



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.ILANGOVAN

CrI.O.P.(MD) No.7792 of 2021

and

CrI.M.P.(MD) No.3958 of 2021

Kumareshan

... Petitioner

Vs.

The Inspector of Police,
All Women Police Station,
Pudukkottai.

Crime No.1 of 2018

...Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records relating to the order in Cr.M.P.No.167 of 2021 in Spl.S.C.No.10 of 2018 dated 27.04.2021 on the file of the learned Sessions Judge, Mahila Court, Pudukkottai and set aside the same.

For Petitioner : Mr.S.Karthikeyan

For Respondent : Mr.R.M.Anbunithi

Additional Public Prosecutor (CrI.Side)

ORDER

This petition is filed seeking to set aside the order passed in Cr.M.P.No.167 of 2021 in Spl.S.C.No.10 of 2018 dated 27.04.2021 on the file of the learned Sessions Judge, Mahila Court, Pudukkottai.

2.The facts in brief are as follows:-

3.The petitioner is facing charge in Crime No.1 of 2018, which culminated in Spl.S.C.No.10 of 2018 on the file of the learned Sessions Judge, Mahila Court, Pudukkottai, for the offences punishable under Sections 5(j)(ii) r/w Section 6 of POCSO Act, 2012. The charge against this petitioner is that the victim girl was doing 10th standard. On 31.08.2017 at about 06.00 pm., this petitioner invited the victim girl to Whip Grove and committed penetrative sexual assault with the victim girl by threatening her and coercing her by giving false promise to marry her. So, because of the penetrative sexual assault, the victim girl has become pregnant.

4.The trial proceeding started and on the side of the prosecution, evidence was over and the case has been listed for the defence side witnesses. During the course of trial proceedings, at the instance of the learned Sessions Judge, Mahila Court, Pudukkottai, the respondent police took steps for subjecting the petitioner to DNA profiling on 15.11.2019. It was also conducted on 05.03.2020. DNA report was received and the same was also informed to the petitioner and his counsel.



5.After that, the trial proceeding proceeded and as stated earlier, on 17.09.2020, the prosecution evidence was over and the petitioner was put under 313 (1) of Cr.P.C. proceedings and later, the matter was posted to 23.12.2020 for examination of the defence side witnesses. Later, it was adjourned to various dates. At that time, the petitioner filed the impugned petition seeking a direction to conduct 2nd DNA test. This petition came to be filed on 02.03.2021.

6.After hearing both sides, this petition came to be dismissed by the trial Court by observing that sufficient opportunity was available to the petitioner after receiving the DNA report on 17.09.2020, the petitioner by keeping quite till the completion of the prosecution side evidence and participated in the trial proceedings. Thereafter, the present petition came to be filed by this petitioner.

7.Heard both sides.

8.As stated above, originally DNA test was not conducted upon the petitioner by the prosecution. But later, at the instance of the directions issued by the trial Court, DNA test was conducted and the report of the same was also received on 17.09.2020, wherein, the chance of the petitioner being the biological father of the child, namely, Ridhthiga, who was born to the victim girl, was found to be 99.999999999%. So, the question is whether the 2nd DNA test can be conducted at the request made by the petitioner.

9.The learned counsel for the petitioner would rely upon the judgment for the purpose of arguing that the 2nd DNA test is permissible and available to the accused person to prove his innocence. In the case of **Vishal Motising Vasava Vs. State of Gujarat** reported in **2004 CriLJ 3086**, the 2nd DNA test was requested. The 1st DNA test was found to be negative. The petitioner, namely, the complainant insisted 2nd DNA test to be conducted by a particular laboratory situated at Hyderabad.

10.The Court after considering the factual situation and position came to a conclusion that the 2nd DNA test is permissible, but at the same time, it was observed that the petitioner cannot insist a particular laboratory to take and undertake DNA profiling. So, according to the learned counsel for the petitioner, this case squarely applicable to the facts of the present case and the petitioner herein is entitled for the relief.

11.In another case in Crl.O.P.(MD) No.19734 of 2014 dated 03.02.2015 (**S.Veeralakshmi Vs. The Superintendent of Police, Madurai and others**), similar situation arose. So, this Court on the basis of the earlier judgment reported in **(2005) 3 MLJ 483 (Sakthivel Vs. Karapagam)**, had held that simply because the expert opinion is not in



favour of the particular individual, he cannot seek repeated opinions by different persons.

12. Under what circumstances the 2nd DNA test is permissible has also been stated that the defect must be pointed out in the earlier test. So, the perusal of the catena of judgments shows that the 2nd DNA test cannot be sought or granted as a matter of right. The party, who seeks 2nd DNA test, must make out a specific case of serious defects or doubts not only in the process of DNA profiling but also during the process of sample taking. So, the question, which arises for consideration in this petition, is that whether this petitioner made out even a *prima facie* doubt or defect in the earlier DNA profiling process including the process of taking the sample.

13. The affidavit filed by this petitioner in support of this petition shows that nothing has been stated. It has been simply stated that the earlier report is not acceptable to the petitioner. It creates doubts. Somewhere and somehow the mistake has been committed. So, a reading of this shows that it is vague in nature. The party, who comes to the Court seeking specific relief cannot be expected to speak in a language, which is not understandable and clear in nature. Specific doubts or defects must be pointed out. The petitioner did not object to the sample taking process either at the time of completion of the process or after receiving the report. He waited for one year to file such petition.

14. As mentioned above, if the sample is not in favour of the petitioner, he cannot go and seek retest by different persons, which is not permissible even as per the judgment cited by this petitioner as noted above. I find that there is no merits in this matter.

15. Under the guise of giving opportunity to the petitioner to prove his innocence, the Courts cannot be expected to make a roving enquiry and test. So, I am of the considered view that the ultimate conclusion that has been reached by the trial Court does not suffer from any illegality. So, this petition deserves to be dismissed and accordingly, the same is dismissed. The order passed by the trial Court in Cr.M.P.No.167 of 2021 in Spl.S.C.No.10 of 2018 dated 27.04.2021 is hereby confirmed. Consequently, connected miscellaneous petition is closed.

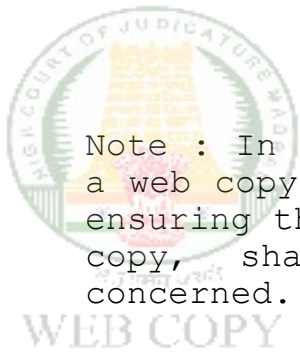
Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Sessions Judge,
Mahila Court, Pudukkottai.
- 2.The Inspector of Police,
All Women Police Station,
Pudukkottai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P. (MD)No.7792 of 2021
25.08.2021

_RD(6.09.2021) 4P 4C