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CrI.O.P.No.29868 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2024

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THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CrI.O.P.No.29868 of 2024

and

CrI.M.P.No.16807 of 2024

K.Deborah Jasper Sweety

... Petitioner

Vs.

1.State Rep.by

The Inspector of Police,
All Women Police Station,
Vellore, Vellore – 632 001.

2.Nivin Samuel Bedford

... Respondents

Prayer: Criminal Original Petition is filed under Section 528 BNSS, 2023, to call for the records and set aside the charge-sheet in S.C.No.141 of 2024 pending on the file of the Sessions Judge, Magalir Neethimandram, Fast Track Mahila Court, Vellore and direct re-investigation or de-novo investigation of the F.I.R in Crime No.4 of 2023 on the file of the 1st respondent, which has culminated in the present sessions case by a competent officer and file a fresh charge-sheet.



Crl.O.P.No.29868 of 2024

WEB COPY

For Petitioner : Mr.Sanjesh Mahalingam

For Respondents : Mr.S.Sugendran

Additional Public Prosecutor for R1

ORDER

This Criminal Original Petition is filed to set aside the charge-sheet in S.C.No.141 of 2024 pending on the file of the Sessions Judge, Magalir Neethimandram, Fast Track Mahila Court, Vellore and to direct re-investigation or de-novo investigation of the F.I.R in Crime No.4 of 2023 on the file of the 1st respondent and to file fresh charge-sheet.

2. On basis of the complaint given by the petitioner herein/*de-facto* complainant, the first respondent/Police registered a case in Crime No.4 of 2023 against the second respondent/accused for the offence under Sections 376(1) and 417 IPC. On completion of investigation, the first respondent/Police filed a charge-sheet against the second respondent for the offences under Sections 376(1), 417, 366 and 342 IPC before the learned Additional Mahila Court, Vellore. Subsequently, the same was taken on file in S.C.No.141 of 2024 by the learned Sessions Judge, Fast



CrI.O.P.No.29868 of 2024

Track Mahila Court, Vellore. Pending trial, the petitioner/*de-facto* complainant has filed the present petition for re-investigation of the case.

3. The main contention of the petitioner is that from the very initial stage of the investigation itself, there were laches and that has caused serious damage in the case of the petitioner. After registration of the case in Crime No.4 of 2023, the petitioner/*de-facto* complainant was sent for medical examination. In the Accident Register, the Doctor, who examined the petitioner has given an opinion that the petitioner was subjected to sexual intercourse and for a specific question i.e., "பாதிக்கப்பட்ட பெண் உடலுறவுக்கு உட்படுத்தப்பட்டுள்ளாரா?" and the answer was handwritten as "ஆம்". However, when the statement of the very same Doctor, was reduced in writing by the Investigating Officer as per Section 161(3) Cr.P.C., wherein the answer to the said question is written as "இல்லை", and hence there is a contradiction between the medical report handwritten by the Doctor in the Accident Register and the statement of the Doctor which was reduced into writing by the Investigating Officer. It is further stated that the first respondent/Police has colluded with the second respondent/accused and has purposefully sabotaged the



CrI.O.P.No.29868 of 2024

investigation only in order to enable to the second respondent to escape from the alleged offences.

4. On a perusal of the records, it is seen that after registration of the F.I.R., the petitioner/*de-facto* complainant was examined by the prosecution under Section 161(3) Cr.P.C., and also she was produced before the learned Judicial Magistrate-IV and her statement was recorded under Section 164(5) Cr.P.C. Since the Doctor, who examined the *de-facto* complainant has given medical certificate, wherein the Doctor has given her opinion that the *de-facto* complainant was subjected to sexual intercourse and when the Investigating Officer raised a question i.e., "பாதிக்கப்பட்ட பெண் உடலுறவுக்கு உட்படுத்தப்பட்டுள்ளாரா?" and the answer was handwritten as "ஆம்", but, however, when the statement of the Doctor, who performed medical examination of the petitioner, was reduced in writing by the first respondent/Police as per Section 161(3) Cr.P.C., wherein the answer to the said question is written as "இல்லை". In view of the contradiction in the final report filed by the Investigating Officer, the petitioner has filed the present petition for re-investigation of the case by some other agency.



CrI.O.P.No.29868 of 2024

WEB CC

5. Originally F.I.R. was registered for the offences under Sections 376(1) and 417 IPC and after investigation, the charge sheet was laid for the offences under Sections 376(1), 417, 366 and 342 IPC. In the Accident Register, the Investigating Officer has posed the questions before the Doctor i.e., (i) as to whether hymen of the *de-facto* complainant was intact or not, for which, the Doctor has answered that it cannot be stated assertively, (ii) as to whether the victim was subjected to sexual intercourse and the Doctor has answered that 'Yes' and (iii) as to whether the victim was pregnant and the answer was 'No'. Thereafter, the evidence of the victim and other witnesses have been recorded and the *de-facto* complainant's statement was recored by the learned Judicial Magistrate-IV under Section 164(5) Cr.P.C. and thereafter, the prosecution filed the charge-sheet before the Magistrate concerned for the offences under Sections 376(1), 417, 366 and 342 IPC.

6. Admittedly, the statement of the victim was recorded under Section 164(5) Cr.P.C by the learned Judicial Magistrate-IV, Vellore and hence, there is no need to re-investigate the matter. However, if the petitioner has got any doubt about the present Investigating



Crl.O.P.No.29868 of 2024

Officer/prosecution, she can engage a counsel of her own choice for assisting the prosecution.

7. With the above observations, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

28.11.2024

Index : Yes/No
Neutral Citation Case : Yes/No
Speaking Order : Yes/No
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To

1. The Sessions Judge, Magalir Neethimandram,
Fast Track Mahila Court, Vellore.
2. The Inspector of Police,
All Women Police Station,
Vellore, Vellore – 632 001.
3. The Public Prosecutor,
High Court, Madras.



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CrI.O.P.No.29868 of 2024

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