

GAHC010225022014



2024:GAU-AS:10764

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./185/2014

MAHABUR RAHMAN
S/O ABDUL KHALEK R/O VILL- SHOLMARI, MOUZA- TI9TAPANI P.S.
KALGASHIA, DIST. BARPETA, ASSAM.

VERSUS

STATE OF ASSAM and ANR.

2:SHAHIDA KHATUN
D/O SIDDIK ALI R/O VILL- SHOLMARI
MOUZA- TITAPANI PS. KALGASHIA
DIST. BARPETA
ASSAM

Advocate for the Petitioner : MR.H R A CHOUDHURY, MD.S ISLAM,MR.A
CHOUDHURY,MS.M KONCH

Advocate for the Respondent : PP, ASSAM, DR. K U AHMED (R2),MR. M A SHEIKH (R2),MR. M
HOSSAIN (R2),MS F INTAZ (R2),,,

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY
O R D E R

05.11.2024

1. None appears for the petitioner on call, though Mr. MA Sheikh, learned counsel for the respondent No. 2 is present.

2. The present petition is filed under Section 482 Cr.P.C. assailing an order dated 17.02.2014 passed in MR Case No. 404/2012 by the learned Additional CJM, Barpeta by which an application for DNA matching test filed by the petitioner was rejected.

3. The brief fact of the case is that the respondent No. 2 filed an application on 06.08.2012 under Section 125 Cr.P.C. seeking maintenance from the petitioner for her child born on 23.07.2012 alleging that the petitioner is the father of the child. It was further alleged in the aforesaid petition that the petitioner assured that the petitioner would marry the respondent after birth of the child. However, when the petitioner refused to accept her and marry her, the maintenance application was filed.

4. After receiving notice from the learned Court, the petitioner appeared before the Court and filed objection denying allegation brought in the application and further prayed for a DNA test for proving the paternity of the minor child inasmuch as it is the case of the petitioner that he had no relation with the respondent. Subsequently, another application was filed on 18.09.2013 specifically seeking DNA test for proving the claim of the respondent. An objection was filed by the wife in that petition.

5. Relying on the decision of the Hon'ble Apex Court in ***Goutam Kundu Vs State of West Bengal*** reported in ***MANU/SC/0345/1993***, the learned trial court concluded that this is not a fit case where DNA test is required to be permitted inasmuch as DNA test cannot be directed as a matter of routine and the proof of non-access between the parties to marry during the relevant period is only way to rebut the presumption. The Hon'ble Apex court in the case of ***Goutam Kundu (supra)*** laid down the following propositions of law:

“(1) That courts in India cannot order blood test as a matter of course;

(2) Wherever applications are made for such prayers in order to have roving inquiry, the prayer for blood test cannot be entertained.

(3) There must be a strong prima facie case in that the husband must establish non-access in order to dispel the presumption arising under Section 112 of the Evidence Act.

(4) The court must carefully examine as to what would be the consequence of ordering the blood test; whether it will have the effect of branding a child as a bastard and the mother as an unchaste woman.

(5) No one can be compelled to give sample of blood for analysis. "

6. I have heard the learned counsels for the parties and also perused the materials available on record.

7. It is well settled that standard of proof of relationship in a proceeding under Section 125 is not strict as is required in a trial of an offence in a criminal case. Section 50 of the Indian Evidence Act, 1872, deals with the relationship of one person to another and in forming an opinion about existence of such relationship between two people, the conduct is relevant. It is equally well settled that the nature and character of such knowledge must be one of parameters and evidence of such witnesses must be substantially corroborated. However, it is also to be taken note that an order passed in an application under Section 125 Cr.P.C. does not really determine the right and obligations of the parties inasmuch as the Section 125 Cr.P.C. is enacted with a view to provide a summary remedy to neglected wife/children and parents to obtain maintenance.

