

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2016

CORAM:

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

Crl.O.P. No.22950 of 2016 & Crl.M.P. No.10751 of 2016

Anjali Devi Petitioner/Defacto Complainant

vs.

1 The State of Tamil Nadu
 represented by its Inspector of Police
 Kunnam Police Station
 Perambalur District

2 Tamil Selvan

3 Chinnaponnu

4 Anbazhagan

5 Tamil Selvi Respondents/Complainant Accused 1 to 4

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records pertaining to the impugned order dated 29.01.2016 made in Crl.M.P. No.369 of 2015 in S.C. No.26 of 2015 on the file of the Mahila Court, Perambalur and set aside the same as illegal and arbitrary against settled principles of law and duty of court and issue further direction for collection of blood samples of petitioner, 1st accused and their girl child by name Tamil Kanni, in the presence of each other before the Court of law and send for a fresh DNA test and report.

For petitioners Mr. R. Veeramani
For R1 Mr. C. Emalias
 Additional Public Prosecutor
For RR 2 to 5 Mr. S. Sathyachandran

ORDER

This Criminal Original Petition has been filed seeking the following relief:

"to call for the records pertaining to the impugned order dated 29.01.2016 made in CrI.M.P. No.369 of 2015 in S.C. No.26 of 2015 on the file of the Mahila Court, Perambalur and set aside the same as illegal and arbitrary against settled principles of law and duty of court and issue further direction for collection of blood samples of petitioner, 1st accused and their girl child by name Tamil Kanni, in the presence of each other before the Court of law and send a fresh DNA test and report."

2 On the complaint lodged by Anjali Devi, the petitioner herein, the first respondent police registered a case in Cr. No.278 of 2012 on 23.05.2012 and after completing the investigation, filed a final report in S.C.No.26 of 2015 before the Mahila Court, Perambalur against Tamil Selvan (A1), Chinnaponnu (A2), Anbazhagan (A3) and Tamil Selvi (A4) for the offences under Sections 417, 376, 294(b), 323 and 506 (ii) IPC.

3 It is the case of the prosecution that Tamil Selvan (A1) and Anjali Devi (de facto complainant) were in love and on the promise of marrying her, Tamil Selvan (A1) had physical relationship with Anjali Devi (de facto complainant) and a child was born through him and thereafter, Tamil Selvan (A1) retracted. Hence, the FIR and final report.

4 Tamil Selvan (A1) was arrested during investigation and was released on bail. Seemingly, at the time of lodging of the FIR, Anjali Devi (de facto complainant) was 6 months pregnant. After Anjali Devi (de facto complainant) delivered a child, the police made an application before the Judicial Magistrate, Perambalur, for drawal of blood samples of Tamil Selvan (A1), Anjali Devi (de facto complainant) and the child, for sending the same for DNA profiling. The Judicial Magistrate, Perambalur allowed the application, pursuant to which, Muruganandham, PC 1353, took the trio to the Government Headquarters Hospital, Perambalur, where, blood samples were drawn on 28.05.2014 in the FTA cards that were supplied by the Tamil Nadu Forensic Sciences Department. After drawal of blood samples, the FTA cards were handed over to the Judicial Magistrate, Perambalur, who, in turn, sent the same to the Tamil Nadu Forensic Sciences Department for DNA profiling. DNA profiling was done and the report dated 05.11.2014 excluded

Tamil Selvan (A1) from fatherhood of the female child Tamil Kanni. Despite the DNA report being in favour of Tamil Selvan (A1), the police completed the investigation and filed a final report against Tamil Selvan (A1) and his relatives for the aforesaid offences.

5 After framing of charge, Anjali Devi (de facto complainant) was examined as P.W.1 and was subjected to cross-examination by the accused. Several other prosecution witnesses were examined. At that juncture, Anjali Devi (de facto complainant) filed an application in CrI.M.P. No.369 of 2015 in S.C.No.26 of 2015 before the Mahila Court, Perambalur, assailing the DNA report, by contending that blood samples were not drawn from Tamil Selvan (A1) and that the blood samples of someone else have been drawn. The Mahila Court, Perambalur, ordered notice to Tamil Selvan (A1) and after hearing Anjali Devi (de facto complainant), the accused and the State, dismissed the petition on 29.01.2016, challenging which, Anjali Devi (de facto complainant) is before this Court.

6 This Court heard Mr. R. Veeramani, learned counsel for Anjali Devi (de facto complainant), Mr. S. Sathyachandran, learned counsel for Tamil Selvan (A1) and other accused and Mr. C. Emalias, learned Additional Public Prosecutor appearing for the first respondent State.

7 Mr. R. Veeramani contended that the female child Tamil Kanni was born to Anjali Devi (de facto complainant) only through Tamil Selvan (A1) and that at the time of drawal of blood samples at the Government Headquarters Hospital, Perambalur, some foul play has occurred.

8 The above submission of Mr. Veeramani was strongly refuted by Mr. Sathyachandran, learned counsel for the accused.

9 This Court gave its anxious consideration to the rival submissions.

10 To satisfy the judicial conscience, this Court called for records from the Judicial Magistrate Court, Perambalur, Government Headquarters Hospital, Perambalur and the Tamil Nadu Forensic Sciences Department and perused the same.

