Surgeon, Government Hospital, Pollachi, has been examined as PW6 on 16.07.2014. She has been cross examined by the accused. Ms.D.Thilaka, Assistant Director of the Forensic Sciences Department, Chennai, has been examined as PW9 on 16.10.2014 and she has also been cross examined.

5. Contending inter alia that PW6-Dr.Kalaiselvi, has not identified the parties from whom the blood samples were collected for the DNA Test and that there was also a delay of two days in affixing the seal on the blood samples collected, the petitioner has filed an application under Section 45 of the Indian Evidence Act, 1872, read with Section 293 of the Code of Criminal Procedure.

6. According to the accused, fresh DNA sample has to be taken to determine the real paternity of the child Suganthi. However, the learned Judge, Mahila Court, Coimbatore, has raised a doubt over the maintainability of the petition and returned the petition.

7. While inviting the attention of this Court to Sections 293 and 294 Cr.PC, Mr.P.Govindarajan, learned Additional Public Prosecutor, submitted that any document purporting to be a report under the hand of an expert, may be used as evidence in any inquiry, trial and other proceeding under the Code of Criminal Procedure and he further submitted that when the genuineness of any document is not disputed, such document may be read in evidence in any inquiry trial or other proceeding under the Code of Criminal Procedure without proof of the signature of the person to whom it purports to be signed. According to the learned Additional Public Prosecutor, even taking it for

granted that if there are any irregularities said to have been committed, while taking the blood samples of the victim/accused and the child, Suganthi, it is only a matter for arguments and there is no need to conduct another DNA test. For the abovesaid reasons, he prayed for dismissal of the Criminal Revision petition.

8. Heard the learned counsel for the parties and perused the material available on record.

9. Before advertng to the rival contentions, this Court deems it fit to extract Sections 293 and 294 CrPC, as hereunder:

"293. Reports of certain Government scientific experts. (1) Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

(2) The Court may, if it thinks fit, summon and examine any such expert as to the subject-matter of his report.

(3) Where any such expert is summoned by a Court and he is unable to attend personally, he may, unless the Court has expressly directed him to appear personally, depute any responsible officer working with him to attend the Court, if such officer is conversant with the facts of the case and can satisfactorily depose in Court on his behalf.

(4) This section applies to the following Government scientific experts, namely:-

- (a) any Chemical Examiner or Assistant Chemical Examiner to Government;
- (b) the Chief Inspector of Explosives;
- (c) the Director of the Finger Print Bureau;
- (d) the Director, Haffkeine Institute, Bombay;
- (e) the Director Deputy Director or Assistant Director of a Central Forensic Science Laboratory or a State forensic Science Laboratory;
- (f) the Serologist to the Government.

294. No formal proof of certain documents.

(1) Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the

pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.

(2) The list of documents shall be in such form as may be prescribed by the State Government.

(3) Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed:

Provided that the Court may, in its discretion, require such signature to be proved."

10. Perusal of FIR in Crime No.45 of 2010, registered under Sections 376 (i) and 506(i) IPC, shows that the accused is alleged to have committed rape against child Kanaka, aged about 14 years and that she had conceived. She is also alleged to have been threatened.

11. On investigation, the Inspector of Police, All Woman Police Station, Pollachi, Coimbatore, has filed a final report on 27.11.2013. About 17 witnesses have been cited as prosecution witnesses, which includes Dr. Kalaiselvi, Assistant Surgeon, Government Hospital, Pollachi, to speak about the collection of blood samples from the victim, the accused and the child; Dr. Thilaka, M.Sc., Assistant Director, Directorate of Forensic Sciences, Chennai, has also been cited as one of the witnesses to speak about the DNA Test and issuance of Certificate. Both the witnesses have been examined on 16.07.2014 and on 16.10.2014, as PW6 and PW9, respectively. Alleging irregularities in not identifying the persons from whom blood samples have been collected, and the delay in affixure of the seal in blood samples, the petitioner has filed an application for conducting a fresh DNA Test.

12. As rightly contended by Mr. P. Govindarajan, learned Additional Public Prosecutor that even taking it for granted that the procedure, if any, required to be followed at the time of taking blood samples, sending the same for DNA test, affixure of the seal on the samples have not been followed scrupulously, it would be only a matter for arguments, in the criminal case, registered against the accused and that would not give rise to a cause for filing of a petition for fresh DNA Test. As per Section 293 of the Act, any document purporting to be a report under the hand of a Government scientific expert to whom this Section 293 applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in

any inquiry, trial or other proceeding under this Code. Certificate, issued under Ex.P.5 is the report of examination of the victim. Ex.P.6 is the examination report of the accused. Ex.P.7 is the report of DNA Test of the victim. Ex.P.8 is the report of DNA Test of the accused. The entire papers would have been furnished to the petitioner/accused, at the time of framing the charges under Sections 376(i) and 506(i) IPC. The abovesaid witnesses have been examined on 16.07.2014 and 16.10.2014, respectively. After examination of the witnesses, petition has been filed under Section 45 of the Indian Evidence Act, 1872, read with Section 293 CrPC.

13. After hearing the parties, the learned Mahila Judge has rightly returned the petition, as not maintainable. No manifest illegality can be said to have been committed by the Court below in returning the petition. It is always open to the petitioner to advance their arguments on the basis of grounds raised in the present revision case. No case is made out for interference.

The Criminal Revision Case is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

mps

To

1. The Judge, The Mahila Court,
Coimbatore.

2. The Inspector of Police,
All Woman Police Station,
Pollachi, Coimbatore.

3. The Public Prosecutor,
High Court of Madras, Chennai.

RJ [CO]
PSI 21.03.2015

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