

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

CRIMINAL REVISION CASE No. 1090 of 2015

ORDER:

-

Assailing the order dated 16.04.2015 passed in CrI.M.P. No.282 of 2014 in M.C.No.16 of 2013 on the file of the Family Court, Warangal, wherein and whereunder an application filed under Sections 45 and 112 of the Indian Evidence Act requesting the Court to direct the second petitioner and respondent therein to undergo D.N.A. test was dismissed, the present Revision is filed.

For the sake of convenience, the parties hereinafter be referred to as arrayed in the CrI.M.P.282 of 2014 in M.C.16 of 2013.

The facts in issue are as under :

The dispute with regard to paternity of the second petitioner in a Maintenance Case led to filing of the present application. The first petitioner herein claims that the second petitioner was born to her through the respondent and to ascertain as to who the biological father of the second petitioner is and having regard to the dispute raised an application was filed to send the second petitioner and the respondent for D.N.A. Test. The respondent filed his counter before the trial court stating that the first petitioner is not his wife and there was no marriage between him and the first petitioner. According to him, the first petitioner is the wife of Mohammed Asif Ali and the second petitioner was born through him. He submits that the birth certificate is manipulated showing respondent as the father and as such there is no point in sending him for D.N.A. test. According to him, the second petitioner was born on 23.09.2000 in Ambedkar Hospital, Warangal. The respondent submits that he left abroad on 27.09.1999 i.e., about a year prior to the birth of the second petitioner. It is his case that there is every likelihood of the first petitioner manipulating the D.N.A. report if the respondent is subjected to the test. The respondent further submits that the first petitioner filed O.A. No.133 of

2005 and the second petitioner filed O.A. No.203 of 2005 before the Railway Claims Tribunal, Secunderabad claiming themselves to be the L.Rs., of Mohammad Asif Ali and as such subjecting respondent to go for D.N.A. test would not arise in view of the admitted facts. After considering all the material on record and rival arguments, the trial court rejected the request. Challenging the same, the present Revision is filed.

Now, the question that arises for consideration is "Whether it is just and necessary to send the second petitioner and the respondent in M.C. to go for D.N.A. Test?"

Heard the learned counsel for the petitioners and the learned counsel for the respondent.

As seen from the record, the first petitioner herein filed M.C. claiming maintenance from the second respondent. The averments in the M.C. disclose that herself and the respondent got married in the month of September, 1999 in Hyderabad and both of them lived together for one year in a rented house. After one year of the marriage, the first petitioner is said to have conceived and the respondent made her believe that he will go abroad to earn money and that he would send Rs.2,000/- per month. Accordingly, the respondent left India but there was no information about him. It is said that the first petitioner gave birth to second petitioner at Dr.B.R.Ambedkar Hospital, Warangal. Few months thereafter, the respondent is alleged to have called her stating that he did not get any employment and requested to provide monetary help. The petitioner is said to have obtained loan from several persons to a tune of Rs.3,50,000/- and provided the same to the respondent through Mohammad Asif. For several years there was no information with regard to the whereabouts of the respondent. Subsequently, the petitioner learnt that the respondent is in India and he married another woman, who was working as a Government Teacher at Mancherial.

The material on record further discloses that pursuant to the death of Md. Asif Ali, the first petitioner herein filed two O.As., i.e., O.A.No.133 of

2005 and O.A.No.203 of 2005 claiming herself and the second petitioner as his legal heirs of Md. Asif Ali before the Railway Claims Tribunal, Secunderabad. Ex.A-1 is the birth certificate of the second petitioner, which shows that the second petitioner was born on 23.09.2000 and the name of the father shown as Mohammed Yakub Ali i.e., the respondent herein. In M.C., which has been filed by the petitioner herein, during her cross-examination as P.W.1, it has been elicited that the second petitioner was born in E.S.I. Hospital, Labour colony, Warangal, whereas in the petition in evidence in chief has stated that the said child was born at Dr.B.R.Ambedkar Hospital, Warangal. Further, P.W.1 admits that she did not file any document showing her marriage with the second respondent herein. She admits that Mohammad Asif Ali died in a train accident about six or seven years prior. It is also admitted by her that herself and Mohammad Asif Ali were going to admit the second petitioner in the School/hostel at the time of the accident. She also admits that she claimed compensation before the Railway Claims Tribunal, Secunderabad vide O.A. No.133 of 2005 and 203 of 2005. She, however denies a suggestion to the effect that her husband's name and also the father's name of the second petitioner was shown as Md. Asif Ali in Railway Claims Tribunal. From the evidence available on record, it is clear that immediately after the death of Md. Asif Ali, the petitioner and her son who is the second petitioner herein filed the two O.As., referred to above claiming compensation as wife and son of the deceased therein. In view of the same, a doubt arises as to the genuinity of the birth certificate which is placed on record as Ex.A-1. If really the second petitioner is not the son of Md. Asif Ali, there is no reason for her to file O.A. 133 of 2005 and O.A. 203 of 2005 claiming compensation. Having regard to the inconsistency stands taken by the petitioner before the Railway Claims Tribunal and before the Family Court, there is no justification for interference with the order under challenge.

Accordingly, the Criminal Revision Case is dismissed. As a sequel to it, miscellaneous petitions pending if any, in this Revision shall stand

closed.

JUSTICE C. PRAVEEN KUMAR

Date: 11.03.2016
GM