

Crl.R.C.(MD).No.1195 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.04.2025

PRONOUNCED ON : 20.06.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.1195 of 2022

and

Crl.M.P.(MD)No.14962 of 2022

~~Kyapax~~

... Petitioner/Sole Accused

Vs.

The Inspector of Police,
Pudukkottai All Women Police Station,
Pudukkottai District.
(Cr.No.14 of 2020)

: Respondent/Respondent

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for records and set aside the order passed by the Sessions Judge, Mahila Court, Pudukkottai in Cr.M.P.No.480 of 2022, dated 11.11.2022 in Spl.S.C.No.40 of 2020.



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For Petitioner : Mr.G.Karuppasamy Pandian
for Mr.A.Purantharadhas

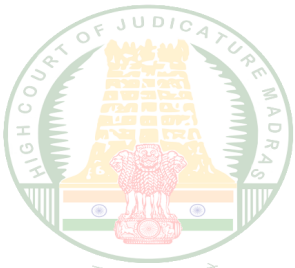
For Respondent : Mrs.M.Aasha
Government Advocate (Crl.Side)

ORDER

This Criminal Revision is directed against the order passed in Cr.M.P.No. 480 of 2022, in Spl.S.C.No.40 of 2020, dated 11.11.2022, on the file of the Mahila Court, Pudukkottai, in dismissing the petition for discharge filed under Section 227 Cr.P.C.

2. The petitioner is the sole accused in Spl.S.C.No.40 of 2020 and is facing the case for the offences under Sections 5(l), 5(j)(ii), 5(n) r/w 6 of POCSO Act and under Section 506(i)I.P.C.

3. The defacto complainant lodged a complaint on 26.09.2020 before the respondent police stating that her daughter aged about 13 years was studying 10th standard in Adhanakottai Government School, that since her daughter was complaining of stomach ache for a period of one week prior to 22.09.2020, she

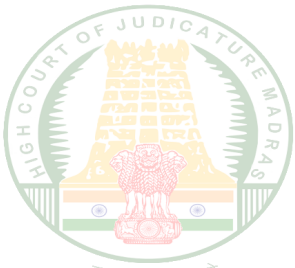


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had taken her daughter to the Government Hospital and on check up, they informed that the complainant's daughter was 6 months pregnant, that on enquiry, the victim girl informed her parents that the defacto complainant's brother's son – ~~Xyapax~~ (accused herein), who was working as a Master in ~~Akanga Vika~~ Hotel, who had come back to village, by giving sweet coated words that he would marry her, had taken to a house under construction situated three houses away from the complainant's house and had sexual intercourse with her thrice and as a result of which, the victim girl has become pregnant. On the basis of the complaint lodged by the victim's mother, F.I.R., came to be registered in Cr.No.14 of 2020 for the offences under Sections 506(i) I.P.C., 5(l), 5(j)(ii) r/w 6 of POCSO Act and the petitioner/accused came to be arrested and remanded to judicial custody on 26.09.2020 and subsequently he was released on bail by the learned Sessions Judge, Mahila Court, Pudukkottai vide order dated 21.12.2020.

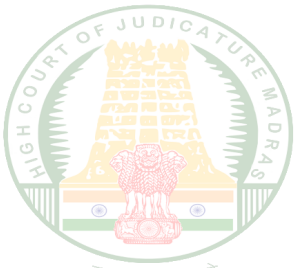
4. The respondent police, after completing the investigation, has laid the final report against the petitioner/accused for the alleged offences under Sections 5(l), 5(j)(ii), 5(n) and 6 of POCSO Act 2012 and under Section 506(i) I.P.C., and the case was taken on file in Spl.S.C.NO.40 of 2020 on 02.03.2021 and the same



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is pending on the file of the Mahila Court, Pudukkottai. The learned Sessions Judge, after complying with the necessary formalities has framed charges against the petitioner/accused for the offences under Sections 5(l), 5(j)(ii), 5(n) and 6 of POCSO Act 2012 and under Section 506(i) I.P.C., and that since the petitioner/accused denied the charges and pleaded not guilty, ordered for trial. When the sessions case was pending for examination of prosecution side witnesses, the petitioner filed a petition invoking Section 482 Cr.P.C., in Crl.O.P. (MD)No.10031 of 2021 seeking a direction to the respondent police to take necessary steps to conduct DNA test to the petitioner and to file a report before the trial Court and a learned Judge of this Court, vide order dated 27.07.2021, directed the petitioner to file an appropriate application before the trial Court and on filing of such application, the Special Court was directed to consider the said petition on merits and dispose of the same in accordance with law within 15 days thereafter.

