



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Monday, the Twenty Sixth day of August Two Thousand Nineteen

PRESENT

The Hon`ble Mr.Justice G.R.SWAMINATHAN

CRL MP(MD) No.7286 of 2019
IN
CRL A(MD) No.295 of 2019

CHANDRA

... APPELLANT/PETITIONER

Vs

1 MURUGESAN

2 THE INSPECTOR OF POLICE
ANNAVASAL POLICE STATION,
PUDUKKOTTAI DISTRICT.
CRIME NO.311 OF 2015

... RESPONDENTS/ RESPONDENTS

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to order or direct the court of Session or Magistrate to undertake the examination of DNA profiling of the accused / respondent as well the minor son Salai Kathir through a registered medical practitioner and to certify the report to this Hon'ble Court.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.R.KARUNANIDHI, Advocate for the petitioner and of M/S.J.UMARANI, Advocate for R1 and Mr.A.ROBINSON, Govt. Advocate (Crl. Side) for R2, the court made the following order:-

The appellant in this appeal is the defacto complainant in Crime No.311 of 2005 registered on the file of the Annaivasal Police Station. The case ended in acquittal on 03.09.2010. Challenging the same, the defacto complainant filed Crl.R.C.(MD)No.658 of 2011 before this Court. Since the Judgment was pronounced after the amendment to Section 372 of Cr.P.C., this Court converted the case to one of appeal.

2. When the appeal was taken up for hearing, this petition under Section 391 of Cr.P.C. has been taken out.

3. The petitioner's counsel states that on account of physical intimacy with the first respondent herein, she has begotten a male child. She now wants the parties namely the first respondent,



herself and the minor child to undergo DNA examination, so that, the paternity of the child can be established.

4. The prayer is opposed by the first respondent. A detailed counter affidavit has been filed. The first respondent states that the cause of action dates back to the year 2005. The revision petition itself was filed in the year 2011. All these years, the petitioner has not taken any steps for directing the parties to undergo DNA Test. Only when the appeal is taken up for final hearing, this petition has been taken out.

5. He points out that the petitioner has got married to one Senthil and a male child was born through the said wedlock. The first respondent got married to one Saranya in the year 2008 and she is having two female and one male child. The first respondent wants this Court to dismiss this petition.

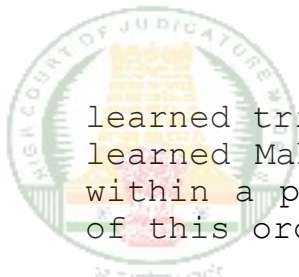
6. I carefully considered the rival contentions.

7. An application for further evidence can be considered by the Appellate Court, if it thinks, it is necessary.

8. The case of the defacto complainant/appellant is that the first respondent gave a false promise to marry and induced her to have sexual intercourse with him and that, as a result, she conceived. In fact, FIR itself clearly states that she is five months pregnant as a result of the sexual intercourse. Of-course, in the testimony given before the Court below, the petitioner has not expressly stated that a male child was born as a result of the pregnancy caused by the first respondent.

9. I am of the view that this omission to state in the testimony will not come in the way of the petitioner seeking relief before this Court. The crux of the prosecution case against the first respondent is that he had sexual intercourse with the petitioner. The specific charge against him is that he gave a false promise to marry. But the Court below has acquitted the first respondent. Challenging the same, this appeal has been filed. The appeal is continuation of the original proceedings. The case projected by the petitioner or the defence projected by the first respondent can be shown to be true or false, if the parties are made to undergo DNA Test. Therefore, for a proper disposal of this appeal, I am of the view that it is necessary to take additional evidence. In this view of the matter, the parties namely the first respondent, the petitioner and the child born to the petitioner will have to necessarily undergo DNA Test. This Court, therefore, directs the learned Judge of the Mahila Court, Sessions Court, Pudukottai to direct the parties concerned to appear before it for the purpose of undergoing DNA Test through a registered medical practitioner. After the report is obtained, the learned

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learned trial Judge shall forward the papers before this Court. The learned Mahila Court, Pudukottai shall conclude the entire exercise within a period of three months from the date of receipt of a copy of this order.

10. This Miscellaneous Petition is allowed on these terms.

sd/-
26/08/2019

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1. THE JUDGE, MAHILA COURT,
SESSIONS COURT, PUDUKOTTAI.

2. THE INSPECTOR OF POLICE
ANNAVASAL POLICE STATION,
PUDUKKOTTAI DISTRICT.

3. THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to Mr. R. KARUNANIDHI Advocate SR.No.13986
+1. C.C. to M/S. M. KRISHNAVENI Advocate SR.No.14141

ORDER
IN
CRL MP(MD) No.7286 of 2019
IN
CRL A(MD) No.295 of 2019
Date : 26/08/2019

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