

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.08.2016

DELIVERED ON : 19.08.2016

CORAM:

THE HON'BLE MR. JUSTICE P.N.PRAKASH

Cr1.O.P. No.17668 of 2016

Harikrishnan

Petitioner

vs.

1 G. Sumathy
2 Minor Stella
3 Minor Samuel

Respondents

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records and set aside the docket order dated 30.04.2014 in M.P. No.674 of 2013 in M.P. No.287 of 2006 on the file of the III Additional Family Court, Chennai.

For petitioner Mrs. Chitra Sampath, Sr. Counsel
for Mr. T.S. Sivasubramanian

ORDER

This Criminal Original Petition has been filed to call for the records and set aside the docket order dated 30.04.2014 passed in M.P. No.674 of 2013 in M.P. (sic) M.C. No.287 of 2006 on the file of the III Additional Family Court, Chennai (for brevity "the Trial Court").

2 For the sake of convenience, the parties will be referred to by their name.

3 It is the case of G. Sumathy that she got married to Harikrishnan on 15.06.1989 and through the wedlock, they have two children, viz., Stella and Samuel. It is alleged by Sumathy that Harikrishnan failed and neglected to maintain her and her children and hence, she filed M.C. No.287 of 2006 before the Trial Court, under Section 125, Cr.P.C. for maintenance. Harikrishnan denied the very factum of marriage and in those circumstances, Sumathy was forced to file a petition in M.P. No.674 of 2013 in M.C. No.287 of 2006 before the Trial Court, for a direction to Harikrishnan to submit himself for DNA profiling, in order to determine the paternity of the two children. After hearing the objections of Harikrishnan, the Trial Court allowed M.P. No.674 of 2013 by order dated 30.04.2014, challenging which Harikrishnan is before this Court now, in the year 2016.

4 When the matter was taken up for admission on 12.08.2016, Mrs. Chitra Sampath, learned Senior Counsel appearing for Harikrishnan submitted that the Trial Court has passed a cryptic order in M.P. No.674 of 2013 without assigning any reason and therefore, the impugned order is liable to be set aside.

5 The order impugned in this petition reads as under:

"M.P. No.674 of 2013
in
M.C. No.287 of 2006
Date: 30/4/2014
Order passed

In the result, this petition stands allowed and it is hereby ordered that the petitioner and respondent to undergo DNA Test on the date of time fixed by the concerned Hospital authorities. No costs.

III Addl. Principal Judge"

6 This Court felt that the order that has been enclosed in the typed set of papers is only the docket order that is normally written in the "A" diary and there is bound to be a detailed speaking order in the case bundle. Therefore, this Court called for a report from the Trial Court.

7 The Trial Judge has sent a copy of the detailed order that has been passed in M.P. No.674 of 2013 in M.C. No.287 of 2006 on 30.04.2014. The Trial Judge has also informed this Court that Harikrishnan was aware of this order, but, was haggling with the Trial Court on trivial grounds, viz., that his name has been typed as Karikrishnan in the order and that the order does not say as to who should bear the cost of DNA test.

8 It is common knowledge that in the Family Court, the parties themselves appear and therefore, Harikrishnan cannot be heard to plead that he was not aware of the fact that the Trial Court had passed a detailed and reasoned order in M.P. No.674 of 2013. In the considered opinion of this Court, by challenging the docket order and contending that no full order has been passed, Harikrishnan has attempted to mislead this Court and therefore, no indulgence can be shown to such a litigant who has approached this Court with unclean hands.

9 Mrs. Chitra Sampath, learned Senior Counsel appearing for Harikrishnan assailed the detailed order by placing reliance upon a judgment of the Supreme Court in Bhabani Prasad Jena vs. Convenor Secretary, Orissa State Commission for Women and another [(2010) 8 SCC 633]. The

learned Senior Counsel submitted that now, the children have grown up and hence, the question of undergoing DNA test, can, in no way be relevant for the Trial Court to decide the petition filed by Sumathy under Section 125 Cr.P.C.

10 On a perusal of the pleadings, it is manifest that Sumathy is finding it very difficult to prove the date of marriage with Harikrishnan and that Harikrishnan is repudiating the very factum of marriage. Under such circumstances, Sumathy was forced to file M.C. No.287 of 2006 for DNA profiling in order to prove to the Court that the children were born through Harikrishnan and that will establish that there was cohabitation between Sumathy and Harikrishnan, which is itself sufficient for a decision under Section 125, Cr.P.C.

11 Deserted women cannot be allowed to be left in the lurch by profligate men. This Court does not find any reason, much less any good reason, to interfere with the well merited order dated 30.04.2014 passed by the Trial Court in M.C. No.287 of 2006.

Hence, this Criminal Original Petition is dismissed with costs of Rs.10,000/-, which shall be deposited by Harikrishnan within two weeks from the date of receipt of a copy of this order to the credit of M.C. No.287 of 2006 before the Trial Court. On such deposit, the Trial Court is directed to use that amount for defraying the expenses for DNA profiling. If Harikrishnan fails to deposit the amount, apart from taking other action against him, it is open to the Trial Court to draw adverse inference against him and proceed with M.C. No.287 of 2006.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

cad
To

1 The III Additional Family Judge
Chennai

2 The Public Prosecutor
High Court of Madras
Chennai 600 104

+2ccs to Mr.T.S. Sivasubramanian,
Advocate, S.R.No.47509, 47598

<https://hcservices.ecourts.gov.in/hcservices/>
AD(CO)
EU(06/09/2016)

CrI.O.P. No.17668 of 2016