



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:09.06.2016

CORAM:

THE HONOURABLE DR.JUSTICE P.DEVADASS

C.R.L.RC (MD) No.590 of 2015

and

M.P (MD) No.1 of 2015

Ganesan

- Petitioner/Petitioner/Respondent

-vs-

1.Muthu Buvaneswari

-1st respondent/1st respondent/1st petitioner

2.Vishali (Minor)

-2nd respondent/2nd respondent/2nd petitioner

3.Devadharshan (Minor)

-3rd respondent/3rd respondent/3rd petitioner

Represented by their Mother/the 1st respondent herein

PRAYER: Criminal Revision Petition is filed, under Section 397 r/w 401 Cr.P.C., to call for the records relating to the order, dated 23.09.2015 made in Cr.M.P.No.6204 of 2014 on the file of the District Munsif cum Judicial Magistrate Court, Vadipatti and set aside the same as illegal.

For Petitioner : Mr.R.Gandhi

For Respondents : Mr.V.Palani

O R D E R

An husband, aggrieved by the dismissal of his Cr.M.P.No.6204 of 2014 by the learned District Munsif cum Judicial Magistrate, Vadipatti, has filed this revision.

2. The revision petitioner Ganesan married the first respondent Muthu Buvaneswari in 2006. Dispute arose between both. The wife claimed maintenance for herself and for her daughter and son, who are respondents 2 and 3 in M.C.No.12 of 2013 before the learned District Munsif cum Judicial Magistrate, Vadipatti.

3. In the maintenance case, Ganesan filed Cr.M.P.No.6204 of 2014 for subjecting his wife and children to D.N.A test with regard to his paternity to respondents 2 and 3 through first respondent.

4. The learned Magistrate coming to the conclusion that it is a delaying tactics and it is an attempt to avoid payment of arrears of maintenance and also to indirectly pressurize his wife to withdraw the cases filed by her, dismissed the D.N.A test petition. That is why, this revision.



5. The learned counsel for the petitioner submitted that during the enquiry in the interim application filed in the execution petition for arrears of maintenance, which was based on interim maintenance granted in favour of the wife and children under Section 24 of the Hindu Marriage Act, the first respondent has stated that she is ready for D.N.A test. This aspect has been overlooked by the trial Court. The trial Court simply carried away by the notion that the husband is an erring husband, who is a tricky man, just to avoid payment of arrears of maintenance, he had embarked upon the novel idea of D.N.A test petition.

6. The learned counsel for the respondents would reiterate the very same contentions, which were placed before the learned Judicial Magistrate, Vadipatti, in the D.N.A test application.

7. I have anxiously considered the rival submissions, perused the impugned order and also the materials on record.

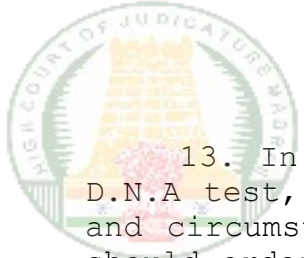
8. D.N.A test is a scientific invention. It will come under Section 45 of the Evidence Act. D.N.A. Test report gives Expert opinion. It is opinion evidence. This is one of the mode to test the paternity of the child to a person. This route has been adopted by the revision petitioner.

9. For mere asking, D.N.A test cannot be ordered. Even if one of the spouses is ready for D.N.A test, the Court cannot be ready as it involves serious emotional issues. The Courts must take extreme care and caution in ordering for such a test. Only when there are materials strong enough to doubt the birth of the children and if it is needed, the Court can order such a test.

10. In this case, Ganesan and Muthu Buvaneswari lived as spouses for a long time. In 2006, they did not know one day they have to fight in D.N.A test petition. In 2006, they were happy married couples. Then they were better halves. Now they have become bitter halves.

11. Before the maintenance case, there were H.M.O.Ps., by both sides. In this respect, each is not second to none. It is pertinent to note that in none of the H.M.O.Ps., Ganesan took up the stand that the children were not born to him through his wife. This aspect has been noted down by the trial Court. Even to order for D.N.A test, whether the petition by husband or by wife, they must make out a strong case. Now in this case, there are some matrimonial proceedings prior to the maintenance case. But in none of the proceedings, Ganesan had made any averments doubting the birth of respondents 2 and 3 to him through his wife.

12. In such circumstances, subjecting the innocent children, namely, respondents 2 and 3 to undergo D.N.A test will be asking them to walk on fire. The revision petitioner may quarrel with his wife, but not with the children. If really Ganesan feels that respondents 2 and 3 are not his children through the first respondent, he should have taken a specific stand. It is very serious allegation that the children are not born to him. Such a serious allegation must be made seriously at the first point in time.



13. In such circumstances, even if a party is willing to undertake D.N.A test, the Court can apply its judicial mind and consider the facts and circumstances of the case and if it is really necessary and then it should order to order for D.N.A test. In the instant case, referring to the various events that took place between this warring couples, the learned Magistrate has declined to order for D.N.A test. I do not find any impropriety in passing the impugned order.

14. In view of the foregoing, this Criminal Revision Case fails and it is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar.

To:

1 The District Munsif cum Judicial Magistrate Court,
Vadipatti.

2 Do Thro' The Chief Judicial Magistrate,
Madurai.

+1CC to M/S.P.T.Thambidurai, Advocate, SR.No. 29400

C.R.L.RC(MD) No.590 of 2015
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