

* HON'BLE SRI JUSTICE R.KANTHA RAO

+ Civil Revision Petition No.2502 of 2014

% 01-6-2015

Chinta Madhu Sudhana Rao

... Petitioner/Respondent/

Defendant

Vs.

\$ Chinta Naga Lakshmi and another

... Respondents/Petitioners/

Plaintiffs

! Counsel for the Petitioner: Sri Kambhampati Ramesh

Babu

Counsel for Respondents: Sri Yeka Balasubrahmanyam

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> Head Note:

? Cases referred:

1. AIR 2010 SC 2851
2. AIR 2003 SC 3450(1)

HON'BLE SRI JUSTICE R.KANTHA RAO

Civil Revision Petition No.2502 of 2014

Date: 01-6-2015

Between

Chinta Madhu Sudhana Rao

... Petitioner/Respondent/

Defendant

and

Chinta Naga Lakshmi

and another

... Respondents/Petitioners/

Plaintiffs

HON'BLE SRI JUSTICE R.KANTHA RAO

Civil Revision Petition No.2502 of 2014

Order:

This civil revision petition is directed against the order dated 03-7-2014 passed by the Principal Junior Civil Judge, Eluru, West Godavari district in I.A.No.715 of 2014 in O.S.No.452 of 2011.

2. The respondents filed the suit to declare the 1st respondent as the legally wedded wife and the 2nd respondent as the legitimate son of the revision petitioner and for grant of maintenance to them. In the said suit, they filed an interlocutory application to send the blood samples of the 2nd plaintiff and the defendant to the Forensic Science Laboratory, Hyderabad for the purpose of conducting DNA test to decide the paternity of the 2nd plaintiff. The said I.A., was allowed by the learned trial Court.

Feeling aggrieved, the defendant filed the present revision.

3. I have heard Sri Kambhampati Ramesh Babu, learned counsel appearing for the petitioner and Sri Yeka Balasubrahmanyam, learned counsel appearing for the respondents.

4. It is contended on behalf of the petitioner that without there being any *prima facie* evidence about the marriage between the petitioner and the 1st respondent, the trial Court allowed the petition directing the petitioner to undergo DNA test in a routine manner and the said direction not being in accordance with law is liable to be set aside in the present revision petition. According to the learned counsel, a party can be directed to undergo DNA test only in deserving cases where it is not possible to reach the truth of paternity without use of such test and where there is strong *prima facie* material about the marriage between the parties and on proof of the fact that the husband gaining access to wife during relevant period.

5. On the other hand, it is contended on behalf of the respondents that since the petitioner without any basis disowned his relationship with the respondents, it became necessary for them to make an application before the trial Court for a direction to the petitioner to undergo DNA test and the direction issued by the trial Court being justified having regard to the facts and circumstances of the case, the order does not require any interference in the revision.

6. In **Bhabani Prasad Jena v. Convenor Secretary, Orissa State Commission for Women**, the Supreme Court held as follows:

“In a matter where paternity of a child is in issue before the Court, the use of DNA is an extremely delicate and sensitive aspect. There is apparent conflict between the right to privacy of a person not to submit himself forcibly to medical examination and duty of the Court to reach the truth, the Court must exercise its discretion only after balancing the interests of the parties and on due consideration whether for a just decision in matter, DNA is eminently needed. DNA in

a matter relating to paternity of a child should not be directed by the Court as a matter of course or in a routine manner, whenever such a request is made. The Court has to consider diverse aspects including presumption under Section 112 of the Evidence Act; pros and cons of such order and the test of 'eminent need' whether it is not possible for the Court to reach the truth without use of such test."

7. The afore-referred judgment was relied on by the learned counsel appearing for the petitioner and the learned counsel argued that the trial Court in a mechanical way directed the petitioner to undergo DNA test without recording any sufficient reasons and also without considering the other aspects including the presumption under Section 112 of the Evidence Act. According to the learned counsel, since the respondents could not be able to place on record any material *prima facie* showing the relationship between the parties, the trial Court ought not to have directed the petitioner to undergo DNA test.

8. To appreciate the contentions urged, the plea put forth by the defendant in the written statement before the trial Court requires to be examined. In response to the assertion made by the respondents that the 1st respondent is the legally wedded wife and the 2nd respondent is the legitimate son of the petitioner and that the marriage of the 1st respondent with the petitioner was performed on 08-8-2001 at 11.00 p.m., according to Hindu rites and customs in Sri Venu Gopala Swamy Temple situate in Nuzvid Road, Appannaveedu, the defendant contended that at no point of time he had any occasion to visit the temple, he never married the 1st respondent, he did not pay any medical bills at the time of the birth of the 2nd respondent as submitted by the respondents. According to him, he was married to another woman legally and has a female child through her. He further contended that the 1st respondent made similar allegations before the elders and the elders admonished her not to make any such allegations claiming relationship with the

petitioner.