5. In pursuance of the directions of this Court, the petitioner moved an application before the trial Court and the trial Court ordered for DNA test. After taking DNA test, the Forensic Sciences Department, Chennai sent a report dated 28.02.2022 giving their opinion that the petitioner – ~~Kyappa~~ is excluded from



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being the father of the male child born to the victim girl. Since the DNA test was in favour of the petitioner/accused, he moved an application seeking discharge under Section 227 Cr.P.C.,

6. In the discharge petition, the petitioner has taken a stand that in view of the negative DNA report, there are no *prima facie* evidence or materials as against the petitioner, that there existed family dispute between his family and the family of her aunt/defacto complainant for nearly 15 years and they are not in talking terms with them, that the petitioner has been studying in Oxford International Institute of catering and Hotel Management at that time and he had no bad antecedent and due to the false complaint, the petitioner's study got spoiled and that since there is no *prima facie* or even suspicion of any type of offences committed by the petitioner, he is entitled to be discharged from the above case.

7. The respondent police filed a counter statement raising objections stating that the accused had been repeatedly sexually assaulting the victim girl from April 2020, that the petitioner/accused had committed penetrative sexual assault on the victim girl repeatedly as per the statements of the victim girl as we



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as her mother, that though the DNA report had been received holding that the petitioner is not a biological father of the child, that by itself is not sufficient to discharge the accused, as the other materials including the statements of the victim girl and others are available and that therefore, the petition is liable to be dismissed.

8. The learned Counsel for the petitioner would submit that the DNA technology accurately identifies the criminals as DNA profiling is now a statutory scheme under Section 53-A Cr.P.C., and such profiling is a must in case of examination of rape victim as per Section 164-A Cr.P.C., and hence, DNA report deserves to be accepted unless it is absolutely dented, that the learned trial Judge failed to consider that the DNA evidence is now a predominant forensic technique for identifying criminals, that the main case of the prosecution that the petitioner was responsible for the pregnancy of the victim girl and the consequent delivery of male child came to be disproved by the DNA report and that since the very foundation of the prosecution case is stumbled, there is absolutely no scope for proceeding further and that since there are absolutely prima facie materials or evidence against the petitioner, he is entitled to get discharge from the above case.



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9. The respondent has filed a counter affidavit to the present revision.

10. The learned Government Advocate (Crl.Side) would submit that the negative DNA report by itself is not a ground to discharge the accused, that the victim girl in her statement recorded under Section 164 Cr.P.C., before the Judicial Magistrate has implicated the petitioner as the person who had committed penetrative sexual assault thrice against her, that there are other statements of the witnesses and other materials available sufficient enough to proceed with the trial, that the Hon'ble Supreme Court in catena of decisions has held that if the testimony of the prosecutrix is found to be reliable, that by itself may be sufficient to convict the culprit and no corroboration of her evidence is necessary, that the offence discloses in the F.I.R., alone is sufficient to trigger the presumption of guilt under Section 29 of POCSO Act and once the foundation of the prosecution case is laid by leading legally admissible evidence, it becomes incumbent on the accused to establish that he has not committed the offence and that the learned Sessions Judge by rightly appreciating the materials available on record, dismissed the discharge application and therefore, there is nothing to interfere with the reasoned order passed by the trial Court.



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11. Admittedly, the petitioner is the close relative of the victim girl, as he is the defacto complainant's brother's son. It is pertinent to mention that after coming to know that the victim girl was 6 months pregnant, the complaint came to be lodged. It is also pertinent to note that the respondent police, though charged the petitioner for the serious offences under the POCSO Act, has not chosen to conduct DNA test, but filed the final report, as if the petitioner is the only culprit and is responsible for the pregnancy of the victim girl. The prosecution has not offered any reason or explanation for not conducting DNA test during the investigation and filing of the final report without DNA test.

