

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE No.2246 of 2014

ORDER :

The present Criminal Revision Case is filed by the petitioners, who are Accused Nos.1 and 2 (for short 'A.1 and A.2') of Crime No.121 of 2010 of Yacharam Police Station, Cyberabad Commissionerate, Hyderabad, aggrieved by the order dated 17.10.2014 in CrI.M.P.No.92 of 2014 in S.C.No.70 of 2012 passed by the learned XIII Additional District and Sessions Judge, Ranga Reddy District at L.B. Nagar, Hyderabad, allowing the petition filed under Section 45 of the Indian Evidence Act, directing the defacto-complainant/PW.1, A.1 (Md. Inayath Ali) and A.2 (Md. Liyakath Ali) to give blood samples and also that of the children of PW.1 at Sai Krishna Neuro Hospital, Kachiguda, with a further direction to the hospital authorities to send the report to the Court directly in a sealed cover, the expenses of which should be borne by the defacto-complainant.

2. The contentions in the grounds of revision *vis-a-vis* the oral submissions in the course of hearing by the learned counsel for revision petitioners – A.1 and A.2 are that the impugned order of the Court below is contrary to law, with no requirement of such a test and thereafter for no reason or just cause much less to intrude into the personal liberty and to compel petitioners – A.1 and A.2 against their wish and thereby sought for dismissal of the impugned order of the Court below.

3. Whereas, it is the contention of the learned counsel for the 2nd respondent - defacto-complainant and the learned Public Prosecutor for the 1st respondent – State that the order of the Court below is well within its scope contemplated by law and the same is necessary for the effective adjudication of the criminal *lis* and there is nothing to interfere therewith and it cannot be stated as intruding into the privacy or in effecting of Fundamental Right, which is not even when absolute, but for qualified, that too subject to due process of law to obey to the orders of the Court in submitting to the requirement of the DNA test and hence to dismiss the revision.

4. Now, in deciding the revision *lis* on the correctness of the impugned order of the Court below, the factual background necessary to mention, in nutshell, is that the 2nd respondent-defacto complainant is the wife of A.2 and she was forced by her husband-A.2 and his family members to have cohabitation with A.1, who is the younger brother of A.2, and that she begot two female children through A.1, but not to A.2, that it is a settled law that any child born from the lawful wedlock is the legitimate child born to that couple only and DNA finger print is being used sparingly to know the paternity of a child. The 2nd respondent-defacto complainant filed the above application in Crl.MP.No.92 of 2014 disputing the paternity of her husband to the children to whom she has given birth and claims that her husband's younger brother Mr. Inayath Ali is the father of those two children and the same was allowed by the Court below, by order dated 17.10.2014. It is impugning the same with the contentions referred supra, the revision is maintained.

5. Heard the submissions of both sides in the course of hearing referred above, which no way require repetition herein.

6. When similar contentions raised on testimonial compulsion, no doubt in relation to E.D. (Erectile Dysfunction), the same was negated, as it is within the meaning of the procedure established by law and not within the meaning of 'to be a witness against himself', but furnishing evidence, which is not equivalent to be a witness against himself and particularly on the DNA examination, since permitted by Sections 53, 53A and 54 of Cr.P.C., for DNA profiling and in SELVI AND OTHERS v. STATE OF KARNATAKA¹, there was an observation also of DNA examination is not a testimonial compulsion once covered by the procedure established by law, cannot be contended as offending Article 21 of the Constitution of India even and in RITESH SINHA VS. STATE OF U.P.², the same was also referred with reference to STATE OF BOMBAY v. KATHI KALU OGHAD³, in the recent past expression in DIPANWITA ROY v. RONOBROTO ROY⁴ it was held referring to the earlier expression on DNA test permissible viz., SHARDA VS. DHARMPAL⁵, BHABANI PRASAD JENA v. CONVENOR⁶ and NANDLAL WASUDEO BADWAIK VS. LATA NANDLAL BADWAIK AND ANOTHER⁷ of DNA examination is permissible, including to determine paternity and in a criminal case and the same no way tantamounts to testimonial compulsion and if the party as held in DIPANWITA ROY (supra), despite direction failed to comply, the Court has to draw an adverse

¹ (2010) 7 SCC 263

² (2013) 2 SCC 357 : AIR 2013 SC 1132

³ AIR 1961 SC 1808

⁴ ((2015) 1 SCC 365),

⁵ (2003) 4 SCC 493

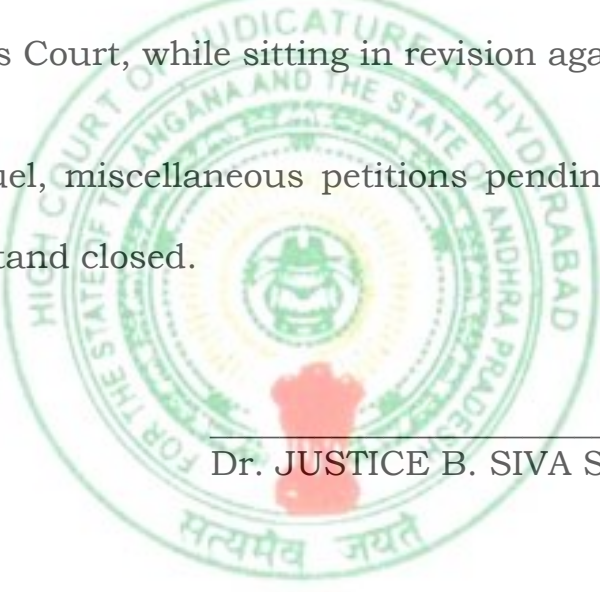
⁶ (2010) 8 SCC 633

⁷ (2014) 2 SCC 576

inference. By discussing all these, it was answered when similar issue also fallen for consideration and decided by this Court vide judgment dated 17.02.2017 in Crl.R.C.No.2346 of 2016. Therefore, following the judgment dated 17.02.2017 in Crl.R.C.No.2346 of 2016, the present Criminal Revision Case also deserves to be dismissed in terms of the said judgment.

7. Accordingly, the order dated 17.10.2014 in Crl.M.P.No.92 of 2014 in S.C.No.70 of 2012 passed by the learned XIII Additional District and Sessions Judge, Ranga Reddy District at L.B. Nagar, Hyderabad, is upheld by dismissing the revision for no grounds to interfere for this Court, while sitting in revision against it.

8. As a sequel, miscellaneous petitions pending, if any, in this revision shall stand closed.



Dr. JUSTICE B. SIVA SANKARA RAO

20.02.2017
Msr

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