

H.C.P.No.2182 of 2022

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N.ANAND VENKATESH, J.

and

SUNDER MOHAN, J.

(Order of the Court was made by N.ANAND VENKATESH, J.)

The Special Bench constituted pursuant to the administrative order passed by the Hon'ble Acting Chief Justice, held the previous hearing on 14.08.2023. During that hearing, we took note of the directions that we had issued during the previous hearing on 07.07.2023 and the follow up action that had been taken by the concerned Departments.

2.During the previous hearing, the primary focus was on the following issues:

a)To identify the cases involving consensual relationship among minors and to see if those cases can be brought to its logical conclusion by considering each case independently.

b)The two finger and per-vaginal examination and a Standard Operating Procedure to be formulated



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while conducting the medical test on the victim girl.

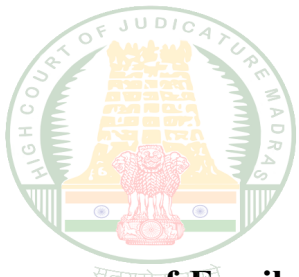
c)The need for the continuing with potency test and the Standard Operating Procedure to be evolved in that regard.

d)The follow up action pursuant to the judgment of the Hon'ble Supreme Court in *X Vs. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi and another* reported in (2023) 9 SCC 433 and termination of pregnancy without disclosure of the name of the minor victim girl particularly in cases arising out of consensual sexual activity.

3.When the matter was taken up for hearing today, some of the related issues which will have a bearing to our earlier order dated 14.08.2023 was brought to our notice.

4.The first issue pertains to the guidelines to be followed for disposal of products of conception after the Medical Termination of Pregnancy (hereinafter referred to as 'MTP') is done for a pregnant minor girl.

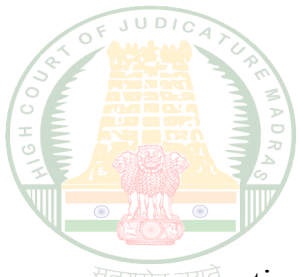
Dr.V.Manimekalai, M.B.B.S., D.G.O., Joint Director (MTP), Directorate



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of Family Welfare, DMS Campus, Chennai – 600 006, was present at the time of hearing. The Joint Director informed us that for the foetus upto 24 weeks, the entire products of conception is sent to the Forensic Science Lab (hereinafter referred to as 'FSL'). In so far as the foetus beyond 24 weeks, the femur alone is sent to the FSL for analysis and the rest of the products of conception is treated as a bio-medical waste and it is destroyed as per procedure. The Joint Director further stated that in so far as the foetus up to 24 weeks with respect to what is sent to the FSL, there is no follow up as to what happens to the products of conception that is sent to the FSL and how the same is treated after it is analyzed and report is prepared. The Joint Director stated that only the FSL has the facility to preserve the products of conception. No such facility is available in the Hospitals and certainly no such facilities are available in the Police Stations or in the Courts. Therefore, if the products of conception is not preserved properly, it will be of no use and even if any further analysis is to be made, the same cannot be done with unpreserved products of conception.

5.Ms.Vidya Reddy, the Executive Director of Thulir stated that as on today, there are absolutely no guidelines to handle the products of



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conception. In some cases, the products of conception is handed over to the Court, in turn it is handed over to the Police and the Police in turn hand it over to the family of the victim girl. In view of the same, a request was made to this Court to formulate some guidelines in this regard.

6.The Joint Director stated that it takes a minimum of one month to get a report from the FSL and sometimes, it also takes months together to receive the report. Till then, the products of conception is preserved in the FSL and the actual problem arises only after the completion of the analysis and the FSL hands it over to the Police. The Joint Director also drew out attention to the fact that there are cases where a request may be made for re-analysis of the products of conception, either from the side of the victim or on the side of the accused person. If that has to be done, the products of conception must be properly preserved, failing which such re-analysis cannot be done.

7.We have already taken note of the judgment of the Hon'ble Supreme Court in the case of *X*, referred to supra. The Hon'ble Supreme Court has made it abundantly clear that when a minor approaches the Registered Medical Practitioner (hereinafter referred to as 'RMP') for a MTP arising out

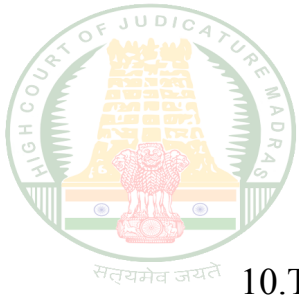


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of a consensual sexual activity, the RMP is obliged to provide information to the concerned authorities. At the same time, the disclosure regarding the identity of the minor must also be taken care.

8. There is no escape from the fact that once a minor girl approaches a RMP for MTP, the information has to be conveyed to the concerned authorities for further course of action. What was insisted in this judgment pertains to the identity and other personal details of the minor which requires to be safeguarded. The Hon'ble Supreme Court held that the rights of privacy and the reproductive autonomy of the minor is guaranteed under Article 21 of the Constitution of India. Therefore, the Hon'ble Supreme Court wanted to strike a balance between the mandatory requirement under Section 19 of the POCSO Act and the rights that are available to a minor.

