

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

Crl.R.C.No.180 of 2018 and
Crl.M.P.No.1596 of 2018

Sathish @ Karthick

.... Petitioner/Accused
Vs.

The State Rep by
The Inspector of Police,
Namakkal Police Station,
Namakkal District.

.... Respondent/Complainant

PRAYER : The Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure against the order made in Crl.M.P.No.651 of 2017 on the file of the learned Sessions Judge (Fast Track Mahila Court), Namakkal dated 21.12.2017.

For Petitioner : Mr.C.D.Johnson

For Respondent : Mr.G.Harihara Arun Somashankar,
Government Advocate (Crl.Side)

O R D E R

The present revision case has been filed against the order made in Crl.M.P.No.651 of 2017 on the file of the learned Sessions Judge (Fast Track Mahila Court), Namakkal dated 21.12.2017.

2. The facts which gave rise to file this revision are stated hereunder: (i) The case of the revision petitioner is that he was charged for the offence punishable under Section 506 (ii) I.P.C. read with 5(L) and 6 of POCSO Act. The complaint was registered against him on the basis of the statement given by the defacto complainant on 28.05.2015.

(ii) The case of the defacto complainant is that the petitioner/accused had sexual and physical relationship with the defacto complainant and due to which, she gave birth to female child. Having father of the child, the petitioner had gone back on his promise to marry her and the defacto complainant being a child as defined under POCSO Act, the petitioner was charged for

the above said offence in the proceedings before the learned Sessions Court. The petitioner herein has filed a petition seeking to order DNA test along with the daughter of the defacto complainant, as according to the petitioner herein, the case was concocted, fabricated and a foisted one.

(iii) According to the revision petitioner/accused, if DNA test is conducted on himself with the so called female child born out of the physical relationship between him and the defacto complainant, the issue would be concluded as to the involvement of the petitioner into the physical relationship, one way or the other.

(iv) The prosecution had filed a counter affidavit before the lower Court, objecting to the order of DNA test, stating that the petition was filed only to prolong the proceedings and it was a dilatory practice adopted by the petitioner by filing such petition.

(v) After advertng to the petition and the counter petition and on hearing the submissions, the learned Sessions Judge has rejected the petition by accepting the case of the prosecution. According to the learned Sessions Judge, there was no necessity to order DNA test in the circumstances of the case. According to the learned Sessions Judge that the petitioner having failed to cross examine the prosecution witnesses viz., P.W.1 to P.W.3, cannot be allowed to file the present petition seeking relief as prayed for. The dismissal of the petition for ordering DNA test is the subject matter of challenge in the present criminal revision case.

3. The learned counsel for the revision petitioner would submit that the false case of the prosecution would be exposed, if the DNA test is conducted on the petitioner with the daughter born to the defacto complainant. By seeking ordering of DNA test on himself, the petitioner was infact taking a very grave risk and in case, in the DNA test, if it is proved about the fact of the charge against the petitioner, then it was a open and shut case for the prosecution. Despite that, the petitioner has filed a petition for DNA test, since he was too sure of his non-involvement of the physical relationship with the defacto complainant which gave rise to the birth of the female child. According to the learned counsel, no prejudice would be caused to the prosecution, if such test is ordered and it will only lead to strengthen the assertion of either prosecution or the defence as the case may be.

4. On the other hand, the learned Government Advocate (Cr1.Side) appearing for the respondent, has objected to grant any relief in the present revision case filed by the petitioner/accused.

5. This Court is in agreement with the submissions made on behalf of the revision petitioner that ultimately the result of the DNA test will prove the culpability of the involvement of the petitioner or otherwise, in regard to the charges framed against him. This Court is of the considered view that after all the petitioner is only seeking to conduct DNA test on himself in order to find out the truth in the allegations made against him. From the circumstances of the case, this Court does not find anything wrong with the petition filed by the petitioner and such an attempt by the petitioner cannot be construed as one of an attempt of dragging the proceedings. On the other hand, probably and presumably, the petitioner was too sure of himself in not being involved in any affair and prompted to file a petition seeking DNA test.

