



WEB COPY



Crl.R.C.No.1578 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2024

CORAM

THE HON'BLE Mr.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1578 of 2024

and

Crl.M.P.Nos.13133 and 13134 of 2024

Selvarasu

...Petitioner

Versus

State by

The Deputy Superintendent of Police,

All Women Police Station,

Jeyakondam,

Ariyalur District

(Crime No.15 of 2019)

...Respondent

Prayer: This Criminal Revision Case is filed under Sections 338 and 442 of BNSS praying to set aside the order passed by the Sessions Judge(FAC), Fast Track Mahila Court, Ariyalur in Crl.M.P.No.3180 of 2024 in S.C.No.70 of 2020 dated 27.08.2024 by allowing the present criminal revision petition.



Crl.R.C.No.1578 of 2024

For Petitioner: Mr.B.Kumarasamy

For Respondent: Mr.A.Damodaran,
Additional Public Prosecutor

ORDER

The Criminal Revision Case has been filed to set aside the order passed by the Sessions Judge (FAC), Fast Track Mahila Court, Ariyalur in Crl.M.P.No.3180 of 2024 in S.C.No.70 of 2020 dated 27.08.2024.

2. The petitioner/accused in S.C.No.70 of 2020 filed a discharge petition in Crl.M.P.No.3180 of 2024 in S.C.No.70 of 2020. The trial Court, by order dated 27.08.2024, dismissed the petition.

3. The case of the prosecution is that the de-facto complainant/the mother of the victim had lodged a compliant against



the petitioner, who is the cousin of Paramanandham, the husband of the de-facto complainant on 13.09.2019. The victim is slightly affected with mental disorder and she has been separated from her husband and living separately. She has got a baby boy. During the year 2019, when the victim went for collecting the seeds from the cashew grove at Thirukonam, the petitioner had indulged in physical relationship forcibly with the victim, taking advantage of her mental incapability. On 26.02.2020, the victim gave birth to second male child. Hence, the de-facto complainant, the mother of the victim, lodged a complaint against the petitioner. The respondent-Police conducted an investigation listing witnesses L.W.1 to L.W.36 and majority of the witnesses are hear-say in nature. The statement of the Doctors who examined the petitioner and the victim were recorded. He further submitted that, totally 4 persons have been suspected as father of the baby and the DNA test conducted on them, namely, the petitioner/ Selvaraj, Nagarajan Velayudham, Rajadurai Adhimoolam and Sankari/Victim and their DNA analysis had not matched with the



Crl.R.C.No.1578 of 2024

baby, Prabhakaran.

WEB COPY

4. Before the lower court, the respondent relied upon a judgment of the Hon'ble Supreme Court reported in **(2019) SCC 368 (Sajjan Kumar Vs CBI)**, wherein it has been held that at the time of framing of charge, the Court has to look into the materials placed before it and determine whether a *prima-facie* case is made out or not. In the matter of sexual offences, the DNA report and expert opinion decide the case, as per the decision in the case of **Rabi Das @ Rabindra Nath Das Vs.State of West Bengal**.

5. The trial Court, relying upon the decision of the Judgment of the Supreme Court reported in **(2014) 11 SCC 709 (State of Tamil Nadu Vs. N.Suresh Rajan and Others)** where the purpose and purport of the discharge petition and its limitation, had been decided



Crl.R.C.No.1578 of 2024

and also relying upon the decision of the Hon'ble Supreme Court reported in **(2019) 4 SCC 771 (Pattu Rajan Vs. The State of Tamil Nadu)**, dismissed the petition.

6. The contention of the petitioner is that parameters laid down in the cases of **Sajan Kumar and Suresh Rajan** are different. Insofar as Pattu Rajan's case is concerned, the facts and circumstances are totally contrary to the facts of the present case. The learned counsel for the petitioner further relied upon a judgment of the Madurai Bench of this Court in **Crl.A.(MD) No.78 of 2023 (Mariappan Vs The Inspector of Police)**, dated 08.09.2023, wherein, the learned Judges observed that the Lower Court has not considered the discharge petition filed by the petitioner therein in proper perspective. Further, it was observed that the respondent-Police cannot stop the investigation with the arrayed accused alone, when the DNA test is



Crl.R.C.No.1578 of 2024

inconclusive and it is for the respondent-Police to find out the real culprit who made the victim girl pregnant. In this case, as on date, the medical evidence clearly confirms that the petitioner is not the culprit. Hence, the petitioner has to be discharged from the above case.

7. The learned Additional Public Prosecutor appearing for the respondent, on instructions, submitted that the respondent-Police had already taken the case for further investigation and they will file appropriate petition before the trial Court informing about further investigation. The victim and the other witnesses have categorically stated that the victim was taken to collect the cashew in the grove, where the petitioner had committed rape on the victim girl. He further submitted that it is not necessary that in all rape cases, the child birth takes place, and DNA test is required to confirm the criminality of the accused. In this case, the victim girl is mentally unsound. Taking advantage of her mental incapability, the victim girl



was raped, not only by the petitioner, but by others also. Now, the endeavour is only to find out the paternity of the baby. The petitioner's act of committing forcible rape, clearly spoken to by the victim in her further statement. L.W23 - Doctor certified that though the victim is aged 34 years, her mental IQ is only 45% and she has mild mental retardation. She is capable of clearly narrating the facts and as to what happened to her. L.W.24 is the Doctor, who examined the petitioner, had confirmed that the petitioner has potency. Now, further investigation is only with regard to the confirmation of the paternity of the child and the petitioner can continue to be prosecuted, in view of the evidence of the victim and the Doctor's evidence. In any event, the trial can be kept pending and further investigation would be carried out to find out the paternity of the child. In any event, the petitioner's act of committing rape is clearly spoken to by the victim and other evidence also points towards the petitioner.

8. Considering the facts and circumstances of this case, the trial



Crl.R.C.No.1578 of 2024

Court is directed to entertain the further investigation petition filed by the respondent-Police. It is to be seen that, earlier, the petitioner had filed a quash-petition before this Court in Crl.O.P.No.940 of 2023 on similar ground that DNA test has not confirmed the paternity of the petitioner. This Court, by order dated 14.08.2023, transferred the investigation of the case in Crime No.15 of 2019 to the file of the Deputy Superintendent of Police, Jayankondam. After further investigation, statements were recorded and the final report had also been filed. However, the DNA report did not match with any of the suspects including the petitioner. Now a petition being filed by the respondent for further investigation to identify the culprit, who made the victim pregnant, hence the trial Court is directed to keep the proceedings in S.C.No.70 of 2020 in abeyance till completion of the further investigation. The respondent-Police is directed to complete the investigation and file a further report. The said exercise shall be completed within a period of four months from the date of receipt of a copy of this order. This four months' time is only an outer limit. The



Crl.R.C.No.1578 of 2024

petitioner is directed to appear before the trial Court on the first working day of every English calendar month, till the report is filed by the respondent, and on the hearing dates in S.C.No.70 of 2020.

8. Accordingly, the Civil Revision Case is disposed of. Consequently, connected miscellaneous petitions are closed.

03.10.2024

Index : Yes/No
Internet : Yes /No
srn

To

The Fast Track Court No.III,

9/11



Crl.R.C.No.1578 of 2024

Metropolitan Magistrate,
Saidapet,
Chennai 15.



WEB COPY



Crl.R.C.No.1578 of 2024

M.NIRMAL KUMAR.J

srn

Crl.R.C.No.1578 of 2024

03.10.2024