



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBBIAH**

AND

THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

W.A. [MD] .No.1428 of 2016

and

C.M.P. (MD) No.10728 of 2016

Dr.R.Rajendran

: Appellant

Vs.

1.Kamar Nisha

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

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

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

5.The Superintendent of Police,
C.B.C.I.D., Chennai.

: Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order of a learned Single Judge of this Court dated 20.10.2016, made in W.P.(MD).No.15208 of 2016.

Prayer in WP(MD). 15208/ 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 from the 3rd respondent and transfer to the 4th respondent Superintendent of Police, CBCID, Chennai.

For Appellant

: Mr.K.Chellapandian,
Senior Counsel,
For Mr.R.Srinivas

**JUDGMENT**

[Judgment of the Court was delivered by **R.SUBBIAH, J.**]

This Writ Appeal has been filed as against the interim order passed by this Court in the Writ Petition filed by the first respondent, by order dated 20.10.2016, in W.P.(MD).No.15208 of 2016

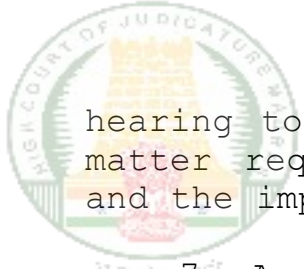
2. By the said interim order, the learned Single Judge has directed the appellant and the first respondent herein to appear before the Dean, Thanjavur Medical College Hospital, Thanjavur on 01.11.2016, who, in turn, take the blood samples of the necessary parties to get DNA report.

3. The learned Senior Counsel for the appellant submits that the Writ Petition was filed by the first respondent on the allegation that the appellant had illicit intimacy with her and as a consequence, a female child was born to her, for which, the first respondent lodged a complaint as against the appellant herein with Pattukkottai Police Station, the fourth respondent herein and the same was registered in Crime No.233 of 2014 for offences under Sections 417, 420 IPC r/s 4(1) of Tamil Nadu Women Harassment Act. Since there is no substantial progress in the investigation, she has filed a Writ Petition in W.P.(MD)No.15208 of 2016 with a prayer to direct the second respondent to transfer the case in Crime No.233 of 2014 from the file of the fourth respondent to the fifth respondent, for further investigation. In the said Writ Petition, she has also obtained an interim order as stated above.

4. The learned Senior Counsel for the appellant further submits that it is a well settled legal position that no one can compel to undergo a DNA test. If a person declines to comply with such direction, the Court can only draw a presumption of the nature contemplated under Section 114 of the Evidence Act, especially, in terms of Illustration (h) thereof. Moreover, the interim order was passed without hearing the contention of the appellant. Thus, the learned Senior Counsel for the appellant submitted that if the matter is remitted back to the Writ Court, the appellant can very well put forth his submissions before the Writ Court.

5. We have heard the learned counsel for the first respondent on the above submission made.

6. Considering the facts and circumstances of the case and <https://hcservices.ecourts.gov.in/hcservices/> it is held that the order, which is impugned in the present Writ Appeal, was passed without affording an opportunity of



hearing to the appellant, we are of the considered view that the matter requires fresh consideration by the learned Single Judge and the impugned order dated 20.10.2016 is liable to be set aside.

7. Accordingly, the Writ Appeal is allowed and the impugned order dated 20.10.2016, in W.P.(MD)No.15208 of 2016, is set aside. The matter is remitted back to the Writ Court for fresh consideration. No costs. Consequently, the connected miscellaneous petition is closed.

8. The Registry is directed to list the Writ Petition before the learned Single Judge for hearing on 12.01.2017. The learned Single Judge is requested to dispose of the Writ Petition at the earliest.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar

To

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

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

3.The Inspector of Police,
Pattukkottai Police Station,
Pattukkottai,
Thanjavur District.

4.The Superintendent of Police,
C.B.C.I.D., Chennai.

Copy to:

The Section Officer

Writ Section, Madurai Bench of Madras High Court, Madurai
(for posting the Writ Petition on 12.01.2017)

+1 cc to MR.S.DEENADHAYALAN, Advocate SR.No.1218

+1 cc to Special Government Pleader SR.No.1325

JUDGMENT MADE IN
W.A. (MD)No.1428 of 2016
Dated: 05.01.2017