



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 24.04.2017
CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH
W.P. (MD) No.15208 of 2016
and
W.M.P. (MD) No.11206 of 2016

Ms.Kamar Nisha

... Petitioner

-vs-

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,
Pattukottai Police Station,
Pattukottai,
Thanjavur District.

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

5.Dr.Rajendran

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

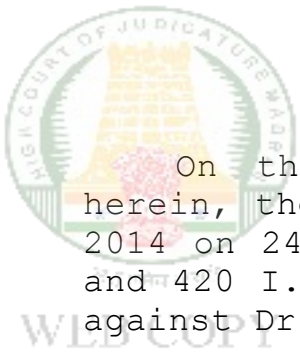
... Respondents

[R6 impleaded vide Court, order dated 06.04.2017,
in W.M.P. (MD) No.11603/2016]

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Mandamus, to direct the first respondent to withdraw the case in Crime No.233 of 2014, on the file of the third respondent and transfer the same to the fourth respondent, viz., Superintendent of Police, C.B.C.I.D., Chennai.

For Petitioner : Mr.K.Mahendran
For R1 to R4 & R6 : Mr.T.S.Mohammed Mohideen
Additional Government Pleader

For R5 : Mr.S.Deenadhayalan

O R D E R

On the complaint lodged by Kamar Nisha / the petitioner herein, the respondent police registered a case in Crime No.233 of 2014 on 24.06.2014 for the offences punishable under Sections 417 and 420 I.P.C., r/w. 4(1) of the Tamil Nadu Women Harassment Act, against Dr.Rajendran/the fifth respondent herein.

2. It is a case of Kamar Nisha that she was married to Abdul Lathif in the year 2001 and the said Abdul Lathif was suffering from some skin ailment. Therefore, Kamar Nisha took Abdul Lathif to Dr.Rajendran, for treatment. Dr.Rajendran treated Abdul Lathif and cured him of his skin disease. Therefore, Abdul Lathif and Dr.Rajendran became very close. Abdul Lathif seems to have confided in Dr.Rajendran that he is not blessed with child and requested Dr.Rajendran to refer Kamar Nisha to his wife Dr.Indira, who is said to be a Gynaecologist for treatment. Instead of referring Kamar Nisha to Dr.Indira, Dr.Rajendran is said to have developed illicit intimacy with Kamar Nisha, on account of which, Kamar Nisha conceived and a child was born to her on 08.03.2007. While the child was 1-1/2 years old, Dr.Rajendran is said to be frequently continuing his extra marital relationship with Kamar Nisha. On coming to know the relationship, Abdul Lathif got estranged from Kamar Nisha. Kamar Nisha went to Dr.Rajendran for help as her husband had deserted her. It is specifically stated in the complaint that Dr.Rajendran asked Kamar Nisha to give Rs.3,00,000/- to his second wife Dr.Devi and take her (Dr.Devi's), house situated nearby on lease. Accordingly, Kamar Nisha gave Rs.3 lakhs to Dr.Devi and took the house bearing Door No.1, Thanjavur Road, Pattukkottai on lease from 20.08.2013.

3. It is further alleged by Kamar Nisha that Dr.Rajendran would come to the house and spend time with her. While this was going on, a stage reached when Kamar Nisha wanted Dr.Rajendran to marry her voluntarily and make their relationship public. When Dr.Rajendran refused, a quarrel arose on 09.05.2014 in the presence of Jeyaraman, a relative of Dr.Rajendran. Thereafter, Dr.Rajendran refused to meet Kamar Nisha and started avoiding her. Unable to maintain herself, Kamar Nisha approached 'Z' Tamil T.V. Channel and she appeared in a programme titled "Solvathellam Unmai" and made her complaint public. On the complaint of Kamar Nisha, the police have registered the FIR in Cr.No.233/14 against Dr.Rajendran for offences under Sections 417 and 420 IPC.

4. After registration of the F.I.R., Dr.Rajendran was granted anticipatory bail by this Court. The Police moved an application before the Judicial Magistrate, Pattukkottai, for a direction to send Dr.Rajendran, Kamar Nisha and the child born for D.N.A. profiling and in that petition, directions were issued to Service Rajendran to appear before the concerned Medical Officer of the Government Hospital for drawal of blood samples, but he did not appear. Earlier, Kamar Nisha filed W.P.(MD)No.7746 of 2015 before

this Court, seeking for transfer of the investigation in Cr.No.233/14 from the local Police to the CBCID. In W.P.(MD). No.7746 of 2015, the Court has passed the following order:

"3.The petitioner gave a complaint which was registered in Crime No.233/2014 and the grievance of the petitioner is that despite of the fact that the complaint has been registered on 24.06.2014, no progress has been made.

4.The learned Additional Government Pleader on instructions, submits that the petitioner as well as the fifth respondent are not cooperating the investigation. This statement is refuted by the learned counsel for the petitioner.

