

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 31-8-2015

Pronounced on : 2-9-2015

CORAM:

THE HON'BLE MR. JUSTICE P.N.PRAKASH

Crl.R.C.No.919 of 2015 & M.P.No.1 of 2015

Santhosh @ Sathiyar

... Petitioner/Petitioner

Vs.

Inspector of Police,
G-5, Secretariate Police Station,
Chennai - 10.

... Respondent/Respondent

PRAYER: Criminal Revision Petition filed under Section 397 and 401 Cr.P.C. with a prayer to call for the records relating to the order passed by the Sessions Judge, Mahila Court, Chennai, in Crl.M.P.No.4583 of 2015 in S.C.No.279 of 2013 dated 14.8.2015 and revise the same and order further investigation.

For Petitioner : Mr.A.Sirajudeen

For Respondent : Mr.C.Emalias
Additional Public Prosecutor

O R D E R

It is the case of the prosecution that this petitioner had enticed a minor girl Priyanka, and had physical affair with her on the promise of marrying her, and that, further she conceived and delivered a baby. In this connection, a case in Crime No.874 of 2009 was registered and after completing the investigation, Police filed final report before the concerned Magistrate and after the case was committed to the Court of Sessions, charges were framed against the petitioner/accused for offences under Sections 417 and 376 IPC. During the course of investigation, the Police had obtained the blood samples from the petitioner and the new born, and they were sent to the Tamil Nadu Forensic Science Department for the purpose of DNA

profiling. The DNA report dated 20.7.2012 states that the petitioner/accused has not fathered the child. Despite this report, in view of other evidences that this petitioner has had sexual intercourse with the minor girl Priyanka, final report was filed against the petitioner, as stated above.

2. The Petitioner filed a petition under Section 173(8) of Cr.P.C. in CrI.M.P.No.1407 of 2014 in S.C.No.279 of 2013, which was dismissed by the trial Court on 10.6.2014, against which he preferred CrI.R.C.No.595 of 2014 before this Court, which was also disposed of on 20.6.2014 with liberty to the petitioner to move appropriate application before the trial Court in accordance with law.

3. The prosecution has examined five witnesses including the victim girl Priyanka. At this juncture, petitioner/accused filed CrI.M.P.No.4583 of 2015 in S.C.No.279 of 2013 under Section 173(8) Cr.P.C. for further investigation, which was dismissed by the trial Court on 14.8.2015, challenging which the petitioner/accused has preferred the instant revision petition.

4. Mr.R.Sirajudeen, learned counsel appearing for the petitioner/accused submitted that a grave injustice has occurred to the victim girl, and it is imperative for the Police to conduct further investigation in order to find out, who has fathered the child.

5. The trial Court while dismissing the plea has stated as follows in paragraph 6 of the impugned order dated 14.8.2015:

"6. The learned Counsel for the petitioner/accused argued that after examination of Forensic Expert, it is brought to the knowledge of the Court that the DNA Report states that the petitioner/accused is not the biological father of the child born to the victim/PW.2 and hence it is absolutely necessary for the investigating Officer to find out who is the real culprit for the child birth of PW.2. On the face of evidence, it is seen that the victim PW.2 and the witnesses examined on the side of prosecution, such as PWs.1 to 4 have stated that the accused by false promise that he would marry the girl and had sexual intercourse with PW.2 and thereby she came pregnant. The Investigation Officer was examined and prosecution evidence was closed. Now at this stage the Court is to decide whether the charge

against the petitioner/accused is proved by the prosecution beyond reasonable doubt. Since the accused was charged u/s.376 and 470 IPC. Now, it is not required to investigate with regard to the cause of child birth of the victim. It is not the burden on the petitioner/accused to ask the Court to investigate with regard to the real person apart from the petitioner/accused. If the material evidence placed before this Court is not sufficient to prove the charge against the petitioner/accused, he is entitled to the benefit. Hence, at this stage, this Court is of the view that there is no necessary for further investigation as to who is the cause of the child birth of PW.2. For the above said reasons, this petition is liable to be dismissed."

This Court does not find any illegality or impropriety in the order passed by the trial Court, warranting interference in exercise of revisional jurisdiction of this Court.

