

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE NO.2220 OF 2016

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C. challenging the order, dated 25-07-2016 in Criminal Revision Petition No.38 of 2015 on the file of the III Additional Sessions Judge, Kurnool at Nandyal.

2. The contention of the learned counsel for the petitioner is two fold viz., (1) the revisional Court set aside the order of the trial Court without taking into consideration the pleadings in the petition and counter and (2) the order passed by the revisional Court is not sustainable either in law or on facts.

3. Per contra, learned counsel for the respondents strenuously submitted that the trial Court allowed the petition without giving a *prima facie* finding with regard to the paternity of the children. He further submitted that the revisional Court considered the material available on record in right perspective and set aside the order of the trial Court.

4. The parties hereinafter will be referred to as they were arrayed in CrI.M.P.No.2542 of 2014 in M.C.No.45 of 2011 on the file of the Special Magistrate, Nandyal, to avoid confusion.

5. The facts, leading to filing of the present revision are as follows: The marriage of the petitioner with the 1st respondent was performed on 30-11-2008 at Allagadda, as per Hindu rites and caste customs. The 1st respondent gave birth to two children i.e., respondents 2 and 3. The 2nd respondent is aged about 3 years and the 3rd respondent is aged about 5 months by the time of filing of M.C.No.45 of

2011. The 1st respondent filed the above M.C. against the petitioner under Section 125 Cr.P.C. seeking maintenance. During the pendency of M.C., petitioner herein filed the above Crl.M.P. with a prayer to conduct DNA test to the petitioner and the respondents in order to prove that the petitioner is not the biological father of the respondents 2 and 3. The petitioner also filed O.P.No.22 of 2013 against the 1st respondent on the file of the Senior Civil Judge Court, Allagadda, to dissolve the marriage between him and the 1st respondent and the same is pending

6. After considering the material on record, the trial Court allowed the above Crl.M.P.. Aggrieved thereby, the respondents herein filed the above Criminal Revision Petition before the III Addl. Sessions Judge, Kurnool at Nandyal, and the same was allowed on 25-07-2016. Hence, this Criminal Revision Case.

7. Now the point that arises for consideration in this revision is whether the order passed by the revisional Court is sustainable under law or not?

8. The grievance of the petitioner is that he is not the biological father of the respondents 2 and 3. Till filing of the above M.C., the petitioner did not dispute that he is not the biological father of the respondents 2 and 3.

9. Both counsel submitted that the petitioner has not taken any specific plea in the above O.P. filed by him that he is not the biological father of respondents 2 and 3. Petitioner filed the counter in the above M.C. It is not out of place to extract relevant portion in the counter, which reads thus:

“The respondent is ready and willing to live with the 1st petitioner and to lead happy matrimonial life.

The 1st petitioner herself is not co-operating with the respondent to lead matrimonial life. The 1st petitioner is not allowing the respondent at least to see his children. When the respondent is tried to see his children, she will threatening that she will file another cases against the respondent.”

A perusal of the above, clearly demonstrates that the petitioner in unequivocal terms admitted that respondents 2 and 3 are his children. It is needless to say that admitted facts need not be proved. If really, the petitioner is not the biological father of the respondents 2 and 3, nothing prevented him to issue legal notice to the 1st respondent when she gave birth to the first child or at least when she gave birth to second child. It is not the case of the petitioner that he is not aware that 1st respondent gave birth to two children, till filing of the above M.C.

10. The petitioner has not taken a specific stand in the above O.P. that he is not the biological father of the respondents 2 and 3. The petitioner appeared in the above M.C. in the year 2011 itself. He did not choose to file similar type of petitions either after receipt of summons or at least at the time of filing of the counter in the above M.C. For the reasons best known to him, the petitioner kept quiet for a period of three years even after filing of the above M.C. The petitioner filed the above CrI.M.P. in the year 2014 stating that he is not the biological father of the respondents 2 and 3. The trial Court allowed the said petition solely on the ground that the petitioner challenged the paternity of the children. Mere taking such a plea by itself is not a valid ground to allow the petition. It is the duty of the Court to consider the material available on record before passing this type of orders. As rightly pointed out by the learned counsel for the petitioner that the trial Court has not given any

reasons, much less, cogent and valid reasons for allowing the petition.

11. It is a settled principle of law that the Court has to assign reasons, much less, cogent and valid reasons while allowing or dismissing the petitions. The trial Court without assigning any reasons, much less, cogent and valid reasons, simply allowed the petition on the sole ground that the petitioner has challenged the paternity of respondents 2 and 3. The revisional Court has considered the factual aspects of the case and assigned reasons, much less, cogent and valid reasons in para 13 of the order for setting aside the order of the trial Court.

12. Viewed from any angle, the order passed by the trial Court in the above CrI.M.P. is not sustainable either in law or on facts. On the other hand, the revisional Court has passed the well reasoned order. There is no illegality or irregularity or impropriety in the order passed by the revisional Court, which warrants interference of this Court by exercising the revisional jurisdiction under Section 397 Cr.P.C.

13. Accordingly, the Criminal Revision Case is dismissed. Miscellaneous petitions, if any pending, in this revision shall stand closed.

T.SUNIL CHOWDARY, J

DATED: 11-11-2016.
Hsd