

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.4121 of 2015

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India by the respondent/wife is directed against the order dated 20.07.2015 of the learned Principal Senior Civil Judge, Tenali of Guntur District passed in I.A.no.219 of 2013 in HMOP 13 of 2010 filed by the husband, the respondent herein, under Section 151 of the Code to direct the wife to produce the female child born on 28.06.2000 before a doctor specialized in the field for conducting DNA test and to furnish a report regarding the paternity of the child.

2. I have heard the submissions of the learned counsel for the revision petitioner/wife and the learned counsel for the respondent/husband. I have perused the material record. The parties in this revision shall hereinafter be referred to as the petitioner/wife and the respondent/husband.

3. The preliminary and core facts, which are necessary for consideration, in brief, are as follows:

The husband filed the original petition (OP) for dissolution of the marriage between the spouses and for grant of divorce on the grounds of adultery, desertion and cruelty. The wife is resisting the said petition. In the OP, the husband had *inter alia* averred that the marriage was consummated on 21.10.1999 and that the parties have lived together only for ten days and that he had left Vemuru village as he was working in the Army and that after some time, he came to know that his wife had developed illicit intimacy with one Tadikonda Prasad S/o Koteswara Rao, a rice mill owner, and that she was having such intimacy even prior to the marriage and that she has given birth to a female child on 28.06.2000 through the said Tadikonda Prasad and that the respondent/husband has not fathered the female child. It is further pleaded in the case of the husband that the wife had spent only one day at

his house after the marriage and that she had left the house even without spending the three customary nights and that during the pendency of the maintenance case only, he came to know about his wife's illicit intimacy with the said Prasad even from a time prior to the marriage and that the daughter was born to the petitioner/wife on account of her illicit intimacy with the said Prasad. The wife in her counter had *inter alia* contended that in the maintenance case, the respondent/husband had not taken any such plea and had also not suggested any such case in the cross-examination the petitioner/wife and that the respondent/husband had never suspected the character of the petitioner/wife and never questioned the paternity of the child at any point of time, from the beginning of the litigation till the end of the maintenance proceedings, and that the CRP 162 of 2009 was dismissed by the learned Additional District Judge, Tenali by recording a finding that the parentage of the minor girl was questioned after a long gap of nine years and therefore, there is no need to interfere with the order granting maintenance and that the respondent/ husband had earlier filed a similar application and that the said application was dismissed and that in the said order, the court had held that the husband cannot straight away seek permission to send the child to DNA test and that ordering such test would lead to repercussions and that the child would be subjected to social stigma and that the petition is filed only to escape the liability to pay maintenance to the minor child and that he had given information to his higher officials that the child was born to him and that she is his daughter.

4. Having regard to the pleadings and the submissions of both the parties, the Court below, on merits, had allowed the petition of the husband. Therefore, the aggrieved wife is before this Court.

5. The learned counsel for the wife while reiterating her defence, which is extracted supra, would contend as follows: "The minor daughter is the daughter of the respondent/husband. The court below had failed to take note of the premature birth of the child. The impugned order, if allowed to sustain, would result in humiliating the wife who is innocent. The husband had access to the wife. The child was born under the lawful wedlock. No case

much less a *prima facie* case is made out to direct the wife to undergo DNA test. When there is no need to undergo such a test and when there is no *prima facie* case, by ordering the DNA test, the wife need not be subjected to the trauma of undergoing such a test. The petition is also intended for character assassination.” Having so urged, the learned counsel for the wife has drawn the attention of this Court to Section 112 of the Indian Evidence Act, 1872 and also to a decision of the Supreme Court in **Goutham Kundu Vs. State of West Bengal**^[1], wherein, the Apex Court held that that there must be a strong *prima facie* case and that the husband must establish non access in order to dispel the presumption arising under Section 112 of the Evidence Act. His further submission is that in a matter where paternity of the child is in issue, the use of DNA test is extremely delicate and sensitive aspect and that subjection of the parties and the child to such a test would *prima facie* lead to bastardizing the child and that therefore, the Court must carefully examine as to what could be the consequences of ordering such a test; and that the order of the court below passed without adverting to the facts and the legal position correctly is unsustainable.

6. On the other hand, the learned counsel for the respondent/husband while supporting the orders of the Court below, had contended that the husband had specifically pleaded in the OP that he had not fathered the child; and that adultery is one of the grounds on which divorce is being sought; and that the husband had also specifically named the adulterer in his petition; and that if DNA test is ordered, the truth will come out as rightly held by the trial Court; and, that it is necessary to note that on the ground that the wife gave birth to a child, who was not fathered by the husband, divorce was being sought; and that it is impossible for the husband to establish his case unless DNA test as sought for is ordered; and that in view of the latest decision of the Supreme Court, the order of the court below is sustainable both under facts and in law. In support of his contentions, he had placed reliance on the decisions in **Dipanwita Roy v. Ronobroto Roy**^[2] and **Manjudari Neerada @ Radhi v. M.P. Narasimha Rao**^[3]. He would submit

