

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.2036 of 2017

ORDER:

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 is filed questioning the propriety and legality of order, dated 29.06.2017 passed in CrI.MP.No.58 of 2017 in M.C.No.1 of 2014 by the Special Judicial Magistrate of First Class, Prohibition & Excise, Mahabubnagar.

Petitioner filed aforesaid CrI.M.P. under Section 49 of the Indian Evidence Act, 1872, to refer respondent No.2 child for DNA test to decide the paternity while contending that he is not the biological father of respondent No.2 child. Respondent No.1 filed counter denying the material allegations *inter alia* contending that after their marriage, she stayed with petitioner for 8 months. Since the date of her joining, petitioner and his family members harassed her for additional dowry. She further contended that he did not take the said plea in the counter filed in M.C.No.1 of 2014 and for the first time, he raised the plea in CrI.M.P. and therefore, respondent No.2 cannot be subjected to such test and thereby, prayed for dismissal of such CrI.M.P.

Respondents herein filed M.C.No.1 of 2014 claiming that respondent No.1 is the legally wedded wife of petitioner and respondent No.2 was born during their wedlock. Petitioner filed counter denying the allegations but did not raise any specific plea that he was not the biological father of respondent No.2 and that respondent No.2 was not born during their wedlock. However, it was suggested to P.W.1 in her cross-examination that the petitioner was not the biological father of respondent No.2 but the same was denied by P.W.1.

In those circumstances, the trial Court dismissed the aforesaid Crl.M.P. mainly on the ground that there was no plea raised by petitioner in the counter filed by him in M.C.No.1 of 2014 that he was not the biological father of respondent No.2 and that for the first time, he has taken such plea in Crl.M.P. Therefore, this Court is of the view that the trial Court rightly rejected the request of petitioner to refer respondent No.2 for DNA test to decide the paternity. Yet, the order under challenge is interlocutory in nature. If the order under challenge is allowed to sustain, it is to be seen whether it would culminate the entire proceedings or not by applying the test laid down in **K.K. Patel v. State of Gujarat**¹ and **Bhaskar Industries Ltd., v. Bhiwani Denim**

¹ (2000) 6 SCC 195

and Apparels Ltd², wherein the Courts consistently laid down the test to determine whether an order under challenge is interlocutory or final. The possible test laid down by the Apex Court is that if the order under challenge is allowed to sustain, it would culminate the entire proceedings or not. By applying the test to the present facts of the case, even if the order under challenge is sustained, it would not culminate the entire proceedings before the Court, as such, it is only an interlocutory order, in view of bar under Section 397(2) Cr.P.C., no revision is maintainable against such interlocutory order. Therefore, the revision is devoid of merit on the grounds referred to supra.

In the result, the Criminal Revision Case is dismissed.

Consequently, pending Miscellaneous Petitions, if any, shall stand dismissed.

M.SATYANARAYANA MURTHY, J

21st AUGUST, 2017.

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² AIR 2001 SC 3625