

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

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CRIMINAL PETITION No.2574 of 2015

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Between:

K.Krishnamachari, S/o.Govindaiah

.. Petitioner

And

The State of Andhra Pradesh,
Rep. by Public Prosecutor,
High Court at Hyderabad & another.

.. Respondents

DATE OF JUDGMENT PRONOUNCED: 20-07-2015

SUBMITTED FOR APPROVAL:

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

1. Whether Reporters of Local newspapers
Yes/No
may be allowed to see the Judgment?

2. Whether the copies of judgment may be
marked to Law Reporters/Journals

Yes/No

3. Whether Their Lordship wish to
see the fair copy of the Judgment?

Yes/No

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.2574 of 2015

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ORDER :

This Criminal Petition is filed by the Petitioner/ respondent under Section 482 Cr.P.C seeking to quash the docket order dated 04.12.2014 passed in M.C. No.13 of 2012 by the learned Judicial Magistrate of First Class, Dhone.

2) The M.C filed by 2nd respondent herein represented by her mother against the petitioner herein claiming maintenance as daughter of him by virtue of docket order dated 14.02.2014 is ordered as follows:

“Both parties present. The matter is re-opened suo-motto. Both parties are directed to undergo DNA test to meet the ends of justice and both parties have to bear equal costs for DNA test. For filing DNA test reported, call on 09.01.2015”

3) It is the said order now impugned by filing present application under Section 482 Cr.P.C to quash or set aside the same in the ends of justice.

4) The contentions in the background for said relief are that the Court below ought not to have exercised its jurisdiction beyond limits as such the said order is unsustainable and without even appreciating the material on record particularly Ex.P3 wherein the maintenance claim filed by the minor represented by her mother stated that she does not have any conjugal contacts with the petitioner and ordering DNA test suo-motu does not arise that too after both sides adducing evidence oral and documentary and not

called for such expert opinion by any application.

5) Heard learned counsel for petitioner and also the 1st respondent—State represented by learned Public Prosecutor and 2nd respondent minor represented by her mother and next friend even ordered notice by personal service having been served and acknowledged, failed to attend, hence taken as heard to decide on merits.

6) No doubt, as laid down by the Apex Court in **Nandlal Wasudeo Badwaik vs. Lata Nandlal Badwaik and another**^[1], that DNA test is a conclusive proof based on the scientific knowledge and DNA test can be ordered even in the maintenance proceedings which are quasi civil and summary in nature under Section 125 Cr.P.C. It is so held by explaining the earlier expression in **Kanthi Devi vs Poshi Ram**^[2], wherein it was held even DNA result is indicative in favour of respondent who disputes paternity that is not conclusive proof under Section 112 of Evidence Act read with Section 4 of Evidence Act in view of earlier expression of the Apex Court on presumption of legitimacy under Section 112 of Evidence of **Chilukuri Venkateshwarly vs. Chilukuri Venkatanarayana**^[3] besides **Goutam Kundu vs State Of West Bengal**^[4] referred and discussed.

7) Referring the expressions, this Court also in

Shaik Fakruddin vs Shaik Mohammed Hasan^[5] at para No.10 observed that Section 4 has to be read with 112 of Evidence Act to draw the presumption of a person born during continuance of 280 days after the dissolution of such marriage and paternity can be decided effectively even otherwise without resorting to DNA test, it was held that when paternity can be decided from such evidence DNA test cannot be directed. In fact, the Apex Court in ***Banarasi Das vs. Teeku Datta***^[6] held that when paternity can be decided effectively even otherwise without resorting to DNA test which can be given only in deserving case and not as a matter of routine it can be directed. In ***Sharda vs Dharam Pal***^[7] at para No.81, the Apex Court held that though the Court has the power to direct a person to undergo medical test and such power would not be in violation of the right to personal liberty under Article 21 of Constitution of India, Court should exercise such a power, if sought by the applicant by showing strong case with sufficient material before the Court to order.

8) From the above expressions in sum and substance, it is clear that there is no inherent power under Section 482 Cr.P.C to the learned Magistrate and the expressions say without application the magistrate cannot resort to such recourse and admittedly in the factual matrix of the case on hand including from the impugned docket

order none of the parties applied for DNA test examination and in the impugned order also there is no discussion as to how the evidence on record sufficient or not, the ordeal taken by the Magistrate is beyond his jurisdiction.

9) Having regard to the above, Criminal Petition is disposed of by setting aside the impugned order and the matter is remitted back by leaving it open to either of the parties to file an application within 15 days from the date of receipt of copy of this order. If such application is filed, it is left open for the learned Magistrate to entertain and decide the same within the legal parameters referred supra and thereafter to decide the M.C, which is summary in nature.

10) Miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.20.07.2015
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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[\[1\]](#) (2014) 2 SCC 576
[\[2\]](#) AIR 2001 SC 2226
[\[3\]](#) AIR 1954 SC 176 = 1954 SCR 424
[\[4\]](#) 1993 (3) SCC 418
[\[5\]](#) AIR 2006 AP 48
[\[6\]](#) 2005 (3) ALD 78 SC

[\[7\]](#) AIR 2003 SC 3450 + (4) SCC 493