



Crl.O.P.(MD) No.2203 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.02.2024

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P (MD) No.2203 of 2024

and

Crl.M.P.(MD)No.1691 of 2024

S.Vignesh

...Petitioner

VS

**State represented by
The Inspector of Police,
All women Police Station,
Palani, Dindigul District.**

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying, to set aside the order, dated 05.12.2023 made in Crl.M.P.No.1025 of 2023 in Spl.S.C.No.256 of 2023 on the file of the Special Court for POCSO Act Cases, Dindigul.

**For Petitioner : Mr.C.Mayilvahana Rajendran
For Respondent : Mr.B.Thanga Aravindh
Government Advocate (crl.side)**



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ORDER

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The Criminal Original Petition had been filed to set aside the order made in Crl.M.P.No.1025 of 2023 in Spl.S.C.No.256 of 2023 on the file of the Special Court for POCSO Act Cases, Dindigul.

2.The learned Counsel for the Petitioner submitted that the Petitioner is arrayed as A1 in a case under POCSO Act and the trial is in part heard stage. In the cross examination of Forensic Expert as PW-14, he had conceded that samples were taken on 13.01.2023 in the FTA card maintained by the Forensic Department to collect sample blood for DNA test from the victim of sexual offence and the accused to determine the parentage of the child born to the victim of sexual assault. In the cross examination of PW-14, DNA Expert had conceded that the sample was taken on 13.01.2023 and the DNA test was conducted only on 22.02.2023. There were 40 days intervening time from the date of collecting samples and from the date, DNA test was conducted and in the meanwhile, whether it was preserved properly. The DNA Expert was unable to answer. Therefore, it is his contention that the report of the DNA test cannot be



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relied on by the Court.

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3.It is his further contention that on the date of alleged occurrence, the victim was aged 17 and the accused was aged 19 years. He cannot be the biological father at that stage. He disputes the same on the ground that when the victim became pregnant, the parents of the victim came to the house of the accused and demanded the accused to marry the victim. It is his further submission that the victim had similar intercourse with several men in the locality. Therefore, he cannot be forced to marry such girl. Based on that, he had filed CrI.M.P.No.1025 of 2023 in Spl.S.C.No.256 of 2023 seeking a second DNA test. The Petition filed by the first Accused was dismissed by the learned Sessions Judge, Special Court for Exclusive Trial of POCSO Offences, Dindigul, by order, dated 05.12.2023. Therefore, he had filed this Petition seeking to set aside the order passed by the learned Sessions Judge, Special Court for Exclusive Trial of POCSO Offences, Dindigul.

4.By way of reply, the learned Government Advocate (crl.side) vehemently objected to the line of arguments of the learned Counsel for the



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Petitioner stating that the Petitioner had filed a Petition in Crl.M.P.No.1025 of 2023, stating that for further test regarding saliva, hair, nail, tooth, semen, pubic hair, vaginal swabs, skin scrapings etc., and disputing that only the blood was taken for deciding DNA. The prosecution had filed counter objecting to the Petition stating that it is only a ploy to delay the trial.

5.After due enquiry, the learned Sessions Judge, Special Court for Exclusive Trial of POCSO Offences, had rejected the contention of the Petitioner in Paragraph 9 stating that the report of the Forensic Expert/DNA expert was available, when the accused was furnished with copies of DNA test, before commencement of trial, he had opportunity to dispute the same. Only after trial, that too after the examination of the Forensic Expert as PW-14, this Petition had been filed. It is nothing but a ploy adopted by the accused to delay the trial. Also, the learned Sessions Judge had relied on Section 35(2) of POCSO Act regarding early disposal of the cases under POCSO Act and stated that the Petitioner had sought DNA test for saliva, hair, pubic hair, nail, semen, etc., and disputed the DNA based on blood samples collected by the Investigation Officer through the Government Doctors, whereas, in this Petition, he seeks a second report that the blood



