

THE HONOURABLE SRI JUSTICE RAJA ELANGO
CRIMINAL REVISION CASE No.915 OF 2015

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ORDER:

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This Criminal Revision Case is filed by the petitioner-A.1 challenging the order of the Special Judicial Magistrate of First Class (for Prohibition & Excise), Kurnool allowing CrI.M.P.No.1871 of 2015 in C.C.No.240 of 2013 filed by the complainant to refer complainant-P.W.1 and A.1 for scientific examination to the Forensic Science Laboratory, Hyderabad along with the child born to P.W.1 for DNA test.

The facts of the case are as follows:

The petitioner-A.1 and his mother-A.2 are facing trial in C.C.No.240 of 2013 for the offence under Section 498-A IPC and under Sections 3 & 4 of Dowry Prohibition Act on the complaint lodged by the de facto complainant, wife of A.1. During the course of trial, in the cross-examination of P.W.1-de facto complainant, it is suggested to her that her marriage was not performed with A.1 and that she never led marital life with A.1. In view of the said suggestion, P.W.1 filed impugned application with the above prayer. The trial Court allowed the application in the light of the said suggestion made to P.W.1.

Heard both sides and perused the material available on record.

The learned counsel for the petitioner submitted that the petitioner should not be compelled to subject himself for DNA test which is against the principles of constitution and it amounts to testimonial compulsion. This Court is of the view that the said contention of the learned counsel for the petitioner is totally against the decisions of the Apex Court since subjecting a person for DNA test will not amount to testimonial compulsion. The learned counsel for the petitioner relied on the decision of

the Apex Court reported in **Smt. Kamti Devi and another v. Poshi Ram** ^[1]. In the said decision, the Court has not passed any order subjecting a person to DNA test which is against the principles of constitution. The Apex Court felt that if the mother of the child is compelled to undergo DNA test, it would affect the future of the child and also observed that the refusal of the mother of the child to undergo DNA test is a ground for the Court to take an adverse inference against her, but at the same time, she should not be subjected to DNA test. In the present case, the facts are totally different.

The petitioner herein along with his mother is facing trial in C.C.No.240 of 2013 for the offence punishable under Section 498-A IPC and Sections 3 & 4 of Dowry Prohibition Act. During the cross-examination of P.W.1, the petitioner herein put a suggestion to her that her marriage was not performed with him and that she never led marital life with him. In view of the fact that there is total denial of relationship with P.W.1 by the petitioner herein, the trial Court rightly allowed the petition for DNA test. No ground is made out to interfere with the impugned order.

In the result, the revision is dismissed

Consequently, miscellaneous petitions, if any, pending, shall stand closed.

JUSTICE RAJA ELANGO

15.06.2015

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^[1] (AIR 2001 SC 2226)