9. We will first deal with the identity of the minor before going into the issue regarding the guidelines for handling the products of conception after MTP is performed.



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10.The challenge regarding maintaining confidentiality becomes even more important by virtue of the coming into force of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, since some of the provisions in the Act insist for audio video recording. If these recordings are leaked, it will cause more damage to the victim girl, who has already undergone a trauma.

11.If the identity of the minor is not revealed to the police, it will become impossible for the police to proceed further with the investigation. That does not mean that the identity and the personal details of the victim girl must be explicitly revealed in the report that is submitted to the authorities. In fact it should not be revealed in the report. Therefore, the RMP on the request made by the police, can orally reveal the identity of the victim girl to enable the police to proceed further with the investigation. The issue is as to how the police thereafter are going to safeguard the identity and the personal details of the victim girl without disclosing it. If the police is prevented from disclosing the identity and the personal details of the minor victim girl, the same will sufficiently ensure the right of privacy guaranteed to the minor victim girl. A proper mechanism must be evolved on the side of the police to ensure that the identity of a minor victim girl and her personal details should never get



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revealed to the outside world. Even after such guidelines are given, there has to be some mechanism to make some higher authority own up if the identity of the victim girl gets revealed to the outside world.

12. Taking into consideration the judgment of the Hon'ble Supreme court and to ensure that the investigation conducted by the police goes on in a smooth manner after they receive the information provided by a RMP under Section 19 and at the same time, to ensure the identity and personal details of the victim child is protected, we deem it fit to make the Superintendent of Police of the concerned District responsible if the identity of the minor victim girl or the personal details are revealed to the outside world. In the same manner, the Deputy Commissioner in the Metropolitan Cities will be made responsible if any such disclosure of the identity and personal details of a victim girl gets revealed to the outside world. The concerned officers identified by us will be made responsible for any violation of the direction issued by the Hon'ble Supreme Court. This protection will ensure that the police officer who is conducting the investigation will be more diligent in carrying out the investigation without disclosing the identity and other personal details of the minor victim child.

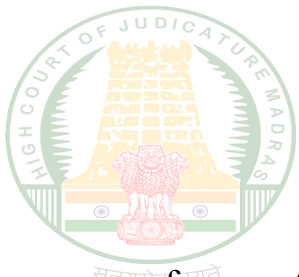


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13.In so far as the guidelines for handling the products of conception, we want to ensure that it never reaches the hands of the victim girl or her family. Going by the statement made by the Joint Director, we understand that the foetus of 24 weeks is completely handed over to the FSL and in so far as the foetus beyond 24 weeks, femur alone is handed over to the FSL and the rest of the products of conception is destroyed as per procedure.

14.In the light of the above statement made by the Joint Director, we make it clear that the products of conception that is retained by the Hospital after sending the femur to the FSL, in cases involving foetus beyond 24 weeks, the same has to be destroyed as per the procedure. It is brought to our notice that the list of Bio-Medical Waste vendors has already been approved by the Pollution Control Board and the said list was also placed before us. This procedure shall be followed consistently across the State of Tamil Nadu.

15.In so far as the foetus which is less than 24 weeks, the entire foetus is sent / forwarded to the FSL. After analysis is done by the FSL, no standard operating procedure is available and there is no idea as to where the products



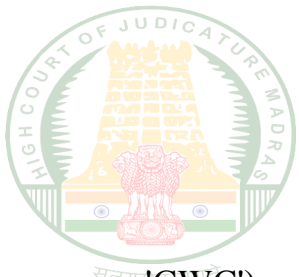
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of conception reaches. It cannot be preserved endlessly in the laboratory and there is no facility to preserve it either in the Hospitals or in the Police Stations or in the Courts. Therefore, there will be no meaning in keeping the products of conception endlessly. Probably that is the reason why it is being passed on from one authority to another and in some cases it even reaches the victim girl and her family.

16.Once the analysis is completed and a report is submitted by the FSL, the sample that is sent to the FSL shall be retained by the FSL till the completion of the case. Thereafter, it shall be destroyed as per procedure.

17.Under no circumstances, the samples that are sent to the laboratory for analysis shall be handed over to the investigation officer or to the Court, it shall be retained in the laboratory and it shall be destroyed after the completion of the case. A guideline in this regard must also be issued and followed across the state of Tamil Nadu.

18.The next area of concern is with respect to the pregnant minor who are produced before the Child Welfare Committee (hereinafter referred to as



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'CWC') and is kept in a home under their care and control. It was brought to out notice that the CWC in many cases do not inform the family of the pregnant minor girl that she has the option of a MTP. In view of the same, the minor girl goes through the entire term and also delivers a child.

19.The minor pregnant girl who is produced before the CWC and her family must be informed by the CWC that the girl has the option of a MTP. Once the minor girl and her family opts for MTP, the same shall be carried out in accordance with the MTP (Amendment) Act, 2021 and Rules thereunder. This guideline shall be kept in mind by the CWCs across the state of Tamil Nadu and it is their duty to comply with this direction.