9. It is nextly contended by the petitioner in the written statement before the trial Court that the

1st respondent's family has never maintained any moral or social values in the society, it is known to one and all in the vicinity, the mother of the 1st respondent deserted her husband long back and leading immoral life and therefore, the submission made by the 1st respondent that she has been depending on her father for food and clothing is absolutely false.

10. Thus, the petitioner not only denied any sort of relationship with the 1st respondent and branded her entire family as immoral and devoid of any social values. He went to the extent of making allegations against the mother of the 1st respondent.

11. Under these circumstances, the question arises as to whether the respondents are entitled to insist upon the trial Court to issue a direction to the petitioner to undergo DNA test.

12. In this context, it is relevant to refer to the judgment of the Supreme Court in **Sharda v. Dharmpal**, wherein it was held as follows:

“80. Therefore, when there is no right to privacy specifically conferred by Article 21 of the Constitution of India and with the extensive interpretation of the phrase “personal liberty” this right has been read into Article 21, it cannot be treated as absolute right. What is emphasized is that some limitations on this right have to be imposed and particularly where two competing interests clash. In matters of aforesaid nature where the legislature has conferred a right upon his spouse to seek divorce on such grounds, it would be the right of that spouse which comes in conflict with the so-called right to privacy of the respondent. Thus the Court has to reconcile these competing interests by balancing the interests involved.

81. If for arriving at the satisfaction of the Court and to protect the right of a party to the lis who may otherwise be found to be incapable of protecting his own interest, the Court passes an appropriate order, the question of such action being violative of Article 21 of the Constitution of India would not arise. The Court having regard to Article 21 of the Constitution of India must also see to it that the right of a person to defend himself must be adequately protected.

82. It is, however, axiomatic that a Court shall not order a roving inquiry. It must have sufficient materials before it to enable it to exercise its discretion. Exercise of such discretion would be subjected to the supervisory jurisdiction of the Court in terms of S.115 of the Code of Civil Procedure and/or Article 227 of the Constitution of India. Abuse of the discretionary power at the hands of a Court is not expected. The Court must arrive at a finding that the applicant has established a strong *prima facie* case before passing such an order.”

13. From the two judgments of the Supreme Court referred supra, it is clear that the Court has a wide discretion to direct a party to undergo any medical test including the DNA test. But, the discretion has to be exercised by the Court properly on being satisfied about the party requiring the Court to direct such a test to establish

a strong *prima facie* case. The party against whom an order directing to undergo medical test is passed, is not permitted to contend that it offends his personal liberty. When the right of a party to the proceeding comes into conflict with the so-called right to privacy and personal liberty of the opposite party, the Court has to look into the competing interests of the parties.

14. In the instant case, the petitioner baldly denied any sort of relationship with the respondents. This apart, he made wild allegations against the 1st respondent and her family members. The respondents came forward with

a specific theory that on 08-8-2001 the marriage of the 1st respondent was performed with the petitioner in a temple and thereafter, the spouses led conjugal life.

The 2nd respondent was said to have born to the 1st respondent through the petitioner during the wedlock and also that the petitioner paid the medical bills of the hospital at the time when the 1st respondent delivered the 2nd respondent. Even the petitioner admitted in the written statement that the 1st respondent raised several disputes before the elders in this regard claiming to be the legally wedded wife of the petitioner and that the 2nd respondent was born to her through the petitioner. The petitioner contended that he has no sort of any relationship with the respondents, he has a legally wedded wife and has a female child through her. In view of the total denial of relationship by the petitioner and making wild allegations against the

1st respondent touching her moral character, the right of the respondents to establish their relationship has to be adequately protected by the trial Court. If the trial Court refuses the prayer made by the respondents to direct the petitioner to undergo DNA test, it would be in the considered view of this Court is nothing but refusal to protect the rights of the respondents. The learned trial Court upon considering the relevant materials before it, arrived at the conclusion that directing the petitioner to undergo DNA test is proper. Having regard to the facts and circumstances of the case, this Court is of the opinion that the learned trial Court exercised discretion properly and allowed the petition filed by the respondents. As this Court is of the view that the DNA test proposed to be conducted is essential to establish the rights of the respondents, the order passed by the trial Court does not require any interference in the revision.

15. For the foregoing, the civil revision petition fails and

accordingly the same is dismissed. The miscellaneous petitions, if any, pending in this revision shall stand closed. No costs.

R.KANTHA RAO, J.

01st June, 2015.

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Note:-

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HON'BLE SRI JUSTICE R.KANTHA RAO

Civil Revision Petition No.2502 of 2014

01st June, 2015.

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