that the Supreme Court in the latest decision had also considered not only the decision which was followed by the trial Court but also the other decisions holding the field and that the Supreme Court had finally held that the husband's plea that he had no access to the wife when the child was begotten stands proved by the DNA test report and that in the face of such a report, the Court cannot compel the husband to bare the fatherhood of a child, when the scientific report proves the contrary and that, therefore, in view of the latest decision, the order of the trial Court brooks no interference. He had also pointed out from the decision cited, the following observations: **'We are conscious that an innocent child may not be bastardised as the marriage between her mother and father was subsisting at the time of her birth, but in view of the DNA test reports and what we have observed above, we cannot forestall the consequence. It is denying the truth. "Truth must triumph" is the hallmark of justice.'**

7. On the other hand, the learned counsel for the wife would submit that Courts in India cannot order DNA test as a matter of course and that there must be a strong *prima facie* case and that the husband must establish non access in order to dispel the presumption arising under Section 112 of the Evidence Act and that it is for the court to carefully examine what would be the consequence of ordering the blood test and that in the affidavit filed in support of the petition, the husband has baldly alleged non access and that the present plea was not raised at the earliest opportunity and this plea, which is belatedly raised, is a false plea and that in the facts and circumstances of the case, the order impugned is not sustainable and needs interference.

8. I have bestowed my attention to the facts and the submissions. I have gone through the precedents cited.

9. Reverting to the facts of the case, it is to be noted that the respondent/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 petition. He has gone to the extent of naming the person,

namely, Tadikonda Prasad S/o Koteswara Rao, who is said to be the father of the female child born to the petitioner/wife. On the ground that the wife gave birth to a child, who was not fathered by the petitioner, the divorce was sought. The law is now well settled that depending upon the facts and circumstances of the case, it would be permissible for a Court to direct for holding of a DNA test to determine the veracity of the allegations which constitute one of the grounds on which the husband would either succeed or lose. In the decision in **Dipanwita Roy** (2nd cited), the Supreme Court having noted the provision of Section 112 of the Indian evidence Act held as follows:

We may remember that Section 112 of the Evidence Act was enacted at a time when the modern scientific advancement and DNA test were not even in contemplation of the legislature. The result of DNA test is said to be scientifically accurate. Although Section 112 raises a presumption of conclusive proof on satisfaction of the conditions enumerated therein but the same is rebuttable. The presumption may afford legitimate means of arriving at an affirmative legal conclusion. While the truth or fact is known, in our opinion, there is no need or room for any presumption. Where there is evidence to the contrary, the presumption is rebuttable and must yield to proof. The interest of justice is best served by ascertaining the truth and the court should be furnished with the best available science and may not be left to bank upon presumptions, unless science has no answer to the facts in issue. In our opinion, when there is a conflict between a conclusive proof envisaged under law and a proof based on scientific advancement accepted by the world community to be correct, the latter must prevail over the former.

Here in the present case, the husband has categorically pleaded that he has no access to the wife and that he had not fathered the child. Therefore, there is a likelihood that the husband's plea that he had no access to the wife when the child was begotten stands proved by the DNA test report as, in the facts and circumstances of the case, it is possible to opine that the proof based on DNA test would be sufficient to dislodge the presumption under Section 112 of the Evidence Act. This Court is in agreement with the argument of the

learned counsel for the respondent that but for the DNA test it would be impossible for the respondent/husband to establish and confirm the assertions made in the pleadings. Therefore, this court is satisfied that a direction can be issued as prayed for in the petition of the husband. Having regard to the above analysis and the precedential guidance in the decision in **Dipanwita Roy** (2nd cited), which is binding on the parties and as the facts of the case before the Supreme Court bear close similarity to the facts of the case which this Court is dealing presently, this Court finds that the trial court is justified in allowing the application of the husband and that therefore, the said order does not brook interference.

10. In the result, the Civil Revision Petition is dismissed. The trial Court shall accordingly direct the petitioner/wife, the respondent/husband and the female child of the petitioner/wife to undergo DNA test by referring them to the Centre for Cellular and Molecular Biology, Habsiguda, Hyderabad or any other Government Institute. However, it is made clear that in case the wife accepts the directions that the trial court may issue in pursuance of the orders of this court, the DNA report will determine the conclusiveness of the veracity of the accusation levelled by the husband against her; but, in case she declines to comply with the directions, the allegations of the husband would be determined by the court below by drawing a presumption of the nature contemplated under section 114 of the Evidence Act especially in terms of illustration (h) thereof. Before referring the parties to undergo the test as directed in these orders, the trial Court shall first direct the husband to deposit the required amount towards the fee of the expert and the expenses for the said test.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this civil revision petition shall stand closed.

M. SEETHARAMA MURTI, J

01st June 2016
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[\[1\]](#) (1993) 3 SCC 418

[\[2\]](#) AIR 2015 SC 418

[\[3\]](#) 2015(4) ALT 157