



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

W.P.No.22269 of 2021

and

WMP.No.23483 of 2021

Palaniyammal

... Petitioner

Vs

State of Tamil Nadu

Represented by the Inspector of Police,

All- Women Police Station Mylapore,

Chennai - 600 004.

... Respondent

PRAYER: The Writ petition has been filed under Article 226 of the Constitution of India to issue a writ of Certiorarified mandamus calling for the records in Crime No.12 of 2021 pending on the file of the AWPS Mylapore and quash the statement of the victim recorded on 25.08.2021 by the learned XVIII Metropolitan Magistrate, Saidapet under Section 164 of the Code of Criminal Procedure, 1973 as illegal and contrary to the Section 164(5) of CrPC and direct the respondent to seek recording the statement of the victim afresh, in strict compliance with Section 164 (5) CrPC.

For Petitioner : Mr.Poongkhulali

For Respondent : Mr.A.Damodaran
Addl.Public Prosecutor

ORDER

The petitioner, who is the defacto complainant in Crime No.12/2021, has filed this writ petition seeking quashing of the statement of the victim recorded on 25.08.2021 by the learned XVIII Metropolitan Magistrate, Saidapet, Chennai under Section 164 Cr.P.C. since it is contrary to Section 164(5) Cr.P.C. and direct the respondent to record the statement of the victim afresh strictly complying with Section 164(5) Cr.P.C.



2.The contention of the learned counsel petitioner is that the petitioner's daughter was subjected to sexual assault and rape and an FIR in crime No.12/2021 was registered by AWPS Police, Mylapore on 15.08.2021 for offences under Sections 354A and 376(2)(k) & 506(I) IPC. The prosecutrix herein is a mentally retarded person with intellectual disability. The petitioner's daughter is 21 years age and she is presently studying class - 10 at Vidyasagar Special School, at Koturpuram Chennai and completing her education through NIOS. Due to her mental incapability, the school is also providing special educator and care. In this case, taking advantage of her disability, the accused Dineshkumar, who is residing in L Block near the petitioner's residence, had taken the petitioner's daughter to his house and there, he had shown some obscene photographs in his mobile phone and thereafter, physically committed rape on her and further threatened her. Thereafter, the victim complained of pain and later, on enquiry she revealed the entire happenings. Hence, complaint has been lodged.

3.The offence itself has been committed taking advantage of the victim's health condition, due to the victims moderate intellectual disability. After registration of the FIR, the victim was subjected to several rounds of medical examination on 16.08.2021, 17.08.2021, 18.08.2021, 20.08.2021, 23.08.2021 and 24.08.2021 at the Government Hospital and she underwent psychiatric assessment at the Madras Medical College, Rajiv Gandhi General Hospital, where her I.Q was examined and found to be at 36% and psychiatrist examined her and diagnosed her with moderate intellectual disability. On 25.08.2021, the respondent police had directed the victim to be present at the Metropolitan Magistrate Court Complex at Saidapet for recording her 164 Statement. Mrs.Gandhimathi, who is a qualified Special Educator and who also teaches the victim at Vidyasagar School, knows about the victim's mental capability and disability and regularly communicating with her, was present to assist the XVIII Metropolitan Magistrate Court, while recording the statement as mandated under Section 164(5) Cr.P.C. Though Mrs.Gandhimathi was present during the recording of statement, she was not allowed to interfere or facilitate to communicate with the victim girl. The XVIII Metropolitan Magistrate was aware of the presence of the educator and her qualification but failed to acknowledge her presence and did not seek any assistance while recording the 164 CR.P.C statement. The Metropolitan Magistrate questioned the victim and dictated the answers directly to the typist. When the Special Educator Gandhimathi offered to facilitate the questioning, the same was declined. Even the advocate, who had accompanied the petitioner and her daughter, though represented to the Magistrate to take assistance of Special Educator and recording the victim's statement in her presence using her assistance is an essential



requirement, the same was not considered by the Magistrate. As per Section 164(5A) Cr.P.C, the learned Magistrate ought to have taken the assistance of a special Educator or interpreter while recording the statement since the victim is a person with mental disability. In view of the same, the recording of the statement is not proper and the victim is unable to explain the entire happenings and events. When the victim was enquired by her mother, she had given the details but due to the abovesaid reason, the same could not be communicated properly and the 164 Statement is bereft of the vital aspects of the offence, which would only facilitate and enure in favour of the accused. He further produced the disability certificate of Commissionerate for the Differently Abled. The medical certificate, when she had appeared before the psychiatric doctor, Government Rajiv Gandhi hospital and the third party affidavit of Chethana, the advocate, who accompanied the victim's mother and the Educator Gandhimathi, the said Gandhimathi had also filed an affidavit all in conformity to the submissions of the petitioner. The said Gandhimathi is a registered counselor as well as special educator is not in dispute and she is a teacher in Vidyasagar School, Kotturpuram, wherein, the victim was studying.

4.This Court heard the submission and perused the materials and found that the XVIII Metropolitan Magistrate had not followed the procedure and recording of 164 statement of the victim girl on 25.08.2021 is not proper and cannot be accepted. For recording the statement of a person with mental disability, strict guidelines and procedures ought to be followed. In this case, admittedly the service and assistance of special educator or interpreter has not been availed despite the presence of Gandhimathi, who is a qualified person. No reason has been given by the XVIII Metropolitan Magistrate for not taking such recourse and for what reason, he proceeded to record the statement directly. Finding gross violation in the principle and procedure, which would definitely affect the right of the victim and she would be denied justice. On comparison of the complaint and the 164 Statement, the absence of assistance of educator or interpreter is glaringly seen.

5. In view of the same, this Court sets aside the 164 statement of victim girl recorded on 25.08.2021 as non est and has no relevance and it cannot be used. The respondent police to approach the Chief Metropolitan Magistrate, to nominate another magistrate to record 164 statement of the victim/ mentally disabled person along with the educator or interpreter or facilitator preferably her school teacher Gandhimathi with whom she will be comfortable. Further, the victim being a lady and has to detail about sexual assault made on her, it would be appropriate that a lady magistrate is requested to record the statement of such a person.



With the abovesaid direction, this writ petition is allowed.
No costs. Consequently, connected miscellaneous petition is closed.

WEB COPY

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

sms

To

1.The Inspector of Police,
All- Women Police Station Mylapore,
Chennai - 600 004.

2.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.B.Poongkhulali, Advocate Sr No.54049

W.P.No.22269 of 2021
and
WMP.No.23483 of 2021

SR II (CO)
PR (17/11/2021)