

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.2482 OF 2012

ORDER:

This Criminal Revision Case is filed under Section 397 read with 401 of Cr.P.C. challenging the order dated 21.08.2012 in Cr.M.P.No.470 of 2008 in M.C.No.4 of 2000 on the file of the Court of the Judicial Magistrate of First Class, Kotabommali.

2. Learned counsel for the petitioner submitted that the order passed by the trial Court is not sustainable either on facts or in law.

3. None appeared on behalf of the second respondent.

4. The facts leading to filing of the present criminal revision case are briefly as follows:

The second respondent herein filed a petition under Section 125 Cr.P.C. seeking maintenance from the petitioner alleging that he is the son of the petitioner. The petitioner filed counter before the trial Court *inter alia* contending that the second respondent is not his son. During pendency of the main M.C., the petitioner herein filed CrI.M.P.No.199 of 2001 seeking permission of the Court to send the second respondent herein and his mother for D.N.A. test and the same was withdrawn by him. Taking into consideration the facts and circumstances, the trial Court allowed the petition. Hence, the revision.

5. The second respondent is claiming maintenance from the petitioner. The contention of the petitioner is that the second respondent herein is not his son.

6. As per the allegations made in the petition, the petitioner herein developed illicit intimacy with the mother of the second respondent, which resulted in birth of the second respondent. The material

available on record clearly reveals that there is no formal marriage between the petitioner and the mother of the second respondent. It is a settled principle of law that an illegitimate child is also entitled to claim maintenance from his father by filing a petition under Section 125 Cr.P.C. If really the petitioner has not developed illicit intimacy with the mother of the second respondent, there is no need for the second respondent to approach the Court claiming maintenance. It is an admitted fact that during pendency of M.C.No.4 of 2000, the petitioner herein filed Crl.M.P.No.199 of 2001 under Section 45 of the Indian Evidence Act praying the trial Court to send the second respondent and his mother for D.N.A. test. For the reasons best known, the petitioner herein withdrawn the said petition. Merely because the petitioner withdrawn Crl.M.P.No.199 of 2001 by itself is not a valid ground to dismiss the present revision. If the petitioner, second respondent and his mother are sent to D.N.A. test, the ultimate truth will come to light. In order to resolve the issue, this Court is placing reliance on the ratio laid down in **Govindula Sathaiah v. Govindula Manjula**^[1], wherein relevant portion from paragraph No.7 reads as follows:

“7. Reverting to the facts of the case, it is to be noted that the petitioner/husband made categorical assertions regarding the infidelity of his wife in the petition filed by him for divorce and also in the affidavit filed in support of the instant petition. He has gone to the extent of naming the person, who was the father of the male child-Shiva Kumar born to the respondent/wife. On the ground that the wife gave birth to a child, who was not fathered by the petitioner, the divorce was sought.....”

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7. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that it is a fit case to send the petitioner, second respondent and his mother to D.N.A. test in order to ascertain the relation between the parties. The trial Court has assigned cogent and valid reasons to its findings. There is no illegality or irregularity in the

order of the trial Court. Hence, I am not inclined to interfere with the order passed by the trial Court.

8. Accordingly, the Criminal Revision Case is dismissed.

9. Consequently, Miscellaneous Petitions, if any, pending in this Criminal Revision Case shall stand closed.

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T.SUNIL CHOWDARY, J

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Date: 11.07.2016

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