5.The fact remains that after the registration of the case in the year of 2014, no progress has been made. There is nothing to indicate that the third respondent has taken adequate steps to investigate further.

6.Considering the facts, this Court is inclined to direct the second respondent to transfer the pending investigation from third respondent to any other investigation officer on his control and also directed to monitor and supervise the investigation.

7.This Writ Petition is ordered accordingly. Consequently, connected Miscellaneous Petition is closed."

5. Pursuant to the order passed by this Court, investigation was transferred from the file of the Inspector of Police, Pattukottai Police Station, Pattukottai, Thanjavur District, to the file of the Inspector of Police, Sethubavachathiram Police Station, Thanjavur District. Even after transfer, there was no progress in the investigation by the Inspector of Police, Sethubavachathiram Police Station and so Kamar Nisha has again approached this Court for C.B.C.I.D. Investigation.

6. On 20.10.2016, a learned Single Judge of this Court passed orders, directing Kamar Nisha and Dr.Rajendran to appear before the Dean, Thanjavur Medical College Hospital, Thanjavur, on 01.11.2016, for giving blood samples for D.N.A. Profiling.

7. Aggrieved by the order dated 20.10.2016, Dr.Rajendran filed W.A(MD)No.1428 of 2016 before the Division Bench of this Court, contending that the learned Single Judge had passed the order dated 20.10.2016 without giving him an opportunity. Accepting the said submission, the Division Bench of this Court set aside the order dated 20.10.2016, made in W.P.(MD)No.15208 of 2016 and ~~the matter is referred back to the learned Single Judge of this Court for hearing Dr.Rajendran and passing appropriate orders. Only under those circumstances, the matter is now before me.~~



8. Heard Mr.K.Mahendran, learned counsel appearing for the petitioner, Mr.T.S.Mohammed Mohideen, learned Additional Government Pleader appearing for the respondents 1 to 4 and 6 and Mr.S.Deenadhayalan, learned counsel appearing for the fifth respondent.

9. Mr.S.Deenadhayalan, learned counsel appearing for Dr.Rajendran, brought to the notice of this Court the Birth Certificate of the child born to Kamar Nisha, which shows that the father of the child is Abdul Lathif. He also submitted that the Transfer Certificate, also shows that the father is Abdul Lathif and not Dr.Rajendran. He also placed reliance on the School Certificates to show that the said Abdul Lathif is the father of the child and not Dr.Rajendran. Therefore, the learned counsel contended that in the absence of such materials, allegation against Dr.Rajendran that he is the father of the child is false and thus he cannot be subjected to D.N.A. Profiling.

10. In support of his contentions, he placed strong reliance on the following judgments:

(i) Goutam Kundu Vs. State of West Bengal and another [AIR 1993 SC 2295]

(ii) Dipanwita Roy Vs. Ronobroto Roy [2015 (1) SCC 365]

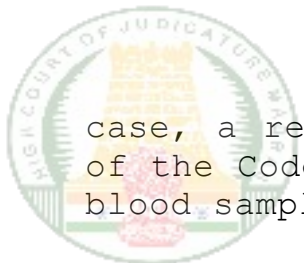
(iii) Kalaichelvan @ Dhanush K.Raja Vs. R.Kathiresan and another [Crl.O.P.(MD)No.480 of 2017, dated 21.04.2017].

11. He also contended that in the absence of prima facie materials, a person's right guaranteed under Article 21 of the Constitution of India cannot be infringed by subjecting him into D.N.A. analysis.

12. Per contra, Mr.T.S.Mohammed Mohideen, learned Additional Government Pleader appearing for the respondents 1 to 4 and 6 and Mr.K.Mahendran, learned counsel for the petitioner refuted the said contentions.

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

14. It is true that on mere asking of a litigant, D.N.A. profiling cannot be ordered without anything more. There must be sufficient materials placed before the Court for ordering D.N.A. profiling. In Kalaichelvan @ Dhanush K.Raja Vs. R.Kathiresan and another [Crl.O.P.(MD)No.480 of 2017, dated 21.04.2017], the question was with regard to a petition under Section 125 Cr.P.C., which is a quasi criminal proceeding, wherein the Kathiresan couple claimed that Dhanush is his son and so entitled to maintenance from him. This Court negatived the plea, since the petition and the supporting materials filed by Kathiresan did not make out even a prima facie link between him and Dhanush. However, in this



case, a regular Police investigation is pending under Chapter XII of the Code of Criminal Procedure against Dr.Rajendran, for which, blood sample of Dr.Rajendran is required.

