

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.4236 of 2015

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'the Cr.P.C.') by the petitioner, who is respondent in Criminal Revision Petition No.29 of 2012 on the file of the VI Additional Sessions Judge (III FTC), Warangal at Mahabubabad, praying to stay all further proceedings pursuant to the order dated 31.07.2014 in the said Criminal Revision Petition.

2. Heard the learned counsel for the petitioner so also the learned Public Prosecutor representing State-1st respondent before admission and before ordering notice to the respondent Nos.2 to 4 and perused the material on record.

3. The learned Judicial Magistrate of First Class, Thorrur, dismissed the application filed by the respondent Nos.2 to 4 herein for conducting DNA test of the petitioner herein. The respondent Nos.2 to 4 herein challenged the said dismissal order before the VI Additional Sessions Judge (III FTC), Warangal at Mahabubabad in C.R.P.No.29 of 2012 and the learned Sessions Judge set aside the order dated 19.06.2012 in CrI.M.P.No.1316 of 2012 in M.C.No.13 of 2009 under Section 125 of Cr.P.C. passed by the learned Magistrate and by permitting the DNA test. A perusal of the order apart from the latest decision in ***Nandlal Wasudeo Badwair v. Lata Nandlal Badwaik and another***^[1] makes it clear that this evidence is helpful to arrive at a conclusion to the learned Magistrate even though the proceedings under Section 125 of Cr.P.C. are summary, what the Apex Court held in permitting DNA Examination, the claim made for maintenance against the so-called petitioner where legitimacy of the child is in dispute that when there is a conflict between a conclusive proof envisaged under law of presumptions (Sections 4 and 112 of the Evidence Act) and a proof based on scientific advancement accepted by the World Community is the correct, the latter must prevail. Hence, scientific proof provided by DNA test

report in a maintenance case is acceptable.

4. Having regard to the above, there is nothing to admit the application under Section 482 of Cr.P.C. to stay all further proceedings in the above M.C.No.13 of 2009. The Criminal Petition is therefore disposed of so that the trial Court after such DNA test opinion report, can arrive its own conclusion after hearing both sides uninfluenced by any of the observations in the orders of the Courts below or of this order.

5. Consequently, miscellaneous applications, if any, pending in this Petition shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date: 18.06.2015

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[\[1\]](#) (2014) 2 SCC 576