

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2019

CORAM :
THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.24575 of 2016

M.Radhika

... Petitioner

Vs.

- 1.The Secretary to the Government of Tamilnadu,
Home Department,
Fort St.George, Chennai-9
- 2.The Director General of Police,
Office of the Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai - 600 004
- 3.The Inspector General of Police(West Zone),
Commissioner of Police Campus,
Coimbatore-641 018
- 4.The Superintendent of Police,
Tiruppur District, Tiruppur
- 5.M.Vivekanandan
- 6.C.Tamilselvi
- 7.M.Chitra

... Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the respondents 1 to 4 to pay an exemplary compensation of Rupees 25,00,000/- to the petitioner's minor school going daughter M.Mohanapriya born on 03.01.2002 for the untold mental agony and pain suffered by her due to the acts of the respondents 5 to 7 who were reluctant to even register the First Information Report in Crime No.5 of 2016 on the file of the 6th Respondent for more than a month for the rape committed on her on 15.01.2016 and the subsequent forcible marriage to the very same rapist, by not even medically examine the child by a doctor within twenty four hours of the receipt of the information of the rape as required under Section 164-A of the Criminal Procedure Code and not invoking Section 375 and 376 of Indian Penal Code for the serious offence of rape and also for the suffering undergone by the petitioner and her husband; thereby acting in disobedience to the orders of the Hon'ble Supreme Court in Lalitha Kumari Vs. State of U.P. & Ors in Writ Petition (Criminal) No.68 of 2008.

For Petitioner : Mr.M.Purushothaman

For RR1 to 4 : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

For RR5 to 7 : No Appearance

O R D E R

The writ petition has been filed to direct the respondents 1 to 4 to pay an exemplary compensation of Rupees 25,00,000/- to the petitioner's minor school going daughter M.Mohanapriya born on 03.01.2002 for the untold mental agony and pain suffered by her due to the acts of the respondents 5 to 7 who were reluctant to even register the First Information Report in Crime No.5 of 2016 on the file of the 6th Respondent for more than a month for the rape committed on her on 15.01.2016 and the subsequent forcible marriage to the very same rapist, by not even medically examine the child by a doctor within twenty four hours of the receipt of the information of the rape as required under Section 164-A of the Criminal Procedure Code and not invoking Section 375 and 376 of Indian Penal Code for the serious offence of rape and also for the suffering undergone by the petitioner and her husband; thereby acting in disobedience to the orders of the Hon'ble Supreme Court in Lalitha Kumari Vs. State of U.P. & Ors in Writ Petition (Criminal) No.68 of 2008.

2. The learned counsel for the petitioner would submit that the petitioner is the mother of the victim girl born on 03.01.2002. When the petitioner and her husband went for their employment, the minor child was in the house. On 15.01.2016, the accused, who is a neighbour of the petitioner, forcibly raped her against her will in the bathroom. The said fact came to knowledge of the petitioner only on 19.01.2016. On 17.02.2016, based on the threat made by the accused family, the petitioner and her husband along with other relatives agreed to perform marriage to the minor girl with the said accused Mr.Karthik and the marriage was solemnised on 17.02.2016. Thereafter he frequently raped her daughter against her will upon instigation of other accused namely Marimuthu father of the accused. Thereafter the petitioner lodged a complaint and enquiry was conducted. Even the victim girl did not attend enquiry. After enquiry, the case has been registered in Crime No.5 of 2016 for the offences under Sections 3 & 4 of POCSO Act, 2012, and Section 9, 10 & 11 of Prohibition of Child Marriage Act, 2006 and Section 506(ii) I.P.C. Thereafter on 20.06.2016, the statement was recorded under Section 164 Cr.P.C. from the victim girl. Thereafter, the accused was arrested on 20.07.2016 and remanded to judicial custody. He further submits that for

the reasons the minor girl has suffered mental agony and pain due to the acts of the respondents 5 to 7 and the respondent Police has taken more than a month for registering the FIR, the petitioner has filed this petition seeking compensation of Rs.25,00,000/- to the petitioner's minor school going daughter.

3. The learned Additional Public Prosecutor would submit that the investigation was completed and the case was charge sheeted on 02.09.2016 under Sections 5(n) (I) r/w 6, 16 r/w 17, 18 of POCSO Act, 2012, and Section 9, 10 & 11 of Prohibition of Child Marriage Act, 2006 and Section 506 (ii) I.P.C. against the sixth accused including the petitioner, Rathika and her husband Magudeeswaran. He further submits that the case was taken on file in the learned Mahila Court, Tiruppur on 16.02.2017 in SPL.SC No.12 of 2017 and the case is now posted to 10.05.2017 for furnishing copies to the accused.

4. It is seen that the petitioner lodged a complaint and enquiry was conducted. Even the victim girl did not attend enquiry. After enquiry, the case has been registered in Crime No.5 of 2016 for the offences under Sections 3 & 4 of POCSO Act, 2012, and Section 9, 10 & 11 of Prohibition of Child Marriage Act, 2006 and Section 506(ii) I.P.C. Thereafter on 20.06.2016, the statement was recorded under Section 164 Cr.P.C. from the victim girl. Thereafter, the accused was arrested on 20.07.2016 and remanded to judicial custody. After completion of enquiry, the case was charge sheeted on 02.09.2016 under Sections 5 (n) (I) r/w 6, 16 r/w 17, 18 of POCSO Act, 2012 and Section 506(ii) I.P.C. against the 6th accused including the petitioner Rathika and her husband Magudeeswaran. It is further submitted that the case was taken on the file of the Mahila Court, Tiruppur on 16.02.2017 in SPL.SC.No.12/2017. Now this case is posted to 10.05.2017 for furnishing copies to the accused. Since the age of the victim girl, Mohanapriya was 15 years the seventh respondent has registered the case under Sections 3 & 4 of POCSO Act 2012 and 9, 10 & 11 of prohibition of Child Marriage Act, 2006 and Section 506(ii) I.P.C. Now, the case has been taken cognizance in SPL.SC.No.12 of 2017 by the learned Mahila Court, Tiruppur and the trial is in progress.

5. Considering the facts and circumstances of the case, this Court is of the view that this petition seeking compensation of Rs.25 lakhs from the respondents 1 to 4 to the petitioner's minor daughter cannot be considered for the reason that the petitioner and her husband are also accused for the offences under Sections 9, 10 & 11 of Prohibition of Child Marriage Act, 2006 and also the petitioner and her husband are also witnesses to the marriage. Even according to the petitioner, the marriage was solemnized on 17.02.2016 and after a period of three months the complaint has been lodged by the petitioner on 30.05.2016. Thereafter the respondent police

investigated the matter and registered the case. Now it has been charge sheeted and the trial is also in progress. Therefore, the entire allegations made in the writ petition are devoid of merits and as such the petitioner is not at all entitled to any compensation as prayed for in this petition.

6. Accordingly, this Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to the Government of Tamilnadu,
Home Department,
Fort St.George, Chennai-9
- 2.The Director General of Police,
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Dr.Radhakrishnan Salai,
Mylapore, Chennai - 600 004
- 3.The Inspector General of Police(West Zone),
Commissioner of Police Campus,
Coimbatore-641 018
- 4.The Superintendent of Police,
Tiruppur District, Tiruppur.
- 5.The Additional Public Prosecutor,
High Court of Madras.

+1cc to Mr.M.Purushothaman, Advocate, S.R.No.16929

SJ(CO)

RRS (22/04/2019)

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