

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.63 of 2015

In

First Appeal No. 333 of 1992

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1. Bibi Aisha Begum wife of Late Syed Zaffar Hasnain @ Lal Babu.
 2. Syed Iftekhhar Ahmad @ Sahib
 3. Syed Imteyaz Ahmad @ Chhotey Both Ss/o Late Syed Zaffar Hasnain @ Lal Babu.
- All residents of Mohalla Gyan Babu Chowk, P.S. & P.O.- Motihari,
District East Champaran.

.... Petitioner/s

Versus

1. Bibi Shahnaz Begam wrongly describing herself as daughter of Syed Zaffar Husnain @ Lal Babu, deceased, wife of Jamil Akhtar @ Jawed, resident of Mohalla Buchar Toli, Motihari Town, P.O. & P.S. - Motihari, District- East Champaran.
2. Bibi Shamima Khatoon wife of Md. Shafique, Resident of Mohalla Miscott Motihari Town, P.O. & P.S.- Motihari, District- East Champaran
3. Bibi Shahjahan Begam D/o Late Syed Zaffar Hasnain @ Lal Babu W/o Syed Md. Hassan @ Chand Babu resident of village- Mathurapur, P.S.- Turkaulia, District- East Champaran at present Mohalla Gyan Babu Chowk, Raqni Kothi, P.O. & P.S. - Motihari, District- East Champaran

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Manish Kishore, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

5. **24-09-2015** Heard learned counsel for the petitioner as well as opposite party.

Petitioner has filed instant petition for review of order dated 03.03.2015 which, the court had passed after giving active consideration of the submissions made on behalf of respective parties over applicability of extraordinary power vested to the appellate court in terms of Order XLI Rule 27(1)(b) of the CPC which, the court considered expedient in the interest of justice to exercise while hearing the learned counsel for the appellant for days together. Both



the parties have advanced detailed submission on the ambit, scope and the manner whereunder appellate court is to exercise the extraordinary power over asking for additional evidence as well as with regard to DNA test particularly in the facts and circumstances of the case. After hearing both the parties the court by the order impugned found that the DNA test is to be carried out followed with submission of report in terms of Order XLI Rule 27(1)(b) of the CPC and accordingly, ordered so by dealing all the aspect.

Now, a prayer has been made on behalf of petitioner to erase the aforesaid finding on three points. The first one while hearing the matter of receiver under SLP(Civil) No.17235 of 2009 (Annexure-2), the Hon'ble Apex Court had directed to proceed with the appeal. The order impugned, if allowed to survive will frustrate the spirit of the order passed by the Hon'ble Apex Court which, the High Court, being a inferior court would not lose right of.

It has also been submitted that exercise of power is to be done with regard to evidence which is already available since before. Admittedly, the DNA test and its report is not available on the record and that being so, its application as evidence would not justify.

It has also been submitted that DNA test would not give the finding in its conclusiveness because of the fact that there happens to be no concrete, positive assertion, evidence that birth of Bibi Shahnaz Begam was on account of copulation in between her mother with Syed Zaffar Husnain @ Lal Babu. That being so, DNA of Bibi Shahnaz Begam with Bibi Aisha Begum, wife of Syed Zaffar Husnain @ Lal Babu would not enlighten the controversy persisting on

the record.

It has also been submitted that apart from this, the law cited on behalf of appellants reported in (2010) 8 SCC 633 though referred under para-14 of the order impugned, has not been taken into consideration wherein, frequent use of DNA test is not only forbidden rather some sort of doubt has also been raised over the genuineness of the DNA test. Apart from this, the learned counsel also referred the grounds taken in the petition to justify the prayer for review of the order dated 03.03.2015, the order impugned.

At the other end, the learned counsel representing the respondent has submitted that so many grounds have been enumerated in the petition including that of old, infirm, sick but she (Aisha Begum) happens to be frequent in traveling. She knowingly and intentionally failed to present herself before the learned lower court in pursuance of the order impugned, at the other end she moved to New Delhi and to justify the same, annexure has been enclosed disclosing the reservation having been in name of Bibi Aisha Begum. Also challenged over the submission made on behalf of appellant /petitioner.

It is true that in the order impugned does contain reference cited on behalf of appellant reported in (2010) 8 SCC 633 but the same was not taken note of for want of its utility over the point in issue.

Now, coming to the main theme asking for review, there is no controversy over the settled principle of law that review is permissible only when the order suffers from any error apparent on the

face as has been held in Rajendra Kumar Vs. Ram Bhai reported in (2007) 15 SCC 513.

After going through the order impugned no error is found duly surfaced which could justify the prayer made on behalf of petitioner. Hence, prayer is refused. Consequent thereupon, petition is rejected. Petitioner is directed to comply the order by putting her presence before the learned lower court within fortnight. Simultaneously the learned lower court is directed to exercise the event and submit report, received by the concerned laboratory, as early as possible within 12 weeks.

Learned counsel for the petitioner drew attention towards the typographical error relating to Rabal Bai under para-5 and 10 of the order impugned, instead of Sabal Bai. It happens to be mere a typographical error without having any impact and so be read accordingly.

(Aditya Kumar Trivedi, J.)

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