

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 387 of 2015

P.Jayakumar

.. Petitioner/Accused

Vs

1. State. Rep. by its
Inspector of Police
All Women Police Station (Central)
Coimbatore.
(Crime No.11 of 2011) .. Respondent/Complainant

Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C. against the order dated 10.04.2015 passed in C.M.P.No. 1398 of 2014 in C.C. No.9 of 2013 on the file of Judicial Magistrate (Additional Mahila Court), Coimbatore.

For Petitioner : Mr. R.Sankarasubbu
For Respondent : Mr. Mohammed Riyaz
Government Advocate (Crl.side)

ORDER

This revision has been filed by the petitioner challenging the order dated 10.04.2015 passed in C.M.P.No. 1398 of 2014 in C.C.No.9 of 2013 by which, the Court below had directed the petitioner/accused, the defacto complainant and her child to undergo DNA Test at Forensic Science Department, Chennai.

2. According to the petitioner/accused, he was charged for the offences punishable under Sections 495, 498(A) & 506 (i) of IPC for which there is no need for conducting DNA test or the question of paternity is no way connected with the alleged offences and hence, the application filed by the State has to be rejected. It is also contended that the prosecution has come forward with the above application only at a later point of time and there is inordinate delay in filing the application. Only after filing of charge sheet the prosecution has come forward with this application, which is against the principles of natural justice. Hence, the present Criminal Revision has been filed.

3. Mr.R.Sankarasubbu, learned counsel appearing for the petitioner would vehemently contend that the petitioner cannot be compelled and subjected to DNA test or the report made thereof cannot be used against him during the criminal trial. According to the learned counsel for the petitioner, such a procedure adopted by the trial Court is in clear violation of the fundamental rights guaranteed to the petitioner under

Article 20 (3) of The Constitution of India. In order to substantiate his contention, the learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court in Sharda vs. Dharmpal reported in 2003(4) SCC 493 to contend that there cannot be any compulsion or force to subject the petitioner to undergo the DNA test.

4. Learned Government Advocate (Crl.side) would contend that the investigating officer who had conducted the investigation of the case had already given a requisition before the learned Judicial Magistrate No.III, Coimbatore and a communication has also been sent to the Director for DNA test, on 07.08.2011. In response, a reply had also been sent by the Deputy Director on 03.08.2012, asking for blood samples and only due to misplacement of records, the said communication has not been complied with. The application in C.M.P.No.1398 of 2014 has been filed by the prosecution for proving the case against the accused beyond reasonable doubt and the same has been rightly ordered by the Court below.

5. I heard the counsel for both sides and perused the materials available on record. On a careful perusal of the records it is seen that the Court below had ordered for conducting DNA test much earlier and the C.M.P.No.1398 of 2014 has been filed subsequently only to comply with the earlier order dated 07.08.2011. As per the judgment of the Supreme Court referred supra, the order to subject an accused to undergo DNA test cannot be passed as a matter of routine. In the decision of the Honourable Supreme Court in (Narayan Dutt Tiwari vs. Rohit Shekhar and another) (2012) 12 Supreme Court Cases 554 the Honourable Supreme Court has issued detailed directions to maintain confidentiality about the report. It was further held that reasonable force can be used by taking police assistance if the blood sample is not willingly given. Therefore, it is not as though an accused cannot be forced or compelled to give blood samples especially when it is required for a just decision in the case. This is more so that the accused denies the factum of marriage itself. Therefore, unless DNA test is conducted and the paternity of the child is identified, it will be very difficult for the prosecution to prove the case against the accused beyond reasonable doubt.

6. In this case, on 07.06.2011, the then Inspector of Police has submitted an application seeking for DNA test of the parties and it was ordered by the learned Judicial Magistrate No.3, Coimbatore. The requisition made by the Court and the order directing to conduct the DNA test are already available in the Court. The Deputy Director, DNA Division, Chennai also addressed to the Court a report thereof and it has been marked to the Inspector of Police, All Women Police Station. However, when the blood samples are to be collected on 03.08.2012, the records relating to the order passed for conducting DNA test could not be traced. In such circumstances, the present application has been filed under Section 53 of the Criminal Procedure Code. The court below, on detailed analysis, has passed the order and I do not find any reason to interfere with

the same. The Criminal Revision Case is therefore dismissed. The court below is directed to proceed further for subjecting the accused to undergo DNA test and complete the said process within a period of two months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

To

1. The Judicial Magistrate IV
Additional Magistrate court
Coimbatore.
2. Do Thro the chief Judicial Magistrate
Coimbatore,
3. The Inspector of police
AllWomen police station central
Coimbatore
4. The public Prosecutor,
High court Madras.

rsi(co)
cp 2/11/2015

Crl RC No. 387 of 2015

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