



Crl.R.C. No. 1597 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

Crl. R.C. No.1597 of 2023 &
Crl.M.P. No.14836/2023

R. Selvaraj

...Petitioner

Vs.

The State represented by,
The Inspector of Police,
Bhavani All Women Police Station,
Erode District.
Crime No. 26/2020

...Respondent

Prayer : Criminal Revision Case filed under Section 397 r/w 401
Cr.P.C. against the order dated 25.01.2023 in Crl.M.P. No.528 of 2021
in Spl.S.C. No.31 of 2021, on the file of the Fast Track Mahila Court,
Erode District.

For Petitioner : Mr.S. Dinakar
for M/s.S. Laksmipathy
For Respondent : Mr. R.Vinothraja
Government Advocate (Crl. Side)



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ORDER

Challenge in this Criminal Revision is made to the orders dated 25.01.2023 passed in Crl.M.P. No.528 of 2021 in Spl.S.C. No.31 of 2021, on the file of the Fast Track Mahila Court, Erode District.

2. The revision petitioner is the sole accused in Spl.S.C. No.31 of 2021, on the file of the Fast Track Mahila Court, Erode District, for the offences punishable under Sections 5(l), (n), (j)(ii), 6 of the Protection of Children from Sexual Offences Act, 2012 and Section 506(i) IPC.

3. The case of the prosecution is that on receipt of information from the Mohan Kumaramangalam Government Medical College and Hospital, Salem, the Inspector of Police, All Women Police Station, Bhavani, went to the hospital and recorded the statement of the victim girl, who was aged 14 years. The victim girl was admitted in the hospital for abortion of five months pregnancy. According to the Inspector of



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Police when she enquired the victim child she had stated that one Karthik had sex with her, on account of which she became pregnant.

3.1. The Inspector of Police after recording the statement of the victim went to the Police Station and registered FIR in Crime No.26/2020 of All Women Police Station, Bhavani, against the accused Karthik for the offences punishable under Sections 5(l) and 6 of the Protection of Children from Sexual Offences Act, 2012.

3.2. During the course of investigation it was found that the said Karthik was not the actual offender and that the father of the victim child had penetrative sex with his own daughter. The statement of the victim girl was recorded by the Judicial Magistrate, Bhavani, under Section 164(5) Cr.P.C wherein the victim had clearly deposed that her father was the reason for her pregnancy. The blood samples of the foetus of the victim and her father were taken and sent for DNA analysis. The DNA test analysis report revealed that the cumulative probability of paternity of the accused Selvaraj (father of the victim) for being the



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father of the foetus is 99.99999999%. The Inspector of Police, after recording the statement of the witnesses, filed a final report against the father of the victim, Selvaraj, before the Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court) Erode, for the offences punishable under Sections 5(l), (n), (j)(ii), 6 of the Protection of Children from Sexual Offences Act, 2012 and Section 506(i) IPC, in Spl.S.C. No.31/2021.

3.3. The learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court) Erode, took cognizance of the offence and furnished copies of records to the accused under Section 207 Cr.P.C. Thereafter the accused Selvaraj, filed a petition under Section 227 Cr.P.C. in Crl.M.P. No.528/2021 in Spl. S.C. No.31/2021, for discharging him from the offences punishable under Sections 5(l), (n), (j)(ii), 6 of the Protection of Children from Sexual Offences Act, 2012 and Section 506(i) IPC. The main contention was that in the FIR, the victim had mentioned the name of one Karthik as accused and that she had subsequently changed her versions and pointed out her fingers



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against the present petitioner/her father. According to him, the petitioner is an innocent person and he had not committed the offences as alleged by the prosecution. He therefore, prayed for discharging him from the offences of which he is charged by the Inspector of Police, All Women Police Station, Bhavani. The learned Sessions Judge, Magalir Magalir Neethi Mandram (Fast Track Mahila Court) Erode, vide her orders dated 25.01.2023, dismissed the said petition filed by the accused Selvaraj by observing thus:

"6. The Sub Inspector of Police, All Women Police Station, Bhavani received the intimation from Government Hospital Salem went to Salem Government Hospital and examined the child victim who is 14 years old and had recorded the statement. On the basis of the same, the First Information report has been registered against one Karthik. Subsequently the child victim statement recorded by Judicial Magistrate under Section 164(5) Cr.P.C. She goes to depose that the father is the reason for her pregnancy. She also states that, only on the instruction of her father she mentioned the name of one Karthik and her father is the reason for the penetrative sexual assault. The blood samples of the foetus, the child victim, the father were sent



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to DNA examination and the report has been received that "the cumulative probability of paternity of the alleged accused Selvaraj for being father of the foetus of reference 2 is 99.9999999%."

7. On perusal of the total records before this court and the documents submitted and after hearing the accused counsel and the prosecution this court finds that there are sufficient ground for proceeding against the accused. The document before this court brings out the prima facie case required to frame the charges under clause 1(b) of 228 Cr.P.C. Therefore this court finds that the accused is not entitled for discharge from the charges as prayed for."

3.4. Aggrieved by the said orders, the present Criminal Revision is filed.

4. Mr.S. Dinakar, learned counsel for the revision petitioner contended that the trial court even without perusing the FIR and the other connected records had dismissed the discharge petition filed by the accused. According to him DNA test analysis report is not a conclusive proof.



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5. Per contra, Mr.R.Vinothraja, learned Government Advocate (Crl. side), would contend that the trial court after perusing the entire records and documents had found a prima facie case against the accused for framing charges against him for the offences punishable under Sections 5(l), (n), (j)(ii), 6 of the Protection of Children from Sexual Offences Act, 2012 and Section 506(i) IPC and therefore, there is no merit in the case.

6. Though in the FIR the victim had stated that one Karthik was responsible for her pregnancy, subsequently she changed her version stating that her father had committed penetrative sexual assault on her. In fact the victim had given a statement under Section 164 Cr.P.C. before the Judicial Magistrate, Bhavani, narrating the entire sequence of events. The foetus was aborted and the blood samples of the foetus, victim and the father of the victim were taken and sent for DNA test analysis. The DNA test revealed that the father of the victim is responsible for the pregnancy of his own daughter and after concluding investigation, the Inspector of Police, All Women Police Station, had filed a final report



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against the father of the victim/accused. In the circumstances, the orders passed by the trial court cannot be interfered with. Moreover the family consisting of the accused (father), victim and her mother were all living under the same roof and in the circumstances it cannot be said at this stage that DNA analysis test report is not a conclusive proof.

7. In the result,

- i. the Criminal Revision Case is dismissed. Consequently connected miscellaneous petition is closed.
- ii. the orders dated 25.01.2023 passed in Crl.M.P. No.528 of 2021 in Spl.S.C. No.31 of 2021, by the learned Sessions Judge, Magalir Magalir Neethi Mandram (Fast Track Mahila Court) Erode, is confirmed.

20.09.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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R. HEMALATHA, J.
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To,

1. The Sessions Judge,
Magalir Magalir Neethi Mandram (Fast Track Mahila Court),
Erode.
2. The State represented by,
The Inspector of Police,
Bhavani All Women Police Station,
Erode District,

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