20.In so far as the follow up on the earlier directions issued by this Court, we will first deal with the two finger test or per-vaginal examination. The Joint Director who was present before the Court brought to our notice the standard operating procedure that has now been issued pursuant to our directions for examination of victims of sexual violence. The relevant portions are extracted hereunder:



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“*PHCs: If any POCSO cases come to Primary Health Centres, First Aid and vital checks have to be done, stabilize the victim and then immediately send the victim / survivor to the nearby Government Hospital by 108 Ambulance.

**Both Two finger test of per Vaginal test examination are now completely barred by the virtue of the Judgment of the Apex court.*

**Any person who conducts the “two finger test” or per Vaginal examination while examining a person alleged to have subjected to a sexual assault in contravention of the direction of Apex court order shall be guilty of misconduct.*

**The status of hymen is irrelevant and an intact hymen does not rule out sexual violence and a torn hymen does not prove previous intercourse.*

**Only those that are relevant to the episode of assault finding such as fresh tears, bleeding, oedemaetc are to be documented.*

**The Examination and treatment as needed may have to be performed under general anaesthesia in case of minors and when injuries inflicted are severe.*

**As per order of the Hon'ble High Court, If at all the Doctor needs to find out if there is any injury to the hymen, it can be done only with an instrument colposcopy. The Doctor should not conduct colposcopy unless it is required for the detection of injuries or for medical treatment and not as a matter of routine.*

**Expressions like “there are no signs suggestive of*



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sexual intercourse” should be completely avoided.

**In view of the above, the Accident Register written by the Medical Officer should not include any details of two finger test of per Vaginum test examination as the same has been barred in virtue of Judgment of the Apex court.”*

21.The above guidelines that have now been issued sufficiently satisfies the directions issued by us on 07.07.2023 and 14.08.2023. We expect the above guidelines to be strictly followed and any violation of the same must entile consequences of initiating appropriate proceedings as directed by the Hon'ble Supreme Court.

22.In so far as the male potency test is concerned, the following standard operating procedure has been issued:

*“*Male Potency test need not be undertaken in a routine manner in all cases involving sexual offences.*

1.If the accused person raises impotency as a defence, the burden of proof will be upon the accused person to prove that he is impotent. Only in such instances there is requirement for conducting the potency test.

2.The doctor must in rare cases adopt invasive



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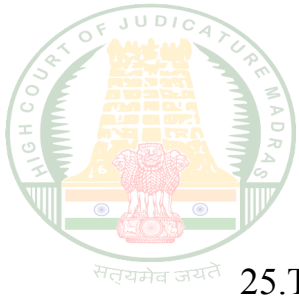
methods to find if the man had consumed any pill or other medication and committed penetrative sexual violence where otherwise he is impotent.

3.Even in cases, as the semen may be traced in the victim or in her undergarments etc, it is enough if the blood sample of the offender is taken and the DNA is matched. It is not necessary to draw the semen from the accused person.”

23.We expect the above procedure to be followed without any default.

The potency test that has been practiced for a long time without any valid reasons, must be stopped forthwith and the standard operating procedure that has been issued pursuant to our orders, must be strictly complied with.

24.The learned Additional Public Prosecutor submitted that the details of the 111 cases that have been identified, is in the process of being collated and the police officers are in the process of getting in touch with the complainant / parent of the victim girl to see if they are consenting for bringing to an end the concerned criminal proceedings. We are inclined to grant some more time in this regard.



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25.The last issue that requires the consideration of this Court is on the over all functioning of CWC in the State of Tamil Nadu. The functions of the CWC has been provided under the Juvenile Justice (Care and Protection of Children) Act, 2016 and the Rules thereunder. Those functions have been tabulated and a sample of the same was placed before this Court. A copy of the tabulated form that has been prepared shall also be furnished to the learned Additional Public Prosecutor. This form shall be circulated to all the CWCs across Tamil Nadu and the particulars contained therein shall be filled up for the period from 01.01.2024 to 30.06.2024. The filled up forms shall be handed over during the next date of hearing. If the particulars are furnished, it will give a fair idea to this Court as regards the functioning of the CWCs in the State of Tamil Nadu. If there are any deficiencies / improvements to be made, necessary guidelines can be given by this Court.

26.“The Social Welfare and Women Empowerment Department” - 7th respondent which is in control of CWCs shall ensure that CWCs comply with the above direction and submit the filled up forms during the next date of hearing.



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27.Post this case for hearing on 18.10.2024 at 02.15 PM.

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(N.A.V.,J)

(S.M.,J)

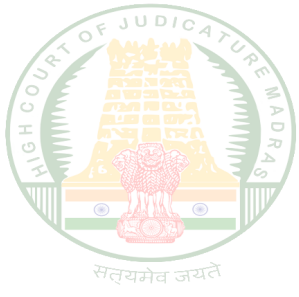
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NOTE: Issue order copy on 16.07.2024.

N.ANAND VENKATESH, J.

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