12. No doubt, the Hon'ble Supreme Court in the case of ***Sunil Vs. State of Madhya Pradesh*** reported in ***(2017)4 SCC 393*** relied on by the learned Government Advocate (Crl.Side), that non-holding of DNA test, or failure to prove DNA test report, or DNA test result favouring the accused would not necessarily result in the failure of the prosecution case and that though a positive result of DNA test would constitute clinching evidence against the accused, if however, the result of test is in the negative ie., favouring the accused or if DNA profiling had not been done in a given case, the weight of other materials and



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evidence on record will still have to be considered. In the above decision case, the Hon'ble Supreme Court, considering the evidence available on record and in the absence of DNA report, had held that they found no reason to differ with the findings of the learned trial Judge, which came to be confirmed by the High Court insofar as the conviction of the appellant under Sections 363, 367, 376(2) (f) and 302 I.P.C.

13. The learned Counsel for the petitioner would rely on the decision of the Hon'ble Supreme Court in ***Mukesh and another Vs. State (NCT of Delhi) and others*** reported in ***(2017)6 SCC 1***, to point out the value of the DNA evidence and it is necessary to refer the following passages:

“ DNA technology accurately identifies criminals – DNA profiling is now statutory scheme, under S.53-A Cr.P.C., and such profiling is a must in case of examination of rape victims as per S.164-C Cr.P.C., - DNA report deserves to be accepted unless it is absolutely dented – If the sampling is proper and if there is no evidence of tampering of samples, DNA Test report is to be accepted.

DNA analysis is hundred percent accurate and at present a predominant forensic technique for identifying criminals (S. 53-A Cr.P.C.,) - DNA is the genetic blueprint of life – No two



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persons except identical twins have identical DNA – DNA fingerprint is identical for every part of body, whether it is blood, saliva, brain, kidney or foot or any part of body – A burning or cutting can change the mistake of a fingerprint, but DNA cannot be changed no matter whatever happens to body..

DNA technology as a part of Forensic Science and scientific discipline not only provides guidance to investigation but also supplies the Court accrued information about the tending features of identification of criminals. The recent advancement in modern biological research has regularized Forensic Science resulting in radical help in the administration of justice. In our country also like several other developed and developing countries, DNA evidence is being increasingly relied upon by courts. After the amendment in the [Criminal Procedure Code](#) by the insertion of Section 53A by Act 25 of 2005, DNA profiling has now become a part of the statutory scheme. Section 53A relates to the examination of a person accused of rape by a medical practitioner.

Similarly, under Section 164A inserted by Act 25 of 2005, for medical examination of the victim of rape, the description of material taken from the person of the woman for DNA profiling is must.

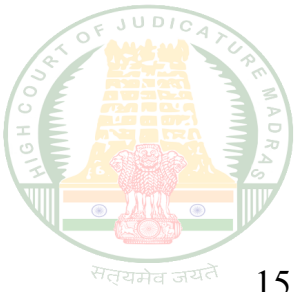


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From the aforesaid authorities, it is quite clear that DNA report deserves to be accepted unless it is absolutely dented and for non-acceptance of the same, it is to be established that there had been no quality control or quality assurance. If the sampling is proper and if there is no evidence as to tampering of samples, the DNA test report is to be accepted.”

14. A Full Bench of the Hon'ble Supreme Court has settled the legal position that DNA report deserves to be accepted unless it is absolutely dented. In the case on hand, as already pointed out, after framing of charges, at the instance of the petitioner/accused, DNA test was conducted and a report came to be filed by the Forensic Science Department concluding that the petitioner/accused is excluded from being the father of the male child born to the victim girl. It is not the case of the prosecution nor the defacto complainant that the DNA test was not conducted properly or that the DNA test report is dented. As already pointed out, it is the case of the defacto complainant and the victim girl (as per her statement under Section 164 Cr.P.C.,) and the case of the prosecution (after investigation) that the petitioner is the sole accused, who alone is responsible for the pregnancy of the victim girl and the consequent delivery of male child.