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collected had been damaged during the period of pendency of DNA test between 13.01.2023 and 22.02.2023. The said submission of the learned Counsel for the Petitioner cannot at all be considered or accepted as reasonable considering the fact that the Lawyers or Judges are not experts in this field. As Forensic Experts, they are aware of collecting body fluids from the human being and they are expert in their field to preserve the sample till they conduct the test based on priority wise. Therefore, the submission that for 40 days period in the Forensic Lab, it gets polluted or damaged. Therefore, the test conducted by the Forensic Expert cannot be relied by the Court of law is found contrary to the provisions of the Indian Evidence Act, regarding Expert opinion. “The Expert opinion is just an opinion and it is not an evidence”. The evidence that is collected before the Court is only considered for deciding cases. In this case, the learned Government Advocate (Crl.side) had relied on the DNA test report, wherein, it is stated as follows:

“Item 1: A white pouch enclosing a blood card with blood stains and marked, “VIGNESH..18 years... 11.01.2023”

Item 2 : A white pouch enclosing a blood card with blood stains and marked “Baby of Mohanapriya ..1 month old.. 11.01.2023”

Item 3: A white pouch enclosing a blood card with blood stains and marked “MOAHANA PRIYA 17 years/Female .. 11.01.2023”



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Report:

DNA was extracted from each of the above blood samples and typed using PCR amplified STR technique for 15 STC loci after taking due care for the integrity of each sample. The blood samples were analysed from 22.02.2023 to 23.02.2023 and labelled as (i)Alleged Father – MDU_DNA_PAT_05_2023_AF_V (ii) Male child – MDU_DNA_PAT_05_2023_C_BOY (iii)Biological Mother – MDU_DNA_PAT_05_B_M.

A comprehensive analysis of the test results and the interpretations thereof are given in the enclosed Annexure. From the comprehensive analysis of the test results as shown in the Annexure, the Alleged Father, Vignesh is not found excluded from the paternity of the Male Child under any of the 15 STC loci tested. Hence, the cumulative probability of paternity of Vignesh for being the father of the Male Child and the cumulative chances of exclusion of any random man from the paternity of the Male Child were computed.

(i)The cumulative probability of the paternity of Vignesh for being the father of the Male Child is found to be 99.999999%.

(ii) The cumulative chance of exclusion of any random man from the paternity of the Male Child is 99.999999%.

Conclusion: From the DNA typing results of the above blood samples, it is found that in the absence of identical twins, Vignesh is the Biological Father of the Male Child.

Note:

1.The report may be used as evidence in any inquiry, trial or other proceedings as per Section 293 Cr.P.C., If the evidence of the scientist is absolutely required as to the subject-matter of this report, summons may kindly be issued.”

6.As per the reported ruling of the Hon'ble Supreme Court in AIR 1973 SC 2200 (Ram Narain vs State of Uttar Pradesh), it had been held that Forensic Expert's opinion is just an opinion and not an evidence. Here, in this case, the attempt of the Petitioner is found nothing but contrary to the



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reported Ruling insisting for a second DNA test by taking saliva, hair, nail, tooth, semen, pubic hair, vaginal swab, etc., is found unwanted and unwarranted, as rightly pointed by the learned Government Advocate (Crl.side) and hence, the order of the learned Sessions Judge is well reasoned order and it does not warrant any interference by this Court under Section 482 of Cr.P.C.,

In the result, this ***Criminal Original Petition*** is dismissed. The learned Sessions Judge, Special Court for Exclusive Trial of POCSO Offences, Dindigul, is directed to proceed further and dispose of the case within a reasonable time period of one month from the date of receipt of a copy of this order or from the date of uploading this order.

Internet :Yes/No
Index :Yes/No
NCC :Yes/No

13.02.2024

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To

1.The Special Court for POCSO Act Cases, Dindigul.

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2.The Inspector of Police,
All women Police Station,
Palani, Dindigul District.

SATHI KUMAR SUKUMARA KURUP, J.

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