



CrI.O.P.No.14027 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.O.P.No.14027 of 2024

and

CrI.M.P.No.8537 of 2024

Rajkumar

... Petitioner

Vs.

1.The State Rep by
The Inspector of Police,
Oomangalam Police Station,
Crime No.39 of 2016.

2.Jayanthi

... Respondents

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, pleaded to set aside the docket order dated 20.05.2024 passed by the learned District Munsif cum Judicial Magistrate, Neyveli in CrI.M.P.No.1124 of 2024 in Crime No.39 of 2019.

For Petitioner : Mr.K.Balakrishnan

For R1 : Mr.S.Udayakumar
Government Advocate (CrI.Side)

ORDER

On a complaint for offence under Sections 294(b), 323, 324, 341,
498(A), 406, 417 of IPC r/w Section 4 of TNPWH Act



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2. The Investigating Officer has thought fit to subject the accused for potency test. Hence made an application to the Judicial Magistrate to pass necessary orders. After considering the nature of the offence, the request made by the Investigating Officer was allowed by the Judicial Magistrate vide order dated 20.05.2024. The petitioner has taken out an application to stay the said order on the ground that before passing the order for potency test, the petitioner was not heard. Therefore, the order has to be stayed till the petitioner exercises his right of wisdom.

3. The complaint against this petitioner revolves around the matrimonial dispute. The prime allegations made by the defacto complainant/ wife of the petitioner is that, the petitioner has cheated her by suppressing his impotency and got married. Therefore, Sections 406 & 417 IPC has roped against him apart from other Sections of IPC.

4. In the said context, the Investigating Officer has thought fit that the petitioner must be subjected to medical examination. Whereas, the petitioner contents that medical examination of a person is warranted only if the accused has involved in a rape or sexual offences. Therefore, the order of the Judicial Magistrate is contrary to Section 53-A of Cr.P.C.



“Section 53-A of Cr.P.C., which reads as below:-

(1). When a person is arrested on a charge of committing an offence of rape or an attempt to commit rape and there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of such offence, it shall be lawful for a registered medical practitioner employed in a hospital run by the Government or by a local authority and in the absence of such a practitioner within the radius of sixteen kilometers from the place where the offence has been committed by any other registered medical practitioner, acting at the request of a police officer not below the rank of a sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the arrested person and to use such force as is reasonably necessary for that purpose.

(2). The registered medical practitioner conducting such examination shall, without delay, examine such person and prepare a report of his examination giving the following particulars, namely;

(i). the name and address of the accused and of the person by whom he was brought,

(ii). the age of the accused,

(iii). marks of injury, if any, on the person of the accused,

(iv). the description of material taken from the person of the accused for DNA profiling, and”.



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(v). *other material particulars in reasonable detail.*

(3) *The report shall state precisely the reasons for each conclusion arrived at.*

(4) *The exact time of commencement and completion of the examination shall also be noted in the report.*

(5) *The registered medical practitioner shall, without delay, forward the report of the investigating officer, who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of Sub-Section (5) of that section.*

5. In this context, it is also necessary to refer Section 53 of the Code which is relevant to the facts of this case.

Section 53:- Examination of accused by medical practitioner at the request of police.

(1) *When a person is arrested on a charge of committing an offence of such a nature and alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence, it shall be lawful for a registered medical practitioner, acting at the request of a police officer not below the rank of sub-inspector, and for any person acting*



in good faith in his aid and under his direction, to make such an examination of the person arrested as is reasonable necessary in order to ascertain the facts which may afford such evidence, and to use such force as is reasonably necessary for that purpose.

(2) Whenever the person of a female is to be examined under this section, the examination shall be made only by, or under the supervision of, a female registered medical practitioner.

Explanation: *In this section and in Sections 53A and 54:-*

(a) “examination” shall include the examination of blood, blood stains, semen, swabs in case of sexual offences, sputum and sweat, hair samples and finger nail clippings by the use of modern and scientific techniques including DNA profiling and such other tests which the registered medical practitioner thinks necessary in a particular case;

(b) “registered medical practitioner” means a medical practitioner who possesses any medical qualification as defined in clause (h) of Section 2 of the Indian Medical Council Act, 1956 (102 of 1956) and whose name has been entered in a State Medical Register.



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6. Section 53 of Cr.P.C., clearly indicates that the Court can order

medical examination of an accused at the request of the police officer who is investigating the case, if he make out the case that the medical examination is necessary for the facts and circumstances and it will afford evidence to the commission of offence. As far as the accusation of rape, the Code mandates that the accused must be subjected to medical examination

7. Thus, reading of Sections 53 and 53-A Cr.P.C., makes it clear that the investigation in relation to rape in connection with offence of rape, then medical examination of the accused person is mandatory. Whereas, in other offences if the Investigating Officer reasonably believes that examination of person will afford evidence to the commission of offence and such test is necessary, he has to seek leave of the Court to subject the accused for medical examination. In this case, since the allegation of cheating by suppressing his potency is under investigation, the Investigating Officer has thought fit that the accused has to be subjected to medical examination.

8. If the accused is not inclined to subject himself for medical examination, he can refuse to participate in the medical examination, at the risk of adverse inference to be drawn by the Court. The petitioner has to opt either



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of the two course. He should subject himself for potency test and co-operate with the enquiry or refuse for the test and invite adverse inference. He cannot challenge the order of the Judicial Magistrate, who after considering the application of the Investigating Officer has thought fit that medical examination of the accused person will provide information in connection with the offence investigated.

9. Hence this Criminal Original Petition is dismissed as devoid of merit. Consequently, the connected Criminal Miscellaneous Petition is also dismissed.

18.06.2024

Index : Yes/No

Neutral Citation : Yes/No

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To

- 1.The District Munsif cum Judicial Magistrate, Neyveli.
- 2.The Inspector of Police, Oomangalam Police Station, Cuddalore District.
- 3.The Public Prosecutor, High Court of Madras, Chennai.



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Dr.G.JAYACHANDRAN,J.

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