



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.05.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Writ Appeal (MD) No.521 of 2017

and

C.M.P (MD) No.4479 of 2017

R.Rajendran

... Appellant/5th Respondent

Vs.

1.Kamar Nisha

2.The Director of General Police (L&O),
O/o.Director General of Police,
Santhome, Chennai.

3.The Superintendent of Police,
Thanjavur District, Thanjavur.

4.The Inspector of Police,
Pattukottai Police Station,
Pattukottai, Thanjavur District.

5.The Inspector of Police,
CBCID, Chennai.

6.The Inspector of Police,
Sethubavachathiram Police Station,
Thanjavur District.

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 24.04.2017 made in W.P.(MD)No.15208 of 2016.

Prayer in WP(MD)No.15208 of 2016:-

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus to direct the 1st respondent to withdraw the Crime No. 233 of 2014 on the file of the 3rd respondent and transfer the same to the file of the 4th respondent viz., Superintendent of Police, CBCID, Chennai.

For Appellant

: Mr.Veera.Kathiravan,
Senior Counsel for
M/s.S.Deenadhayalan

<https://hcservices.ecourts.gov.in/hcservices/> For 1st Respondent

: Mr.K.Mahendran

For Respondents 2 - 6

: Mr.V.Muruganandham,
Additional Government Pleader.

JUDGMENT

(Judgment of the Court was delivered by T.RAJA,J)

This writ appeal is directed against the order passed by the learned single Judge dated 24.04.2017 in W.P(MD)No.15208 of 2016 wherein a direction was issued to the respondent police to produce the appellant, the first respondent and her child before the Dean, Government Rajaji Hospital, Madurai on 10.05.2017 at 10.30 a.m. The sixth respondent was also directed to collect F.T.A Cards from the Forensic Science Department and submit the same to the Dean, Thanjavur Medical College Hospital on 10.05.2017, on which date, the blood samples of the trio shall be taken and the Dean shall send the same to the Forensic Laboratory, Kamarajar Salai, Mylapore, Chennai 600 004. Aggrieved over the same, the present writ appeal has been filed.

2.Mr.Veera.Kathiravan, learned Senior Counsel appearing for the appellant would submit that the complaint given by the first respondent, namely, Kamar Nisha raising accusation against the appellant with regard to his fatherhood to her child is hopeless, barred and belated and based on such a complaint, the appellant cannot be compelled to give blood samples for any analysis including D.N.A test which is against the ratio laid down by the Hon'ble Supreme Court in the case of *Goutam Kundu Vs.State of West Bengal* and another reported in AIR 1993 SC 2295. Learned Senior Counsel for the appellant would further contend that the learned single Judge ought not to have given any such direction ignoring the long delay, as it is an afterthought, the order of the learned single Judge is liable to be set aside.

3.Adding further learned Senior Counsel for the appellant would contend that when the writ petitioner, namely, Kamar Nisha, is a married lady and marital relationship with her husband namely, Abdul Lathif is still in force, she had begotten a female child namely, Noorul Hawwa and in the birth certificate, since the writ petitioner has specifically given the name of the said Abdul Lathif as her husband and father of the child, the appellant cannot be doubted or suspected to be a father of the child of the writ petitioner, at any point of time. Therefore, the writ petition should have been dismissed at the threshold by the learned single Judge but erroneously entertained the writ petition and ordered for DNA test against the settled legal position and hence, the order of the learned single Judge is liable to be set aside.

4.Mr.Veera.Kathiravan, learned Senior Counsel would also place reliance on the following judgments in support of his submissions.

<https://hcservices.ecourts.gov.in/hcservices/>

"(i) In *Banarsi Dass Vs.Teeku Dutta (Mrs) and another* reported in (2005) 4 SCC 449



(ii) In *Ramkanya Bai Vs. Bharatram* reported in (2010) 1 SCC 85

(iii) In *Bhabani Prasad Jena Vs. Convenor Secretary, Orissa State Commission for Women* and another reported in AIR 2010 SC 2851

(iv) In *Dipanwita Roy Vs. Ronobroto Roy* reported in (2015) 1 SCC 365".

