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Crl.OP.No.31708 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2022

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THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.31708 of 2022
& Crl.M.P.No.19419 of 2022

Rajesh Kumar

...Petitioner

Vs.

State represented by
The Inspector of Police,
All Women Police Station, Ulundurpet,
Villupuram District.
(Crime No.13/2017)

... Respondent

PRAYER: This Criminal Original Petition is filed under Section 482 of Cr.P.C., to set aside order dated 14.11.2022 passed in the Crl.M.P.No.5707 of 2022 in S.C.No.218 of 2018 pending on the file of learned Sessions Judge, Magalir Needhimandram, (Fast Track Mahila Court) Villupuram.

For Petitioner : Mr.D.Bennington
For Respondent : Mr.S.Santhosh
Government Advocate(Criminal side)



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ORDER

This Criminal Original Petition has been filed to set aside order dated 14.11.2022 passed in the Crl.M.P.No.5707 of 2022 in S.C.No.218 of 2018 pending on the file of the learned Sessions Judge, Magalir Needhimandram, (Fast Track Mahila Court), Villupuram.

2.The learned counsel for the petitioner submitted that petitioner is charged for the offence under Section 417, 376, 352, 506 (1), 341 and 294 (b) I.P.C. and Section 4 Tamil Nadu Prohibition of Harassment of Woman Act, 2002.

3.It is the evidence of P.W.1 that the petitioner had committed rape on her and as a result she got pregnant and delivered a female child. The investigating officer had not taken any steps for subjecting the petitioner, the defacto complainant and the child for DNA test to find out the paternity of the child. Only after the final report was filed, a petition was filed for DNA test. Thereafter, on the directions of the Court DNA test was conducted on petitioner, defacto complainant and the child. DNA report was not marked through the



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expert who has done the DNA analysis and gave the report, but it was marked through the investigating officer. P.W.10 and P.W.12 had given evidence stating that it is not possible to get conceive immediately after menstrual period. In the case before hand, the allegation is that the petitioner had committed rape on the defacto complainant/victim on 21.12.2016, immediately after the menstrual cycle. In the DNA report, a finding was given that petitioner is the biological father of the child. The learned counsel for the petitioner further submits that copy of DNA report was not furnished to the accused till date. There is an obvious contradiction between evidence of P.W.10 and P.W.12 and the DNA report as to the possibility of getting conceived immediately after the menstrual period. Therefore, petitioner filed petition for examination of the expert who had given DNA report under Section 233 (3) Cr.P.C., but that was dismissed, resulting in filing of this petition.

4.The learned Government Advocate (Criminal side) submitted that this petition is filed when the case is pending for defence evidence, only to protract the proceedings. DNA report makes it obvious that petitioner is the biological father of the child and it proves that defacto complainant was raped by the



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petitioner. Thus, he prayed for dismissal of this petition.

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5.Considered rival submissions and perused the records.

6.If the claim of the petitioner that copy of the DNA report which was marked as Ex.P.14 is not furnished to the accused, it is a grave error. Petitioner is entitled for supply of free copy of the DNA report which was marked as Ex.P14. If not supplied, the trial Court is directed to immediately supply free copy of Ex.P14 DNA report to the petitioner. Now, this DNA report is challenged by the petitioner on the basis of the evidence given by P.W.10 and P.W.12 that it was not possible to get conceived immediately after the menstrual period. When the DNA report is challenged, necessarily the expert has to be examined to prove this report. Marking the report through the investigating officer is not enough. Therefore, this Court set aside the order dated 14.11.2022 passed in Crl.M.P.No.5707 of 2022 in S.C.No.218 of 2018 on the file of Sessions Judge, Magalir Needhimandram, (Fast Track Mahila Court) Villupuram. The trial Court is directed to summon the expert who gave Ex.P14



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DNA report as a defence witness.

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7. Accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
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G.CHANDRASEKHARAN,J.

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To

- 1.The Inspector of Police,
All Women Police Station, Ulundurpet,
Villupuram District.
- 2.The Public Prosecutor,
High Court of Madras, Chennai.

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