

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 22.01.2019****CORAM:****THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA**
Cr1.O.P.(MD)No.22262 of 2018

WEB COPY

Muthukumar : Petitioner/Accused Single

Vs.

1.The Superintendent of Police,
Thoothukudi District, Thoothukudi.2.The Inspector of Police,
All Woman Police Station,
Vilathikulam, Thoothukudi District.

(Crime No.2 of 2018) : Respondents/Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., to direct the Inspector of Police, All Woman Police Station, Vilathikulam, Thoothukudi District to conduct the DNA test afresh after the drawl of blood sample from the petitioner as well as from the alleged victims of the case in Crime No.2 of 2018 pending on the file of the said police station and get a report therefrom with regard to the paternity of the child involved in the said case.

For Petitioner : Mr.R.Anand

For Respondents : Mr.R.Anandharaj
Additional Public Prosecutor**ORDER**

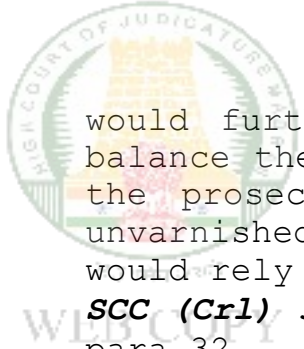
This Criminal Original Petition is filed to direct the second respondent to conduct the DNA test afresh after the drawl of blood sample from the petitioner as well as from the alleged victims in Crime No.2 of 2018 pending on the file of the said police station and get a report therefrom with regard to the paternity of the child involved in the said case.

2.The learned counsel appearing for the petitioner would submit that the petitioner is sole accused in crime no.2 of 2018 registered by the respondent police for the offences under Sections 417, 376 and 506(i) IPC. The allegation as per the defacto complainant is that the petitioner and the defacto complainant were in love with each other for about three years and that the petitioner on the inducement to marry her had committed rape on her

and she had become pregnant. Based on the complaint given by the defacto complainant, a case was registered on 12.02.2018.

3.The learned counsel for the petitioner would submit that the defacto complainant delivered a baby on 10.08.2018. He would submit that the petitioner specifically denies the paternity of the child and that the petitioner has been roped in this case only to blackmail and take ransom on him. He would further submit that the petitioner was arrested on 13.02.2018 and he was in custody for the 43 days. He would submit that as per the Section 53(A) Cr.P.C., it shall be lawful for the registered medical practitioner to examine the accused and prepare a report containing particulars as per Section 53(A) (2) Cr.P.C., including DNA profiling as per Section 53 (A)(2)(iv). He would submit that the respondent police did not follow the mandate in the Section 53(A) of Cr.P.C., and DNA profiling was not done when he was in custody. Thereafter, the respondent filed a petition for summoning the petitioner for DNA profiling and in the requisition form several interpolation and over writing were found and the name of the petitioner was mentioned as Muthusamy instead of Muthukumar and on the basis of the wrong information furnished by the respondents, a defective order was passed by the learned Magistrate on 04.09.2018. He would submit that based on the defective order and defective particulars, a request was placed before the lab and the lab had returned the order on 05.09.2018 and thereafter, the order was corrected and re-presented before the lab on 06.09.2018 and only on 14.09.2018 the police constable had sought for summoning the petitioner before the learned Magistrate and thereafter, pursuant to the order passed by the learned Magistrate on 18.09.2018, the petitioner was produced before the learned Magistrate and after orders were passed by the learned Magistrate on 19.09.2018, the petitioner was produced before the Government Hospital, Thoothukudi and sample was collected from him. After test, the DNA report has been given to the respondent police on 22.10.2018.

4.The learned counsel for the petitioner would submit that right from the beginning there seems to be confusion in the procedure adopted and orders passed and that the petitioner has reasonable apprehension that there could have been mixing of samples at the place where the samples drawn, since 15 other persons were also present on the same day. He would submit that when there is suspicious and apprehension with regard to the mixing of samples, the petitioner has come up with this petition seeking for second test by drawing samples from the petitioner as well as victims, to prove his case. He would further submit that as an accused the petitioner has every right to prove his innocence and that he had thereby requested for a second test. He would also submit that by conducting a second DNA test, no prejudice will be caused to anybody, since, it will in no way affect the DNA profile. He would submit that by subjecting the petitioner and victims to the second DNA test, the petitioner can avoid many doubt and suspicion regarding the test and shield himself from any prejudice being caused to him and at the same time the prosecution case can also dispel any suspicion as to the genuineness of the earlier test. He



would further submit that the Court as temple of justice has to balance the right of the accused for ensuring a fair trial and that the prosecution should take every effort to bring out the real unvarnished truth rather than to bolster up a prosecution case. He would rely on the decision of the Supreme Court reported in **(2011) 1 SCC (Cr1) 336 Babubhai Vs. State of Gujarat and others** and refer to para 32.

