

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2016

CORAM:

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

Crl.O.P. Nos.9995 of 2016 and 11675 of 2016
& Crl.M.P. Nos.5968 & 5969 of 2016

Arumugam ...Petitioner in Crl.O.P.9995 of 2016

S.Rajalakshmi ...Petitioner in Crl.O.P.11675 of 2016

Vs.

State represented by:

1. The Superintendent of Police
Cuddalore District
Cuddalore
2. The Inspector of Police
Kurunjipadi Police Station
Cuddalore District
- ...Respondents in Crl.O.P.9995 of 2016

1. The Union of India
represented by its Secretary
Ministry of External Affairs
New Delhi
2. The Joint Secretary and Chief Passport Officer
CPV Division
Ministry of External Affairs
Room No.8, Patiala House
Tilak Marg, New Delhi 110 001

3. The Foreigners Regional Registration Officer
Bureau of Immigration
Chennai 600 006

4. The Superintendent of Police
Cuddalore District
Cuddalore

5. The State of Tamil Nadu
The Inspector of Police
Kurinjipadi Police Station
Cuddalore District
Cuddalore

6. Arumugam ...Respondents in Crl.O.P.11675 of 2016

Prayer in Crl.O.P. No.9995 of 2016:

Criminal Original Petition filed under Section 482 Cr.P.C., to direct the first respondent to withdraw or cancel the lookout notice issued on 13.03.2014 in view of the order passed in Crl.M.P. No.1272 of 2016 dated 12.04.2016 by the Principal Sessions Judge, Cuddalore.

Prayer in Crl.O.P. No.11675 of 2016:

Criminal Original Petition filed under Section 482 Cr.P.C., to direct the respondents 1 to 5 to seize the passport of the respondent accused Mr. P.Arumugam bearing Passport No.J 347 1805, pending disposal of the proceedings in PRC No.2 of 2015 in Kurinjipadi P.S. Crime No.228 of 2013, pending on the file of the Judicial Magistrate cum Additional Mahila Court at Cuddalore.

For petitioner in : Mr. K. Gandhi Kumar
Crl.OP No.9995 of 2016

For respondents in : Mr. C. Emalias
Crl.O.P. No.9995 of 2016 Additional Public Prosecutor

For petitioner in : M/s. M.Manivasagam Associates
Crl.O.P. No.11675 of 2016

For RR 5 & 6 in : Mr. C. Emalias
Crl.O.P. No.11675 of 2016 Additional Public Prosecutor

For R6 in : Mr. K. Gandhi Kumar
Crl.O.P. No.11675 of 2016

COMMON ORDER

While Crl.O.P. No.9995 of 2016 is filed for a direction to the first respondent to withdraw or cancel the look out notice issued on 13.03.2014 in view of the order dated 12.04.2016 passed in Crl.M.P. No.1272 of 2016 by the Principal Sessions Judge, Cuddalore, Crl.O.P. No.11675 of 2016 is filed to direct the respondents 1 to 5 to seize the passport of the respondent-accused P.Arumugam bearing Passport No.J 3471805, pending disposal of the proceedings in PRC No.2 of 2015 in Kurinjipadi P.S. Crime No.228 of 2013, on the file of the Judicial Magistrate cum Additional Mahila Court at Cuddalore.

2. For the sake of convenience, the parties are referred to by their name.

3.1 On the complaint lodged by Rajalakshmi, the respondent police registered a case in Crime No.228 of 2013 for offences under Section 417, 506(II) IPC and Section 4 of

the Tamil Nadu Prohibition of Harassment of Women Act, 1998, and after completing the investigation, has filed a final report in PRC No.2 of 2015 for offences under Section 376 and 506 (II) IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998 before the Judicial Magistrate-cum-Additional Mahila Court, Cuddalore.

3.2 It is the case of Rajalakshmi that Arumugam is her own uncle and that he had raped her on 20.06.2011 after mixing some sedatives in a drink. On account of that, she conceived and delivered a female child on 21.03.2012. Arumugam is working in the U.A.E. and he was not available for interrogation. A look out notice was issued against him and ultimately, when he came to India, he was arrested on 10.01.2016 at the Coimbatore Airport and was remanded to custody. Later, he was released on bail on 22.01.2016 by the Principal District and Sessions Court, Cuddalore.

