

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.11.2017

Coram

THE HONOURABLE Mr. JUSTICE V.BHARATHIDASAN

Crl.RC.No.1390 of 2012 and
M.P.No.1 of 2012

1.Lakshmanan

2.Rathi

3.Chandran ... Petitioners/Respondent/Respondent

V.

1.Damayanthi

2.Nagalakshmi (Minor) ... Respondents/Petitioner/Complainant

(rep by her mother,
natural guardian damayanthi)

Prayer: Revision Petition filed under Section 397 & 401 of the Criminal Procedure Code, to call for the records relating to the impugned order dated 04.01.2012 passed in Crl.M.P.No.5189 of 2011 in C.C.No.357 of 2010 on the file of the Judicial Magistrate No.I, Thiruvallur and set aside the same.

For Petitioners : Mr.P.R.Thiruneelakandan

For Respondents : Mr.A.Ramkumar
Legal Aid Counsel

ORDER

This revision petition has been filed by the husband as against the order passed in Crl.M.P.No.5189 of 2011 in C.C.No.357 of 2010 dated 04.01.2012 by the learned Judicial Magistrate No.I, Tiruvallur, in allowing the petition filed under Section 54 Cr.P.C. by the 1st respondent/wife for conducting DNA test.

2.The case of the 1st respondent/wife is that the 1st respondent is the wife of the 1st petitioner and the 2nd respondent is their daughter. The marriage between the 1st petitioner and the 1st respondent took place on 29.12.2009 and out of the wedlock, the 2nd respondent was born, subsequently, he deserted the respondents, and now the 1st respondent alone maintaining the 2nd respondent. Therefore, the respondent/wife has filed a petition under Section 12 of the Domestic Violence Act seeking for maintenance at the rate of Rs.3000/- each to the respondents. Pending the above petition, the 1st petitioner/husband filed a counter disputing the paternity of the 2nd respondent.

3.In the above circumstances, the 1st respondent/wife filed an application for conducting a DNA test to ascertain the paternity of the child as that of the 1st petitioner/husband. The said application was allowed by the trial Court on the ground that the 1st petitioner herein did not file his counter and not appearing in the Court, despite several chances have been given to him to file counter. Challenging the above said order, the 1st petitioner/husband filed the present revision.

4.Even though notice was served on the respondents and their names have also been printed in the cause list, they did not appear before this Court. Therefore, this Court, on 10.10.2017, appointed a Legal Aid Counsel for the respondents. I have heard counsel for petitioner and counsel for respondent and perused the records.

5.The learned counsel for the petitioners would contend that the 1st petitioner/husband has already filed a counter in this case contending that there is no necessary for conducting a DNA test, and he was always ready to contest the above application. But the trial Court erroneously allowed the petition without considering the case on merits.

6.The trial Court allowed the application filed by the 1st respondent/wife, only on the ground that the 1st petitioner/husband did not file his counter, despite several chances given.

7.From the perusal of records, it could be seen that the trial Court has allowed the application only due to non-filing of counter affidavit by the petitioner. Since the 1st petitioner/husband filed a counter affidavit, this Court, in order to give him a chance to contest the application on merit, is inclined to set aside the the impugned order passed by the trial Court, and the matter is remanded to the trial Court for fresh consideration. The trial Court shall consider the case on

merits and pass orders, after giving opportunity to the petitioners and the respondents.

8.In fine, the Criminal Revision Petition is disposed of with the above direction. The Tamil Nadu Legal Services Authority is directed to pay the remuneration to the Legal Aid Counsel, who appeared before this Court. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-iii)

//True Copy//

Sub Assistant Registrar

Sgl

To

- 1.The Judicial Magistrate No.I,
Thiruvallur.
- 2.The Tamil Nadu Legal Services Authority,
High Court, Madras.

Copy to:

The Section Officer,
Criminal Section, High Court, Madras.

+1cc to Mr.P.R.THIRUNEELAKANDAN, Advocate, S.R.No. 84854

Crl.R.C.No.1390 of 2012

SSV(CO)
TR(06/06/2018)

सत्यमेव जयते

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