

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

CRL.R.C.No.899 of 2014
and M.P.No.1 of 2014

John Bosco

... Petitioner/Respondent

vs.

1.Ezhilrani

2.Minor Arthi Anandhi

(minor 2nd respondent represented

by next friend 1st respondent Ezhilrani .. Respondents/Petitioners

PRAYER: Criminal Revision Case filed under Sections 397 and 401 of Criminal Procedure Code to set aside the order dated 16.07.2014 passed in CrI.M.P.No.4047 of 2014 in MC No.29 of 2013 on the file of the learned Judicial Magistrate No.II, Panruti.

For Petitioner : Mr.R.Gururaj

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor

JUDGMENT

Though the 1st respondent/wife has been served, and her name is also shown in the cause list, there is no appearance, either in person or through pleader.

2.In the abovesaid circumstances, this Court deems it fit to dispose of the Criminal Revision Case, after hearing the submissions of the learned counsel for the petitioner and considering the material available on record.

3.Revision Case is filed against the dismissal of CrI.M.P.No.4047 of 2014 in MC No.29 of 2013 dated 16.07.2014, filed by the husband, for a direction to the respondent/wife to undergo DNA Test.

4.In support of the above prayer, the petitioner/husband has contended that he was not married to Ms.Ezhilrani, respondent No.1 and minor Arthi Anandhi was not his daughter. He has also contended

that the decree obtained against him in O.S.No.331 of 1995 on the file of the learned District Munsif, Panruti, was a fraudulent manner. Revision petitioner has contended that there was no marriage between the parties and in the Baptism Certificate dated 26.06.1995, name of the petitioner has been inserted. According to him, if the respondents are subjected to DNA Test, truth would come to light.

5.Perusal of the impugned order shows that the respondents had no objection for the DNA test. Despite the same, the Court below has dismissed the petition, citing reasons. Placing reliance on the decision of the Hon'ble Supreme Court in Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik and another reported in 2014-5-L.W.449, Mr.R.Gururaj, learned counsel for the petitioner submitted that DNA test is the best evidence for determining the paternity of the child for whom maintenance is claimed, and a prayer for DNA test ought not to have been rejected, when the respondent has agreed for the same. As stated supra, the respondents had not entered appearance and that the contention that they have agreed for a DNA test, before the Lower Court has not been disputed.

6.Before framing the points for consideration, the learned Judicial Magistrate No.II, Panruti, himself has recorded that the respondents have no objection, for the DNA Test.

“எதிர்மனுதாரர்கள் தரப்பில் ஆட்சேபணை இல்லை என்று தெரிவிக்கப்பட்டுள்ளது.”

7.Having regard to the decision of the Hon'ble Supreme Court in Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik and another reported in 2014-5-L.W.449, and taking note of the consent, given by the respondent, and recorded by the Court below and as rightly contended by the learned counsel for the petitioner, the learned Judicial Magistrate No.II, Panaruti, ought not to have rejected the prayer for DNA test. On the facts and circumstances of this case, insofar as the claim for maintenance to the respondent, claiming herself to be the wife of the revision petitioner is concerned, it can be decided, independently, without a DNA test, on the basis of available materials. While setting aside the impugned order, made in CrI.M.P.No.4047 of 2014 in MC No.29 of 2013, dated 16.07.2014, there shall be a direction to the petitioner and the respondents to undergo DNA test, at the Directorate of Forensic Sciences Laboratory, Kamarajar Salai, Chennai-600 004, within a period of one month from the date of receipt of a copy of this order. Since DNA test is directed to be taken up, at the instance of the petitioner, he shall bear all the costs for such test. Insofar as the claim for maintenance, for the wife, there is no bar, for the Magistrate to decide. Procrastination, by the petitioner, if any should not be entertained.

The Criminal Revision Case is allowed as indicated only.
Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mps

To

1.The Judicial Magistrate No.II,
Panruti.

2.-do- Thro The Chief Judicial Magistrate, Cuddalore.

3.The Public Prosecutor,
High Court of Madras,
Chennai.

4.The Directorate of Forensic Sciences Laboratory,
Kamarajar Salai, Chennai -4.

1 cc to Mr.R.Gururaj, Advocate, SR.No.17576

CRL.R.C.No.899 of 2014
and M.P.No.1 of 2014

skv (co)
pmk.4.5.2015

सत्यमेव जयते
WEB COPY