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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 23/06/2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

WP (MD) No.10747 of 2023

and

WMP (MD) Nos.9459 and 9460 of 2023

Muthukrishnan

: Petitioner

Vs.

- 1.The District Collector,
Office of the District Collector,
Pudukkottai District.
- 2.The Superintendent of Police,
Office of the Superintendent of Police,
Pudukkottai District.
- 3.The State through
The Deputy Superintendent of Police,
Office of the Deputy Superintendent of Police,
Crime Branch CID,
Trichy Range,
Trichy.
- 4.The Inspector of Police,
Office of the Inspector of Police,
Vellanur Police Station,
Pudukkottai District.

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari filed Mandamus, to call for the records connected with the impugned communication in D.No.129/2023, dated 18.04.2023 issued by the Hon'ble Special Session's Judge, Special Court for Trial of SC/ST



Act cases, Pudukkottai and quash the same as illegal, consequently, direct the respondent No.3 for not to compel the petitioner to undergo DNA Test in accordance with law within the time stipulated by this court.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.B.Nambiselvan
Additional Public Prosecutor

O R D E R

The writ petition has been filed seeking quashment of the impugned communication in D.No.129/2023, dated 18.04.2023 issued by the Special Sessions Judge, Special Court for Trial of SC/ST Act cases, Pudukkottai and consequently, direct the respondent No.3 not to compel the petitioner to undergo DNA test.

2.The right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution.

- ***The Hon'ble Supreme Court in
K.S.Puttaswamy Vs. Union of India
(2017)10 SCC 1.***



3.This petitioner wants to invoke the above said decision of the Hon'ble Supreme Court in this matter stating that his right to life, liberty and privacy of is impinged by way of this administrative communication.

4.Challenging the communication made by the Special Court to the Assistant Professor, Government Medical College and Hospital, Pudukkottai, to conduct DNA test of 11 persons, this writ petition has been filed.

5.The facts need not be elaborated. Suffice to say that a case in Crime No.1 of 2023 was registered for the offences under section 277, 328 IPC and sections 3(1)(b), 3(1)(x), 3(2)(va) of the SC/ST (Prevention of Atrocities) Act, 1989, when the faeces of human found in an overhead water tank located in Vengaiavayal.

6.During the course of investigation, the Investigating Officer made request to the Special Court to address the Assistant Professor, Government Medical College and Hospital, Pudukkottai, for conducting DNA test. The above said request was complied by the Special Court and in pursuance of the above said request, the



Assistant Professor, Government Medical College and Hospital, Pudukkottai, also conducted DNA test. Some of them appeared, subjected themselves to the test and some of them did not. One among the objectors is the petitioner herein.

7. At the time of hearing, the learned counsel appearing for the petitioner would submit that without properly following the procedure namely natural justice, the above said communication has been sent, which according to him, intrusion to his privacy under Article 21 of the Constitution of India. The second contention was that the Investigating Agency poised to implead or frame or fix this petitioner as one of the accused in the above said crime. So, according to him, it also violated Article 20(3) of the Constitution of India. On these twin grounds, this petition has been filed.

8. Whether any judicial order was passed by the Special Court on the request made by the Investigating Officer, a report was called for from the concerned Special Court. The report reads that on the basis of the request made by the Investigating Officer, the above said



request was made to the Department. But no judicial order was passed in that matter. Except the above said communication, no other materials are available in the file, as seen from the Special Court. So, it is seen that the above said request made by the Investigating Officer was taken on its administrative side and communication has been sent.

9. When the right of an individual is involved, the Special Court ought to have taken proper proceedings. This is the first mistake or irregularity that has been committed by the Special Court in entertaining the above said letter of request on the administrative side. The second is that because of the above said mistake or irregularity, objection or consent of this petitioner as well as others were not ascertained. This is the issue involved here.

10. When this issue was raised before this court, I told the learned counsel appearing for the petitioner that if there is any procedural irregularity, it will be taken care of by this court by giving direction to the Special Court. But I enquired him, why he is shying away



11. Here comes the contradicting interest of the State and individual. When such contradicting interests come, what sort of test must be undertaken has been laid down by the Hon'ble Supreme Court in the case of ***K.S. Puttaswamy and another Vs. Union of India and others*** (2017) 10 SCC 1.