8. The learned Trial Judge after dealing with the settled proposition of law and the given facts of the case projected by the parties relying on the decision of the Hon'ble Apex Court declined to permit DNA matching. Therefore, this Court is now to consider whether such order is required to be interfered under its revisional power under Section 482 Cr.P.C.

9. In exercise of its inherent power, this Court can set right a patent defect or an error of jurisdiction or of law, pass order to prevent abuse of process and for securing ends of justice. Such power can be exercised where the decision under challenge are grossly erroneous, there is non compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is

exercised arbitrarily or perversely. It is equally well settled that a revisional jurisdiction of High Court should not be exercised in a routine manner. The Hon'ble Apex Court in ***Chandra Babu vs State*** reported in **2015 (8) SCC 774** held that normally revisional jurisdiction should be exercised in a question of law however, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. The Supreme Court went to say that the power is required to be exercised so that justice is done and there is no abuse of power by the Court.

10. It is also well settled proposition of law that until and unless there are illegality, irregularity and failure of justice, this Court generally should not exercise its power under Section 482 Cr.P.C. in cases of maintenance under Section 125 Cr.P.C.

11. This issue should not detain us any further, inasmuch as, The Hon'ble Apex Court in ***Dwarika Prasad Satpathy-VS- Bidyut Prava Dixit and Another*** reported in **1999 7 SCC 675**, laid down the propositions that the standard of proof of marriage in a Section 125 proceeding is not as strict as is required in a trial of an offence in a criminal case. It is equally well settled that an order passed in an application under Section 125 Cr.P.C. does not really determine the rights and obligations of the parties inasmuch as the Section 125 Cr.P.C. is enacted with a view to provide a summary remedy to neglected wife/children and parents to obtain maintenance.

12. It is also well settled that the absolute proof of marriage is not always necessary and when a party denies the marital status, he/she should opt for appropriate remedy to establish the same.

13. The object of revisional power of this Court under Section 397 Cr.P.C. is to set right a patent defect or an error of jurisdiction or law. Such power can be exercised where the decision under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely.

14. It is equally well settled that a revisional jurisdiction of High Court should not be

exercised in a routine manner. The Hon'ble Apex Court in ***Chandra Babu vs State*** reported in ***2015 (8) SCC 774***, held that normally revisional jurisdiction should be exercised in a question of law however, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. The Supreme Court went to say that the power is required to be exercised so that justice is done and there is no abuse of power by the Court.

15. This Court is in agreement with the findings recorded by the courts below which are based on sound reasoning. In the considered opinion of this Court and as discussed herein above, the learned Courts below has duly appreciated the evidence on record and the conclusion arrived at on the basis of such appreciation of evidence cannot be termed as a decision which could not have been arrived at on the basis of evidence available on record more particularly, in the backdrop of the settled law in this regard as recorded hereinabove. This Court has not found anything as regards any patent defect of jurisdiction or of law. The learned counsel has not also been able to show non compliance of any provisions of law or that the findings recorded is based on no evidence or that material evidence is ignored or that judicial discretion is exercised arbitrarily or perversely.

16. In the case in hand, the DNA matching is sought between the petitioner and the child. In the aforesaid backdrop and in the given fact of the case, more particularly, considering that it is a case of maintenance, the learned trial court refused to grant such permission. This court has not found any glaring illegality or irregularity in the aforesaid order, more particularly, in the given fact of the case that the proceeding was under Section 125 Cr.P.C. inasmuch as the task of deciding of marital status or parenthood can be dealt by an appropriate forum such as Civil Court or Criminal Court and it is not advisable to enter into such a roving and fishing enquiry in a proceeding under Section 125 Cr.P.C.

17. That being the position, this court is not inclined to exercise its power under Section 482 Cr.P.C. However, this order shall not be treated as an ascertainment of the

dispute regarding parenthood between the petitioner and the child in question.

18. Interim order passed on 21.03.2014 stands vacated.

JUDGE

Comparing Assistant