

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No.1921 of 2013

ORDER :

This Criminal Revision Case is filed under Sections 397 and 401 of the Code of Criminal Procedure (Cr.P.C.), aggrieved by the order dated 18-06-2013 passed in CrI.M.P.No.1618 of 2013 in M.C.No.17 of 2012 on the file of the Additional Junior Civil Judge,Repalle, Guntur District.

The facts in issue are as under:-

The petitioners herein filed M.C.No.17 of 2012 claiming maintenance under Section 125 Cr.P.C.. Pending the said M.C., the 2nd respondent herein, who is the husband of the petitioner No.1 therein filed CrI.M.P.No.1618 of 2013 requesting the Court to subject the petitioners and 2nd respondent to D.N.A. test. By an order dated 18-06-2013, the trial Court allowed the application and the petitioners herein were directed to co-operate with the 2nd respondent in getting a D.N.A. test done. It was further held that all the expenses should be borne by the 2nd respondent herein. Challenging the same, the petitioners who are the wife and the son of 2nd respondent respectively, filed the Revision.

The issue involved in the present case is whether the petitioners herein can be subjected to D.N.A. test. The same came-up for consideration before Apex Court in **Dipanwita Roy vs.Ronobroto Roy**^[1]. Wherein the Apex Court after considering all the judgments of the Apex Court on the subject held as under:

“ 9. It is borne from the decisions rendered by this Court in Bhabani Prasad Jena (supra), and Nandlal Wasudeo Badwaik (supra), that depending on the facts and

circumstances of the case, it would be permissible for a Court to direct the holding of DNA examination, to determine the veracity of the allegation(s), which constitute one of the grounds, on which the concerned party would either succeed or lose. There can be no dispute, that if the direction to hold such a test can be avoided, it should be so avoided. The reason, as already recorded in various judgments by this Court, is that the legitimacy of a child should not be put to peril.

11. We would, however, while upholding the order passed by the High Court, consider it just and appropriate to record a caveat, giving the appellant-wife liberty to comply with or disregard the order passed by the High Court, requiring the holding of the D.N.A test. In case, she accepts the direction issued by the High Court, the D.N.A. test will determine conclusively the veracity of accusation leveled by the respondent-husband, against her. In case, she declines to comply with the direction issued by the High Court, the allegation would be determined by the concerned Court, by drawing a presumption of the nature contemplated in Section 114 of the Indian Evidence Act, especially, in terms of illustration (h) thereof.”

Keeping in view of the judgment referred to above, it has to be seen whether it is just and necessary to order a D.N.A. test. As seen from the record, the respondent in his counter admitted that as the marriage was performed with the first petitioner and that he came to know that during subsistence of her marriage with one Venkaiah, his marriage was performed. It was further averred that she suppressed the same at the time of marrying the respondent herein. It is stated that he has not cohabited with the first petitioner at any point of time. However, the first petitioner-wife contended that she has no illegal relationship with any other person and she lived with the respondent and lead conjugal life. But there is no reliable evidence on record to show that the 1st petitioner and the respondent lead conjugal life. In the above circumstances, the trial Court found that it was just and necessary to order D.N.A. test. Since there is a dispute with regard to the relationship between the parties and also paternity of the child, and in view of the observations made by the trial Court that there is no

reliable evidence to show that the 1st petitioner and the respondent lived together and lead conjugal life, the arguments raised by the husband that himself and the 1st petitioner never lived together and lead conjugal life, the order subjecting the petitioners to D.N.A. test appears to be just and necessary.

Accordingly, the Criminal Revision Case is dismissed.

As a sequel, Miscellaneous Petitions, if any, pending in this Revision shall stand closed.

JUSTICE C. PRAVEEN KUMAR

29-01-2015

nvl

[\[1\]](#) Laws (SC)-2014-10-22