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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2021

CORAM

THE HON'BLE MS. JUSTICE R.N.MANJULA

Crl.O.P.No.1870 of 2019
and
Crl.M.P.No.1155 of 2019

Dr.M.Selvamba Rajkumar

... Petitioner/Accused

Vs.

1. The State,
Rep.by Inspector of Police,
Vaazhapadi Police Station,
Salem District.

... 1st Respondent

2. The Chief Civil Surgeon/Medical Officer,
Government Hospital,
Vaazhapadi, Salem District.

... 2nd Respondent/Defacto Complainant

Prayer:- This Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records pertaining to Crime No.130 of 2018 on the file of the 1st respondent and quash the same as illegal, incompetent and abuse of process by allowing the present criminal original petition.

For Petitioner : Jayaprakash
for M/s.T.N.Rangesh Kanna

For Respondents : Mrs.G.V.Kasthuri for R1
Additional Public Prosecutor

No appearance for R2

ORDER

This Criminal Original Petition has been filed calling for the records pertaining to Crime No.130 of 2018 on the file of the 1st respondent Police and quash the same.



2. The learned counsel for the petitioner submitted that as per Section 28 of Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, no cognizance can be taken under this Act except on a complaint made by the appropriate authority to the Court. For the purpose of convenience, the provision of Section 28 is extracted below:-

"28. Cognizance of offences.

1.

1. No Court shall take cognizance of an offence under this Act except on a complaint made by-

(a) the Appropriate Authority concerned, or any officer authorised in this behalf by the Central Government or State Government, as the case may be, or the Appropriate Authority; or

(b) a person who has given notice of not less than fifteen days in the manner prescribed, to the Appropriate Authority, of the alleged offence and of his intention to make a complaint to the court.

2. No Court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

3. Where a complaint has been made under clause (b) of sub-section (1), the Court may, on demand by such person, direct the Appropriate Authority to make available copies of the relevant records in its possession to such person."

3. But in this matter, a case has been registered by the first respondent Police in F.I.R. No.130 of 2018 on the complaint given by the second respondent. Since a private complaint procedure is contemplated under the Special Act, there is a procedural violation. Hence, the Government has taken steps to withdraw the said case and file a fresh case before the jurisdictional Court by adopting due procedure.

4. It is submitted by the second respondent that a private complaint has also been filed by the appropriate authority before the jurisdictional Court and it has been taken on file.



In view of the above reason, this Criminal Original Petition is closed. Connected criminal miscellaneous petition is closed.

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Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

Sni

To

1. The Inspector of Police,
Vaazhapadi Police Station, Salem District.
2. The Chief Civil Surgeon / Medical Officer,
Government Hospital,
Vaazhapadi, Salem District.
3. The Public Prosecutor.
High Court, Madras.

Cr1.O.P.No.1870 of 2019

KG(CO)
SU(01/12/2021)