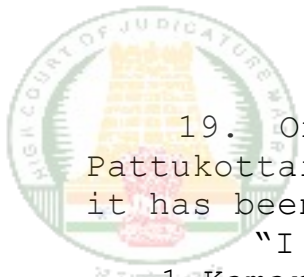
15. In State of Bombay Vs. Kati Kalu Oghad reported in AIR 1961 SC 1808 : 1961 (2) Cri. L.J. 856 : 1962 (3) SCR 10, the Hon'ble Apex Court has stated that giving of hair, blood samples etc. during the course of investigation will not violative under Articles 20 and 21 of the Constitution of India. This principle has been affirmed by the Three-Judge Bench in the case of Selvi and others Vs. State of Karnataka reported in 2010 (7) SCC 263 : 2013 (3) SCC (Cri.) 1.

16. In fact, Sections 53 and 53-A of the Code of Criminal Procedure, empower a Police Officer to subject an accused arrested for medical examination. Both Sections 53 and 53-A of the Code of Criminal Procedure categorically states that medical examination would include D.N.A. Profiling.

17. In this case, a reading of the complaint shows that Dr.Rajendran was having illicit intimacy with Kamar Nisha, who was a married lady and who did not have a child through Abdul Lathif from 2001 to 2006. When her husband approached Dr.Rajendran for treatment, it is alleged that he himself treated Kamar Nisha in such a manner that, she begot a child. As regards the contention that in the School Certificate of the child, the name of Abdul Lathif is there, it is understandable that Kamar Nisha would have wanted to keep the relationship as a closely guarded secret and hence she would not have wanted her husband to know of it. That is why, in the Birth Certificate as well as in the School records, the father of the child has been shown as Abdul Lathif. However, when Abdul Lathif came to know about it, he got estranged from Kamar Nisha and there is specific allegation in the F.I.R. to the effect that Dr.Rajendran accommodated her in the house belonging to his wife Dr.Devi, where Kamar Nisha was housed with her child and Dr.Rajendran was visiting her frequently for his carnal pleasure. The matter became public only when Kamar Nisha wanted Dr.Rajendran to marry her. When Dr.Rajendran refused, Kamar Nisha approached the TV Channel for ventilating her grievance. In the FIR, Kamar Nisha has given cogent reasons for her silence from 2006 to 2014.

18. For ordering DNA profiling, the Hon'ble Supreme Court has laid down a test, called "Eminent Need Test". The "Eminent Need Test" has to be applied in a criminal prosecution of this nature under Chapter XII of the Code, because, after DNA profiling is done, it can either result in a charge sheet being filed against Dr.Rajendran or a closure report being filed closing the FIR, as

<https://hccservices.gov.in/hccservices/> completing the investigation, DNA profiling is essential.



19. On the direction of this Court, Judicial Magistrate, Pattukottai, has sent a detailed report, dated 21.04.2014, wherein it has been stated as follows:

"I further submit that the summons were served to 1.Kamarnisha and 2.Noorul Hawa through police and the summon for Dr.Rajendran was not served in person because the door was locked and the summons affixed in front of his House witnessed by Thiru.S.Paulraj, V.A.O., Pattukkottai, on 10.11.2016 through Police. I submit that according to the letter in Na.Ka.No.14215/kF/2016, dated 11.11.2016 of the Dean, Thanjavur Medical College Hospital, Thanjavur, 1.Kamarnisha and 2.Noorul Hawa have appeared on 11.11.2014 and the Blood Samples of them have not been taken for DNA Analysis due to their written objection."

20. From a reading of the report, it is clear that Kamar Nisha and the child appeared before the Dean, Thanjavur Medical College Hospital, Thanjavur, for giving blood samples, but Dr.Rajendran avoided, which only shows that an adverse inference can be drawn against him in law.

21. In the result, this Court is of the view that D.N.A. Profiling of Dr.Rajendran, Kamar Nisha and the child is essential for the investigation of the case in Crime No.233 of 2014, for which, a direction is required to be issued. Therefore, this Court directs the 6th respondent police to produce Dr.Rajendran, Kamar Nisha and the child before the Dean, Rajaji Government Hospital, Madurai on 10.05.2017 at 10.30 a.m. The sixth respondent Police is directed 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 directly through his authorised Messenger to the Tamil Nadu Forensic Laboratory, Kamarajar Salai, Mylapore, Chennai - 600 004. The D.N.A. Report shall be sent to the learned Judicial Magistrate, Pattukottai. In the considered opinion of this Court, no further direction is required for change of investigation in this case, as the result of the investigation in Cr.No.233 of 14 will depend upon the results of the D.N.A. Test and nothing more.

22. With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/



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,
Pattukottai Police Station,
Pattukottai,
Thanjavur District.

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

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

6.The Dean,
Thanjavur Medical College Hospital,
Thanjavur.

7.The Director,
The Tamil Nadu Forensic Laboratory,
Kamarajar Salai,
Mylapore,
Chennai - 600 004.

+1CC to M/S.K.Mahendran, Advocate, SR.No. 54064

+2CC to M/S.S.Deenadhayalan, Advocate, SR.No. 53700,19823

+1CC to the Special Government Pleader SR.No. 53924

W.P.(MD) No.15208 of 2016

smn2/ar

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