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Crl.O.P.No.13062 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2024

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THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Crl.O.P.No.13062 of 2024

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.... Petitioner

Versus

The State Rep. by
the Inspector of Police,
All Women Police Station,
Gudiyatham, Vellore District.

.... Respondent

Prayer: The Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the entire records in respect of order passed by the Special Judge, Special Court, for Exclusive Trial of Cases under POCSO Act, Vellore, in C.M.P.No.251 of 2024 in Special S.C.No.114 of 2018 dated 05.03.2024 and set aside the same.

For Petitioner : Mr.D.Rajagopal

For Respondent : Mr.S.Udaya Kumar
Government Advocate (Crl.Side)

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ORDER

The petitioner herein has filed this Criminal Original Petition to set aside the order passed by the trial Court allowing the petition filed under Section 311 of Cr.P.C. to examine one Dr.M.Usha Rani, Junior Scientific Officer, Forensic Science Department, Chennai.

2. It is the case under POCSO Act, wherein DNA test has been conducted for ascertaining the parentage. A report has been sent by three Officers of the Forensic Science Department, one by Dr.Vimali Thiagarajan, Deputy Director shown as Listed Witness 18 and Tmt.Usha Rani, Junior Scientific Officer and Mrs.Thilaga, Assistant Director. The prosecution is not fit to summon Tmt.Usha Rani, whose name is not included in the list of witnesses due to inadvertence.



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3. The trial Court, after considering the provisions of law, had allowed the petition despite objection raised by the accused citing Section 293(2) Cr.P.C. The said order is under challenge before this Court.

4. The learned counsel appearing for the petitioner submitted that when L.W.18 - Dr.Vimala Thiyagarajn, who has given the forensic report, is very much available, without assigning any proper reason, the prosecution filed a petition to examine Dr.Usha Rani, which is contrary to Section 293(3) of the Code. Only when the Expert, who had issued the opinion is not available or unable to attend personally, the Deputy Officer or any responsible Officer can be deputed in this case in exercise of power under Section 293(3) of the Code. Whereas, in this case, Dr.Vimala Thiyagarajn, signatory of the certificate, is very much available, the prosecution cannot resort to Section 293 (3) of the Code.



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DR. G. JAYACHANDRAN, J.

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5. This Court, on perusing the impugned order and the provisions of Code, finds that the DNA report has not only signed by Dr.Vimala Thiyagarajn, who cited as witness, it contains the signature of Tmt.Usha Rani, who had also conducted the test as Junior Scientific Officer. Therefore, the prosecution summoning her to speak about the DNA report is well within the law and therefore, the Criminal Original Petition deserves to be dismissed and accordingly, the same is dismissed.

07.06.2024

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To

1. The Inspector of P olice,
All Women Police Station,
Gudiyatham, Vellore District.
2. The Public Prosecutor,
High Court of Madras.

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