The concerns expressed on behalf of the petitioners arising from the possibility of the State infringing the right to privacy can be met by the test suggested for limiting the discretion of the State:



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(i) The action must be sanctioned by law;

(ii) The proposed action must be necessary in a democratic society for a legitimate aim;

(iii) The extent of such interference must be proportionate to the need for such interference;

(iv) There must be procedural guarantees against abuse of such interference.

13. After passing of the above said judgment, the Government of India, enacted the Criminal Procedure (Identification) Act, 2022. The object and reasoning of the above said Act may be extracted herein:-

"An Act to authorise for taking measurements of convicts and other persons for the purpose of identification and investigation in criminal matters and to preserve records and for matters connected therewith and incidental thereto."



14. Now, we will straightaway go to section 5 of the Act, which would run thus:-

"5. Power of Magistrate to direct a person to give measurements.-Where the Magistrate is satisfied that, for the purpose of any investigation or proceeding under the Code of Criminal Procedure, 1973 (Act 2 of 1974) or any other law for the time being in force, it is expedient to direct any person to give measurements under this Act, the Magistrate may make an order to that effect and in that case, the person to whom the order relates shall allow the measurements to be taken in conformity with such directions."

15. The word '**measurements**' is defined in section 2(b) of the Act, which would run thus:-

"(b) "measurements" includes finger-impressions, palm-print impressions, foot-print impressions, photographs, iris and retina scan, physical, biological samples and their analysis, behavioural attributes including signatures, handwriting or



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any other examination referred to in Section 53 or Section 53-A of the Code of Criminal Procedure, 1973 (Act 2 of 1974)."

16. Rules were also framed by the Government on 19th September' 1992, called 'The Criminal Procedure (Identification) Act, 2022, as to how, the above said test must be undertaken and what will be the effect if the person ordered to undergo DNA test refuses and resists.

17. The above Act may be made applicable to the present case also. The Special Court can take pretrial process also in such matters, since there is no express or implied bar.

18. Even though, section '5' gives complete power to the Magistrate that power must be exercised in a judicial manner. There must be subjective satisfaction expressed by the Magistrate in the judicial Order. The above said subjective satisfaction of the Magistrate must also be subject to the test, that has been laid down by the Hon'ble Supreme Supreme in the famous case



K.S.Puttaswamy. All these things must be taken care by the Hon'ble Special Court.

19.Without going into the merits of the matter and other things, whether this will amount to self incrimination and the petitioner can be compelled to undergo DNA test are all the matters to be taken into account, as provided under section 5 of the Special Act at the time of hearing by the Special Court.

20.So, I am of the considered view, this matter can be disposed of by giving the following directions:-

(i)Let a fresh petition be filed by the Investigating Officer in a proper manner before the Special Court making request.

(ii)The above said petition must be processed and notice/summon must be issued to the respondents. After hearing them, the judicial order must be passed by the Special Court.



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(iii) The above said process shall be completed within a period of 15 days from the date of filing of the petition by the Investigating Officer before the Special Court. But this will not affect the DNA test, which was already undertaken and the report already received. The same procedure may also be followed by the Special Court also, if any new request comes from the Investigating Officer, in future.

21. With the above said directions, this writ petition stands **disposed of**. No costs. Consequently, connected Miscellaneous Petitions are closed.

23/06/2023

Index: Yes/No
Internet: Yes/No
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To,

- 1.The District Collector,
Office of the District Collector,
Pudukkottai District.
- 2.The Superintendent of Police,
Office of the Superintendent of Police,
Pudukkottai District.
- 3.The Deputy Superintendent of Police,
Office of the Deputy Superintendent of Police,
Crime Branch CID,
Trichy Range,
Trichy.
- 4.The Inspector of Police,
Office of the Inspector of Police,
Vellanur Police Station,
Pudukkottai District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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WP (MD) No.10747 of 2023

23.06.2023