6. The petitioner had the DNA report even at the time when he was served with the copies of the documents under Section 207 Cr.P.C. by the Committal Court. At that time, his heart did not bleed for the victim girl. Now the victim girl has given evidence implicating him. As rightly pointed out by the trial Court, it is always open to the petitioner/accused to take advantage of DNA the report in trial.

7. In India we do not have an inquisitorial system of criminal jurisprudence, and it is only adversarial system that we have adopted, in which it is the duty of the prosecution to prove the allegation against the accused beyond reasonable doubt, and the burden is not on the accused to find out, who the actual offender is. Therefore the order of the trial Court does not suffer from infirmity and this petition is dismissed.

8. Before parting, this Court carefully perused the DNA report dated 20.7.2012 and the evidence of Priyanka (victim). Priyanka has given cogent evidence about the promiscuous relationship the petitioner had with her, on account of which she conceived and delivered a girl baby on 31.3.2010. In the evidence Priyanka has stated that the name of her child is Sharani, but from the DNA report dated 20.7.2012 it is seen that the blood sample of one baby Alka, aged about 2 years has gone to the Tamil Nadu Forensic Science Department for DNA profiling. The blood samples of Priyanka has also been taken for DNA profiling. Thus, some foul play has occurred

in this case, and that requires rectification in the interest of justice. Therefore, this Court directs the Assistant Commissioner of Police, Ayanavaram Range, in whose jurisdiction G-5 Secretariate Colony Police Station falls, to have the blood samples of the Priyanka, Petitioner/accused and the child of Priyanka taken again by the Medical Officer, Forensic Medicine Department, Rajiv Gandhi Government General Hospital, Chennai, in the presence of the XIV Metropolitan Magistrate, Egmore, Chennai, and the FTA Micro Cards be handed over to the Tamil Nadu Forensic Science Department for DNA profiling. The Tamil Nadu Forensic Science Department, Chennai is directed to supply the necessary FTA Cards to the Assistant Commissioner of Police, Ayanavaram Range for this purpose. It is seen that Priyanka is a Dalit, who was sexually abused when she was hardly 13 years of age. Extra-ordinary cases requires extraordinary remedies, and this Court cannot be a mute spectator when criminal justice system is thwarted. The Tamil Nadu Forensic Science Department is requested to give priority to this case and do the DNA profiling of the child vis-a-vis Priyanka (biological mother) and the petitioner/accused herein and send the report within a period of thirty days directly to the Sessions Judge, Mahila Court, Chennai in S.C.No.279 of 2013. The petitioner/accused shall co-operate in implementing the order of this Court, failing which, the trial Court is directed to immediately cancel his bail and remand him to custody under Section 309 Cr.P.C. in the light of the Judgment of the Supreme Court in State of U.P. v. Shambu Nath Singh, JT 2001 (4) SC 319. The Assistant Commissioner of Police, Ayanavaram Range is directed to comply with the order passed by this Court within a period of one week from the date of receipt of copy of this order. The Registry is directed to mark a copy of this order to the Assistant Commissioner of Police, Ayanavaram Range, and to The Director, Forensic Science Department, Kamarajar Salai, Chennai, for necessary immediate action.

9. In the result, this revision petition is dismissed with the above directions. Connected miscellaneous petition is also dismissed. The above observations are only for the purpose of deciding this revision petition. The trial Court is directed to conduct trial uninfluenced by any of the above observations and decide the case on its own merits.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vr

To

1. The Inspector of Police,
G-5, Secretariate Police Station,
Kellys, Chennai - 10.
2. The Assistant Commissioner of Police,
G-5 Secretariate Colony P.S.,
Kellys, Chennai-10.
3. The Director,
Forensic Science Department,
Kamarajar Salai, Chennai.
4. The Assistant Commissioner of Police,
Ayanavaram Range, Chennai.
5. The Sessions Judge,
Mahila Court, Chennai.
6. The XIV Metropolitan Magistrate,
Egmore, Chennai.
7. The Public Prosecutor,
High Court, Chennai.

+1cc to Mr.A.Sirajudeen, Advocate, S.R.No.47098

Cr1.R.C.No.919 of 2015

BVR(CO)
CA(11/09/2015)

सत्यमेव जयते

WEB COPY