5. Mr. Veera. Kathiravan, learned Senior Counsel would further contend that when Eminent Need Test has to be applied in a criminal prosecution of this nature under Chapter XII of the Code, without even specifying the Eminent Need Test, the learned single Judge has merely ordered the sixth respondent police to collect the F.T.A Cards from the Forensic Science Department and submit the same to the Dean, Thanjavur Medical College Hospital, on 10.05.2017, on which date, the blood samples of the trio shall be taken and the Dean shall send the same to the Forensic Laboratory, Kamarajar Salai, Mylapore, Chennai 600 004 and therefore, the said order is liable to be set aside.

6. We have considered the submissions made by the learned counsel appearing for the respective parties.

7. Admittedly, the writ petitioner and her husband Abdul Lathif were regular patients of the appellant. The appellant having cured the skin disease of the writ petitioner's husband, he became his friend. While so, the said Abdul Lathif requested the appellant that even after five years of marriage, they have no issue and therefore, asked him whether he can treat them to have issue. Thereafter, he promised them to treat the writ petitioner and in the guise of treatment, the appellant tactfully had sexual intercourse with her and continued illegal relationship with her after undue persuasion. As the writ petitioner's husband came to know the said relationship, he started avoiding her and therefore, she came to Pattukottai where the appellant used to visit and as a result of which, she begotten a female child but the appellant refused to marry her. Therefore, the writ petitioner gave a complaint before the third respondent police which was registered in Crime No. 233 of 2014 for the offence punishable under Sections 417 and 420 IPC read with 4 (1) of the Tamil Nadu Women Harassment Act.

8. As the appellant started avoiding the writ petitioner and her child, the situation arose for conducting DNA test. Therefore, the writ petition came to be filed and the learned single Judge has rightly directed the sixth respondent to produce the appellant, the first respondent and her child before the Dean, Government Rajaji Hospital, Madurai on 10.05.2017 at 10.30 a.m.



9. We are unable to find any justification or merits in the submissions made by the learned Senior Counsel for the appellant for the reason that there was serious allegation made against the appellant that he was having illicit intimacy with the first respondent who was a married lady begotten a child and when she and her child are prepared to appear before the Dean, Government Rajaji Hospital, Madurai for giving blood samples to take the DNA test, in all fairness, the appellant ought not to have avoided. Therefore, we do not find any error or irregularity in the order passed by the learned single Judge.

10. Accordingly, the writ appeal stands dismissed. However, learned Senior Counsel for the appellant fairly submitted that today, namely, 10.05.2017, is the date fixed for taking blood samples and since the appellant is unable to appear before the Dean, Government Rajaji Hospital, Madurai, some other date may be given and on which date, the appellant shall appear for the said test.

11. Recording his submission, the appellant is directed to appear before the Dean, Government Rajaji Hospital, Madurai on or before 19.05.2017 for taking blood samples as ordered by the learned single Judge. No costs. Consequently, C.M.P (MD) No. 4479 of 2017 is closed.

Sd/-
Vacation Officer/
Assistant Registrar

/True Copy/

Sub-Assistant Registrar

To

1. The Director of General Police (L&O),
O/o. Director General of Police, Santhome, Chennai.
2. The Superintendent of Police, Thanjavur District, Thanjavur.
3. The Inspector of Police, Pattukottai Police Station,
Pattukottai, Thanjavur District.
4. The Inspector of Police, CBCID, Chennai.
5. The Inspector of Police,
Sethubavachathiram Police Station, Thanjavur District.
6. The Dean, Government Rajaji Hospital, Madurai
7. The Director, Tamilnadu Forensic Laboratory, Kamarajar Salai,
Chennai-600 004

+One cc to The Special Government Pleader, SR.No.56335

+One cc to Mr.K.Mahendran, Advocate, SR.no.56165

+One cc to Mr.S.Deenadhayalan, Advocate, SR.No.56175

sms

RL/11C/RSK/SAR3/12.5.2017

Writ Appeal (MD) No.521 of 2017

and

C.M.P (MD) No.4479 of 2017

10.05.2017