5.The learned Additional Public Prosecutor filed status report. He would submit that the apprehension of the petitioner that there was mix up of samples is not true. He would submit that DNA profile has been done and that DNA profile of the petitioner matches with the DNA of the child and that the respondent police has completed the investigation and also filed final report. When this Court put question to him as to whether second DNA test will affect the case of the prosecution, he would submit that it will not affect the case of the prosecution whereas it will only fortify the case of the prosecution. He would further submit that the respondent police are also interested in bringing out the truth and that they have no objection in second DNA test being conducted under the supervision of the Magistrate.

6.It is apposite to refer to para 32 of the judgment of the Hon'ble Apex Court in the case of **Babubhai Vs. State of Gujarat and others**, reported in **(2011) 1 SCC (Cr1) 336**

"The investigation into a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior motive. It is also the duty of the investigating officer to conduct the investigation avoiding any kind of mischief and harassment to any of the accused. The investigating officer should be fair and conscious so as to rule out any possibility of fabrication of evidence and his impartial conduct must dispel any suspicion as to its genuineness. The investigating officer "is not merely to bolster up a prosecution case with such unvarnished truth". (Vide R.P.Kapur Vs. State of Punjab, Jamuna Chaudhary Vs. State of Bihar, SCC at p.780, para 11 and Mahmood Vs.State of U.P.)"

7.The learned counsel for the petitioner would submit that in the interest of justice, the petitioner is prepared to pay necessary expenses incurred for second DNA test to be conducted on him as well as on the defacto complainant and her child. He would further submit that he is prepared to appear before the learned Magistrate and that suitable directions may be issued to the Magistrate to accept the memo to be filed by him and thereupon summons may be issued to the defacto complainant as well as her child and <https://hservices.ecourts.gov.in/hservices/> on a specific date may be fixed and that the petitioner as well as the defacto complainant and her child may be directed to appear before concerned medical officer for giving samples. He once

again reiterate that by taking a second DNA test, will only fortify the case of the prosecution and there will not be any change and no prejudice will be caused to any of the parties.

8. In view of the above, this Court is of the opinion that by ordering second DNA test afresh, no prejudice will be caused to the victims or to the case of the prosecution and it would in fact rule out any possibility of fabrication and it would also dispel the suspicion raised by the petitioner with regard to the earlier test conducted. (*) **"Hence, the petitioner is directed to appear before the learned Judicial Magistrate, Vilathikulam, Thoothukudi District, along with his counsel, within 15 days from the date of receipt of a copy of this order and on his appearance before the learned Magistrate, the learned Magistrate shall pass appropriate directions to concerned Medical Officer to draw samples for conducting second DNA test."** The learned Magistrate shall also summon the victims through the respondent police and direct them to appear before the concerned Medical Officer who shall draw samples for conducting second DNA test on them.

9. This process of second test should be completed within a period of two months from the date of receipt of a copy of this order. (*) **"This Court makes it clear that the expenses incurred for DNA test, shall be borne by the petitioner and the learned Judicial Magistrate, Vilathikulam, Thoothukudi District, after getting report from the Medical Officer, shall inform the petitioner about the expenses and direct him to deposit the same."** The petitioner shall also deposit an amount of Rs.2,500/- in the Court, towards expenses for victims to attend the second DNA test on the date of filing memo before the Magistrate's Court. Accordingly, this Criminal Original Petition is disposed of.

Sd/-

Assistant Registrar (AD I)

/True Copy/

Sd/-

Assistant Registrar (CRL.SIDE)

/True Copy/

(*) **Corrected as per the order of this Court dated 21.03.2019 made in Cr1.OP(MD)No.22262 of 2018**

Sub Assistant Registrar(CS I)

To

(*) **To be substituted to the order already despatched on 13.03.2019**

1. The Judicial Magistrate, Villathikulam, Thoothukudi District.

2. The Superintendent of Police,

<https://hcservices.ecourts.gov.in/hcservices/> Thoothukudi District, Thoothukudi.



3.The Inspector of Police,
All Woman Police Station
Vilathikulam, Thoothukudi District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC to Mr.R.ANAND , Advocate SR.No. 1100.

Cr1.O.P. (MD) No.22262 of 2018

22.01.2019

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