6. In any case, this Court finds that such petition cannot be said to be extraneous or without any relevance of the proceedings initiated against him and in order to ascertain the parentage of the child concerned, the DNA test is a most foolproof method and such prayer being asked at the instance of the accused himself, has to be appreciated in proper perspective.

7. For the above said reasons, this Court finds that the impugned order passed by the learned Sessions Judge (Fast Track Mahila Court), Namakkal in CrI.M.P.No.651 of 2017 in Spl.C.C.No.37 of 2015, dated 21.12.2017, cannot be sustained and the same is set aside. The petition filed by the revision petitioner herein under Section 45 of the Indian Evidence Act dated 08.11.2017, is hereby allowed. The Director of DNA Test Department, Forensic Lab, Chennai, is directed to conduct DNA test on the petitioner along with the daughter of the defacto complainant, within a period of one month from the date of receipt of a copy of this order and on completion of the test, the report shall be filed before the learned Sessions Court concerned.

8. This criminal revision case stands allowed on the above terms. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

gsk

To

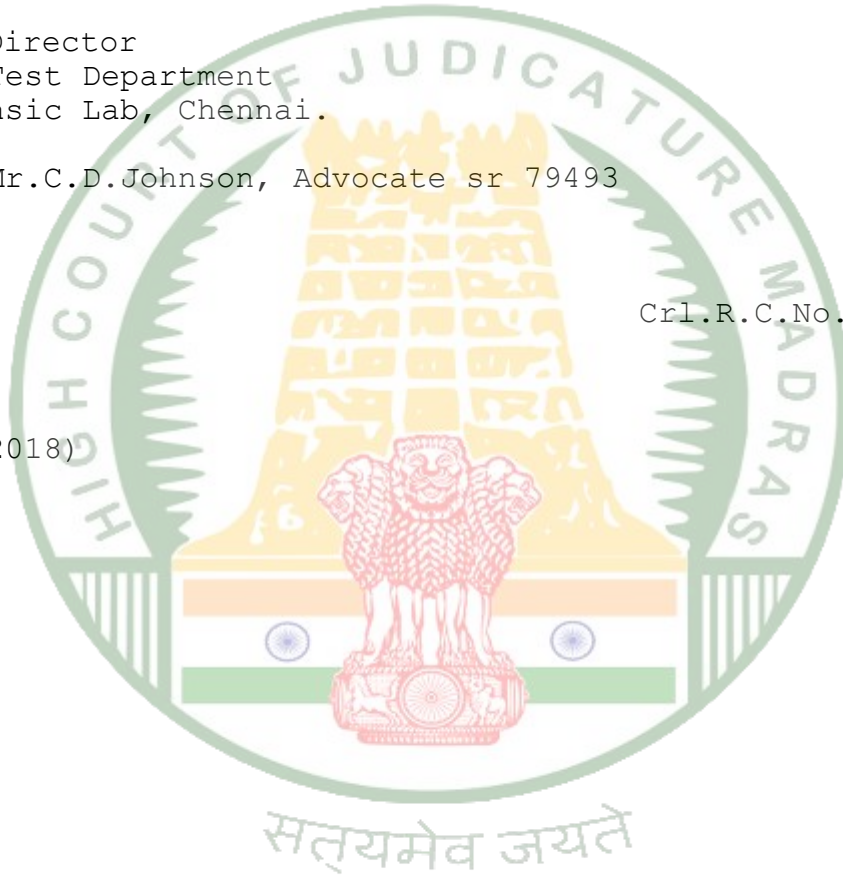
1. The Additional and District Sessions Judge
Magalir Neethimandram
Fast Track Mahila Court,
Namakkal.
2. The Inspector of Police,
Namakkal Police Station,
Namakkal District.

Copy to
The Director
DNA Test Department
Forensic Lab, Chennai.

+1 CC to Mr.C.D.Johnson, Advocate sr 79493

CrI.R.C.No.180 of 2018

VGII (CO)
SP (30/11/2018)



WEB COPY