

Abdul Rahuman Vs. 1.State Represented By

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Court : Chennai

Decided On : Mar-31-2015

Judge : M.Sathyanarayanan

Appellant : Abdul Rahuman

Respondent : 1.State Represented By

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED :

31. 03.2015 CORAM THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN Criminal Revision Case (MD)No.393 of 2014 and M.P(MD)Nos.1 of 2014 and 1 of 2015 Abdul Rahuman ... Petitioner/ Accused/ Accused Vs. 1.State represented by The Inspector of Police, All Women Police Station, Valliyur, Thoothukudi District. ... 1st Respondent/ ` Complainant/ Complainant 2.Syed Ali Fathima ... 2nd Respondent/ Petitioner/ Defacto Complainant Prayer : Revision filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to call for the records in Cr.M.P.No.3169 of 2014 in C.C.No.692 of 2013 on the file of the Court of Judicial Magistrate, Valliyur and set aside the order dated 03.09.2014. !For Petitioner : Mr.R.Anand ^For Respondents : Mr.C.Ramesh, Additional Public Prosecutor for R.1 Mr.S.Lingarasu for R.2 :

ORDER

The revision petitioner is the sole accused in C.C.No.692 of 2013 on the file of the Court of Judicial Magistrate, Valliyur and he is being prosecuted for the offences under Section 417 I.P.C and Section 4 of the Tamil Nadu Prohibition of Women Harassment Act.

2. According to the second respondent/defacto complainant, she has studied upto 10th Standard and through her friend, she developed intimacy with her brother - the revision petitioner herein/accused and on 19.01.2009, he enticed her by stating that he will marry her and had a forceful physical relationship. Subsequently, the second respondent/victim became pregnant and delivered a male child on 07.10.2009 and when she insisted the revision petitioner/accused to marry her, he has refused to do so and therefore, she lodged a complaint on 27.09.2010, based on which, the first respondent has registered a case in Cr.No.5 of 2010 for the commission of the offences under Sections 417 and 376 I.P.C and after investigation, has laid the charge sheet, charging the revision petitioner/accused for the commission of the offences under Section 417 I.P.C and Section 4 of the Tamil Nadu Prohibition of Women Harassment Act. Pendency of the investigation, the first respondent has also subjected the revision petitioner/accused, the second respondent/defacto complainant and the child born to them, to DNA Test and vide report dated 28.06.2013, the Forensic Sciences Department, Government of Tamil Nadu, Chennai - 600 004, has given an opinion that the revision petitioner/accused is excluded from the father of the male child.

3. It seems that the second respondent/defacto complainant has given a petition to the District Legal Aid Committee for conducting the DNA Test once again and it was forwarded to the Court of Judicial Magistrate, Valliyur, who took it on file and once again ordered for the DNA Test, vide impugned order dated 03.09.2014 and challenging the legality of the same, the present revision is filed.

4. The learned Counsel for the revision petitioner/accused would submit that admittedly, the DNA Test was conducted during the investigation and as per the opinion of the above said Lab, the revision petitioner is excluded from the father of the male child born to the second respondent/defacto complainant and without disclosing the said fact, the second respondent/defacto complainant has once

again filed a petition before the District Legal Aid Committee, who merely forwarded the same to the said Court and the said Court without taking note of the objections raised by the revision petitioner/accused, ordered for conducting second DNA Test and prays for interference.

5. The learned Counsel for the revision petitioner/accused, in support of his submissions, has placed reliance upon the order of this Court in *S.Veeralakshmi v. The Superintendent of Police, Madurai District, Madurai and others* [Crl.O.P.(MD)No.19734 of 2014, decided on 03.02.2015]., wherein the Single Bench of this Court, after taking note of the decision of this Court in *Sakhivel v. Karpagam* reported in (2005) 3 MLJ483 has held that it is not proper to order for second DNA Test and in the absence of any reasonable defect in the earlier report, the second DNA Test cannot be ordered.

6. Per contra, the learned Counsel for the second respondent/defacto complainant would contend that the revision petitioner/accused has practised deception by his inception and had a physical relationship under the pretext of marrying her and she became pregnant and delivered a male child and since the first DNA Test was not done in a scientific manner, she was forced to submit a petition to the District Legal Aid Committee to conduct the DNA Test once again and taking into consideration all the relevant aspects, the trial Court has rightly ordered the petition and prays for the dismissal of this petition.

7. Heard the submissions of Mr.C.Ramesh, learned Additional Public Prosecutor for the first respondent also.

8. It is an undisputed fact that pendency of the investigation, a DNA Test was ordered and as per the opinion of the Forensic Sciences Department, Government of Tamil Nadu, Chennai - 600 004, the revision petitioner/accused is excluded from the parentage of the child born to the second respondent/defacto complainant and she, aggrieved by the same, has filed a petition before the District Legal Aid Committee to conduct the DNA Test, which, in turn, forwarded the same to the trial Court.

9. It is not made clear that at the time of application made to the District Legal Aid Committee, the fact of conducting the earlier DNA Test was brought to their notice or not, but the fact remains that it came to be numbered as Cr.M.P.No.3169 of 2014 and in the counter, the revision petitioner, who was arrayed as the first respondent, has specifically pointed out about the conducting of earlier DNA Test and the result also. In spite of it, the trial Court has once again ordered for the DNA Test.

10. As rightly observed by the learned Judge in the above cited judgment in S.Veeralakshmi v. The Superintendent of Police, Madurai District, Madurai and others [CrI.O.P.(MD)No.19734 of 2014, decided on 03.02.2015]., the earlier DNA Test report is available on file and it has not been eshewed also and in the absence of any infirmity in the said DNA Test, the impugned order for second DNA Test, on the face of it, is unsustainable. Of course, the testimony of the expert who has conducted the DNA Test, will also be under scrutiny to arrive a fair decision.

11. In the considered opinion of this Court, the reasons assigned by the trial Court for ordering the second DNA Test are untenable and hence, the impugned order warrants interference.

12. In the result, this Criminal Revision Case is allowed and the impugned order dated 03.09.2014, passed in Cr.M.P.No.3169 of 2014 in C.C.No.692 of 2013, by the learned Judicial Magistrate, Valliyur, is set aside. Since the Calendar Case is of the year 2013, the trial Court is directed to afford utmost priority for expeditious completion of the trial and to pronounce the verdict. Consequently, the connected Miscellaneous Petitions are closed. Index :No 31.03.2015 Internet :Yes rsb To 1.The Inspector of Police, All Women Police Station, Valliyur, Thoothukudi District. 2.The Court of Judicial Magistrate, Valliyur. 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai. M.SATHYANARAYANAN,J.

rsb Criminal Revision Case (MD)No.393 of 2014 and M.P(MD)Nos.1 of 2014 and 1 of 2015 31.03.2015