

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

WEDNESDAY, THE 16TH DAY OF DECEMBER 2015/25TH AGRAHAYANA, 1937

RPFC.No. 124 of 2015 ()

AGAINST THE ORDER IN MC 339/2013 of FAMILY COURT, THRISSUR
DATED 07-03-2015

REVISION PETITIONER(S)/RESPONDENT:

RAJESH
S/O.RADHAKRISHNAN, THANAYATH HOUSE
NADAVARAMBU DESOM & P.O., MUKUNDAPURAM TALUK
THRISSUR DISTRICT-680 661.

BY ADVS.SRI.PHILIP J.VETTICKATTU
SRI.B.PREMNATH (E)

RESPONDENT(S)/PETITIONER:

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1. BHAGYALAKSHMI
D/O.ULLATTIL VEETTIL BALASUBRAMANIAN
MULLOORKKARA P.O./DESOM/VILLAGE
THALAPPILLY TALUK-680583.
 2. MINOR VIGNESH
AGED 3, 3/4 YEARS
(MINOR REPRESENTED BY MOTHER AND GUARDIAN 1ST RESPONDENT
BHAGYALAKSHMI)
D/O.ULLATTIL VEETTIL BALASUBRAMANIAN
MULLOORKKARA P.O./DESOM/VILLAGE
THALAPPILLY TALUK-680583.

R1,2 BY ADV. SRI.C.A.CHACKO

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD
ON 16-12-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

acd

P.D. RAJAN, J.

R.P.(FC)No.124 of 2015

Dated this the 16th day of December, 2015

JUDGMENT

The revision petitioner, who is the respondent in M.C.No.339/2013 of the Family Court, Thrissur, challenges the direction to pay maintenance u/s.125 of the Code of Criminal Procedure. The above maintenance petition, M.C.339/2013 was filed by the wife and child who are 1st and the 2nd respondents in this revision petition. The petitioner wife claimed maintenance at the rate of ₹8,000/- for her and ₹4,000/- to the 2nd respondent, minor child. Her marriage with the revision petitioner was solemnized on 27.12.2010 as per Hindu Customary rites and in the wed lock, the 2nd respondent born to them. The

revision petitioner treated the 1st respondent with cruelty and showed paranoiac behaviour and doubted the chastity of the 1st respondent. In the circumstances, from 11.5.2013 onwards she was residing with his parents and she claimed the above amount as maintenance. The revision petitioner is working as a Computer Engineer and getting more than ₹35,000/- per month. In the circumstances, she approached the Family Court.

2. In the trial Court, the husband revision petitioner resisted the above contention and contended that the wife is residing in her parent's house without any reason. He denied the paternity of the 2nd respondent and raised a false allegation that she is in love with one Ashokan and it is not possible her to live without Ashokan. Therefore, he filed O.P.No.431/2013 for divorce and wife filed O.P.No.477/2013 for getting back her gold ornaments in the Family Court, Irinjalakuda. The learned Judge,

Family Court examined the 1st respondent wife as PW1 and her documents were marked as Exts.P1 & P2. The revision petitioner was examined as RW1 and his documents were marked as Exts.D1 to D3. After considering the rival contention, the learned Family Court Judge was of the view that the husband has sufficient means and directed the revision petitioner to pay maintenance at the rate of ₹ 4,000/- to the 1st respondent and ₹2,500/- to the 2nd respondent from the date of petition. Being aggrieved by that, the husband preferred this revision petition.

3. When the revision petition came up for hearing, I have perused the order of the Family Court to find out whether any illegality or irregularity has been committed in its proceedings. The revisional jurisdiction can be invoked for the purpose of satisfying itself to the correctness, legality or propriety of any finding, sentence or order, recorded or passed by the courts below and it is

a supervisory jurisdiction to rectify miscarriage of justice.

The revision petitioner disputed the paternity of the child.

In the circumstances, this Court as per the order dated

13.8.2015 in Crl.M.A.No.4383/2015 directed to conduct

DNA test and observe as follows:

"3. On consensus of both parties, this Court referred the matter for mediation and after mediation the Mediator has reported that the dispute between the parties can be settled only after determining the paternity of the minor second respondent as the paternity of the child is the basis of the entire disputes. Both counsel appearing for the respective parties agree with the report.

4. Going by the impugned order it is seen that, earlier, the petitioner had filed a petition before the Family Court seeking DNA test and the same was dismissed by the court accepting the objection raised by the respondents and thereafter the petitioner preferred a revision before this Court and this Court also affirmed the order dismissing the application seeking DNA test, accepting the objection raised by the respondents. But now the respondents also agree with the opinion of the Mediator that the entire dispute can be resolved by determining the paternity of the second respondent only.

5. Considering the better interest of both parties, I find that, even though the application seeking DNA test was dismissed earlier by the Family Court and the dismissal was affirmed by this Court also, in view of the change of circumstances,

the opinion of the Mediator deserves to be considered positively and if the entire dispute can be resolved on the result of the DNA test, for the sake of better interest of the family, it can be allowed.

For the reasons stated above, the application seeking DNA test filed by the petitioner herein and supported by the respondents stands allowed. The Family Court, Thrissur is directed to take steps to conduct DNA test of the second respondent to determine his paternity at Rajiv Gandhi Centre for Bio-Technology, Thiruvananthapuram, at the expense of the petitioner/respondent. The Family Court is further directed to forward the report as soon as the same is received. The parties shall appear before the Family Court, Thrissur on 7.9.2015."

4. Accordingly, both parties have appeared before Rajiv Gandhi Centre for Bio-Technology, Thiruvananthapuram and undergone the DNA test. The result is as follows:

"The DNA profile of the source of exhibit B (Vignesh) is matching with the DNA profile of the source of exhibit A (Bhagyalakshmi). The DNA profile of the source of exhibit B (Vignesh) is matching with the DNA profile of the source of exhibit C (Rajesh). The maternal alleles shown by red colour in the enclosed Table 1 in the DNA profile of the source of exhibit B (Vignesh) are accounted in the DNA profile of the source of exhibit A (Bhagyalakshmi). The paternal alleles shown by blue colour in the enclosed Table 1 in the DNA profile of the source of exhibit B (Vignesh) are accounted in the DNA profile of the source of exhibit C (Rajesh)."

It is concluded that the source of exhibit C (Rajesh) is the biological father of the source of exhibit B (Vignesh). The source of exhibit A (Bhagyalakshmi) is the biological mother of the source of exhibit B (Vignesh). The report of DNA test of Rajiv Gandhi Centre for Biotechnology is marked as Ext.C1. A perusal of Ext.C1 makes it clear that the revision petitioner is the legitimate father of the minor and he neglected to pay a monthly allowance for the maintenance to his wife and minor child. Revision petitioner is employed having sufficient means to pay the maintenance. I do not find any illegality in the order passed by the Family Court granting ₹4,000/- to the 1st respondent, mother and ₹2,500/- to the 2nd respondent, minor child. There is no illegality in the order and this petition is dismissed.

5. The learned counsel appearing for the revision petitioner submitted that an earlier mediation talk was

conducted in this case and there is a chance for settling the entire dispute, hence the matter may be again referred for mediation. Before parting with the judgment, I may observe that the revision petitioner is the legitimate father of the 2nd respondent and if both parties are willing to settle the dispute, they can try for a settlement. In the circumstances, both parties are directed to appear in the Ernakulam Mediation Centre on 6.1.2016, on such appearance, the earlier mediator shall be appointed for mediation.

R.P.(FC) is disposed of as above.

P.D. RAJAN, JUDGE.

acd