11 On a scrutiny of the records, it is seen that the Judicial Magistrate, Perambalur, has addressed a communication dated 27.05.2014 to the Superintendent, Government Headquarters Hospital, Perambalur, to draw blood samples of Tamil Selvan

(A1), Anjali Devi (de facto complainant) and the female child Tamil Kanni. In the said communication, the Judicial Magistrate, Perambalur, has given the physical identification particulars of the trio, besides stating that they are being sent through Muruganandham, PC 1353. The original Accident Register that was called for from the Government Headquarters Hospital, Perambalur, shows that on 28.05.2014, Dr. S. Saravanan has recorded the identification particulars of the trio which tallies with the identification particulars given in the letter dated 27.05.2014 addressed by the Judicial Magistrate, Perambalur. After having drawn samples from the trio, the FTA cards have been put in a sealed cover and Dr. Saravanan has signed it crisscross, so that, if anyone opens the sealed cover, his signature portion will have to be cut. The sealed cover has been handed over to the Judicial Magistrate, Perambalur, who, in turn, has sent it with his covering letter dated 28.05.2014 through Muruganandham, PC 1353 to the Tamil Nadu Forensic Sciences Laboratory. The specimen signature of Muruganandham, PC 1353 has been obtained in the communication of the Judicial Magistrate, Perambalur. At the Tamil Nadu Forensic Sciences Department, the sealed cover has been received from Muruganandham, PC 1353 and after checking the seals thereon, the FTA cards have been opened and DNA profiling done.

12 This Court showed the entries in the Accident Register and the signature on FTA cards to Mr. Veeramani, learned counsel for Anjali Devi (de facto complainant) so that he should also be satisfied that there is no reason to allege that there was any foul play.

13 Mr. Sathyachandran, learned counsel for the accused, placed strong reliance on a judgment of this Court in S. Veeralakshmi vs. The Superintendent of Police, Madurai and others [CDJ 2015 MHC 1353] to garner strength to his contention that a person cannot be subjected to second DNA analysis.

14 Of course, this Court does not have any quarrel with the proposition of law laid down in the aforesaid judgment. However, the power of this Court to order second DNA profiling cannot be completely taken away in extraordinary cases where justice demands. Unfortunately, this is not a case, where, the second DNA profiling requires to be ordered by this Court.

15 In view of the aforesaid discussion, this Court does not find any infirmity in the order passed by the Mahila Court, Perambalur and accordingly, the same is upheld.

Resultantly, this Criminal Original Petition is dismissed, making it clear that the observations made herein are only for the limited purpose of deciding this quash application and that

the same shall not cause any prejudice to either party.
Connected Crl.M.P. is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1 The Service Judge,
The Mahila Court
Perambalur
- 2 The Judicial Magistrate
Perambalur
- 3 do thro The chief Judicial Magistrate, Perambalur
- 4 The Superintendent
Government Headquarters Hospital
Perambalur (with a direction to send a messenger collecting
the original accident registrar book from this cause)
- 5 The Director The Tamil Nadu Forensic Sciences Departments
(Laboratory), Mylapore, Chennai 600 004
- 6 The Inspector of Police,
Kumam Police Station,
Perambalur
- 7 The Public Prosecutor
High Court, Chennai 104

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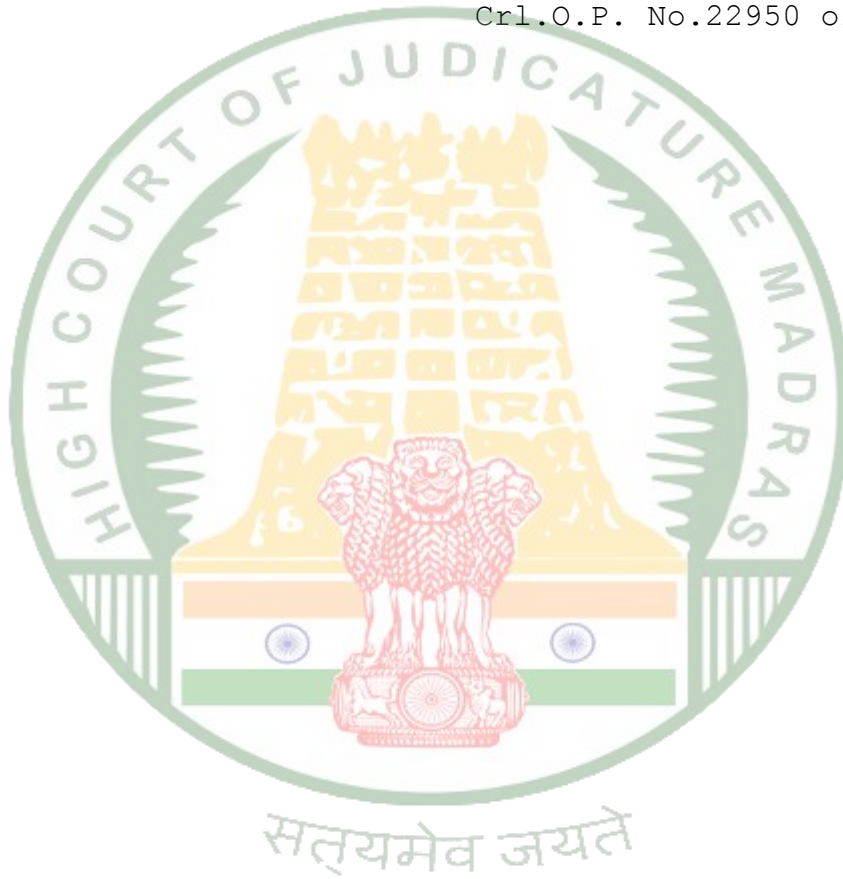
The Assistant Registrar Criminal Section
High Court, Chennai 104
(The ensure that the FTA Cases and Accident Register such
the respecer Depts., safety)

Copy to:
The Section Officer
Criminal Section
High Court, Chennai 104

+1cc to Mr.S. Sathia Chomdram, Advocate, S.R.No.71217

pvs (CO)
md(22/12/2016)

Cr1.O.P. No.22950 of 2016



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