3.3 While so, Arumugam filed Crl.O.P. No.9955 of 2016 seeking a direction to the first respondent to withdraw or cancel the look out notice dated 13.03.2014 and Rajalakshmi filed Crl.O.P. No.11675 of 2016 to direct the respondents 1 to 5 to seize the passport of the respondent-accused P.Arumugam, pending disposal of criminal prosecution.

3.4 When the matter was extensively heard before this Court, this Court observed that the police had not conducted DNA profiling in order to find out the paternity of the female child that was born to Rajalakshmi. Therefore, this Court directed Arumugam, Rajalakshmi and the female child to submit themselves for DNA profiling and accordingly, their blood samples were drawn and DNA profiling was done by the Forensic Sciences Department, Government of Tamil Nadu. The conclusion of the report dated 20.06.2016 received from the Forensic Sciences Department reads as under:

"From the DNA typing results of the above samples, it is found that in the absence of identical twins, Mr. P. Arumugam is the biological father of the female child Divyadharshini."

3.5 From the above, it is seen that the paternity of the child is attributable to Arumugam.

4. Mr.C. Emalias, learned Additional Public Prosecutor submitted that the case in PRC No.2 of 2015 has been committed to the Court of Sessions and is now taken on file and posted to 28.06.2016 before the Principal District and Sessions Court, Cuddalore, for the appearance of Arumugam.

5. Mr. Ilayaraja Kandasamy, learned counsel for Arumugam would fervently make an appeal that the look out notice issued against Arumugam should be withdrawn so as to facilitate

Arumugam to go to the UAE and collect all his employment benefits from the employer.

6. Per contra, Mr. C. Emalias, learned Additional Public Prosecutor, would submit that the FIR was registered way back in the year 2013, but, the police could effectively secure Arumugam only in January 2016 when he came to India. Therefore, Mr. Emalias submitted that in the light of the DNA report, the possibility of Arumugam fleeing from justice cannot be ruled out.

7. There appears to be force in the submission of the learned Additional Public Prosecutor and the learned counsel for Rajalakshmi. In a case of this nature, especially in a case of a hapless woman, trial will further prolong, if the look out notice is withdrawn, at this juncture. This Court has to weigh the prejudice to the accused, vis-a-vis, the assertion of the State in securing justice to the victim lady.

8. In the result, Crl.O.P. No.9995 of 2016 filed by Arumugam is dismissed. The respondent police is directed to renew the look out notice until the culmination of trial.

9. As regards the prayer of Rajalakshmi in Crl.O.P. No. 11675 of 2016, in view of the order passed in Crl.O.P.No. 9995 of 2006, the same is closed. Connected Crl.M.P.s are closed.

10. A photocopy of the DNA report dated 20.06.2016 has been furnished to the learned counsel for Arumugam, learned counsel for Rajalakshmi and the learned Additional Public Prosecutor. Besides, a photocopy of the DNA report is enclosed in the file of this Court.

11. The Registry is directed to send the original DNA report dated 20.06.2016 in a sealed cover to the Court of Principal District and Sessions Judge, Cuddalore, along with a copy of this order, who shall make it as a part and parcel of the case records in PRC No.2 of 2015.

Since the exercise of DNA profiling has already been done, it is not necessary for the Trial Court to replicate. It will suffice if the expert who had done the DNA profiling is included in the memo of evidence and examined as prosecution witness by the Trial Court.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

- 1.The Principal District &
Sessions Judge,
Cuddalore.
(Order with one sealed cover
consisting Original DNA report)
- 2.The Superintendent of Police
Cuddalore District
Cuddalore
- 3.The Inspector of Police
Kurunjipadi Police Station
Cuddalore District
- 4.The Secretary
Ministry of External Affairs
New Delhi
- 5.The Joint Secretary and Chief Passport Officer
CPV Division, Ministry of External Affairs
Room No.8, Patiala House
Tilak Marg
New Delhi 110 001
- 6.The Foreigners Regional Registration Officer
Bureau of Immigration
Chennai 600 006
- 7.The Public Prosecutor
High Court of Madras.

+1cc to Mr.K. Gandhi Kumar, Advocate, S.R.No.36073

+4cc's to Mr.M.Manivasagam Associates, Advocate,
S.R.Nos.35567 & 35566

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Crl.O.P. Nos.9995 of 2016
and 11675 of 2016

MP1 (CO)
CA(04/07/2016)