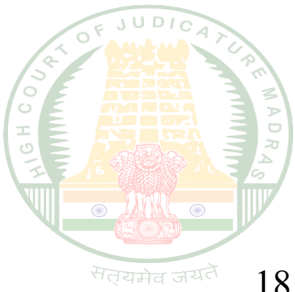
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15. The prosecution's case has two aspects: firstly, the accused allegedly committed penetrative sexual assault on the victim girl thrice, and secondly, the victim girl became pregnant through the accused. However, the DNA report contradicts the latter claim. Despite this, the prosecution may still prove the penetrative sexual assault charge. The possibility remains that another individual impregnated the victim, resulting in the birth of a male child.

16. It is shocking that despite the negative DNA report, the prosecution has not sought court permission for further investigation or pursued identifying the individual responsible for the pregnancy. Two possibilities exist: (1) Two perpetrators, with one responsible for the pregnancy, or (2) a single perpetrator responsible for both the assault and pregnancy, potentially exonerating the petitioner. Further investigation is crucial to determine the actual culprit and the petitioner's involvement, if any.

17. POCSO offences are serious in nature, attracting more severe punishments and warrant meticulous investigation to ensure justice. Unfortunately, some cases exhibit casual and mechanical investigation, disregarding consequences. It is high time for the prosecution to ensure thorough and proper investigation upholding the gravity of the cases.

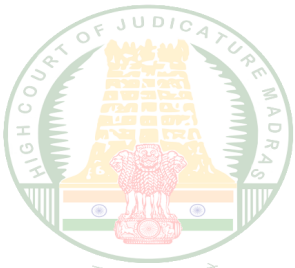


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18. In the case on hand, no doubt, the petitioner has filed the discharge petition after framing of charges. No doubt, it is settled law that no discharge petition can be entertained after framing of the charges. But here, the DNA test was conducted only at the instance of the petitioner/accused and the report came to be received after framing of the charges. Given the significant development of the DNA negative report, this Court is empowered to invoke Section 482 Cr.P.C. to ensure justice and fairness in the proceedings.

19. Considering the entire facts and circumstances, the way in which the investigation was conducted and final report came to be filed and taking note of the negative DNA report and its consequences, this Court exercises its power under Section 482 Cr.P.C., to quash the charge sheet and order re-investigation for a just outcome. Hence, the Superintendent of Police, Pudukkottai District is directed to nominate a police officer in the rank of the Deputy Superintendent of Police and the nominated Deputy Superintendent of Police is directed to re-investigate the case and file a final report within a period of three months from the date of receipt of a copy of this order. As no child could be allowed to be bastardised, the respondent police is to be directed to proceed with the re-investigation and to find out the real culprit. This Court is mindful of the



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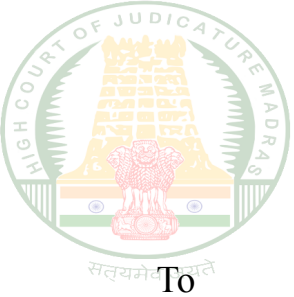
possibility of implicating some other person by the victim girl, complainant or by the respondent police. No doubt, Section 53-A Cr.P.C., mandates the arrest of the accused as a condition for subjecting him for medical examination. In order to avoid the arrest of the suspected persons, this Court in exercise of its power under Section 482 Cr.P.C., to secure the ends of justice, the Investigating Officer is directed to take steps to conduct DNA test on the suspected accused without arresting him and if the test proves positive, he is at liberty to proceed in accordance with law. It is clarified that the petitioner has not been exonerated from the above case, and the Investigating Officer is directed to investigate and determine the petitioner's involvement in the alleged offences.

20. With the above directions, the Criminal Revision Case stands disposed of. Consequently, the connected Miscellaneous Petition is closed.

20.06.2025

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

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To

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1. The Sessions Court, Mahila Court, Pudukkottai.
2. The Inspector of Police,
Pudukkottai All Women Police Station,
Pudukkottai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J.

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Pre-Delivery order made in

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