

THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION Nos.5054 and 5129 of 2016

COMMON ORDER:

1) C.R.P.No.5054 of 2016 and C.R.P.Nos.5129 of 2016 are filed, against the common order dated 02.09.2016 passed in I.A.No.1014 and 1015 of 2016 in F.C.O.P.No.130 of 2014 on the file of the V Additional District Judge, Tirupati, wherein the applications filed to re-open the case and for D.N.A. Test were dismissed.

2) Since the issue involved in both the Civil Revision Petitions filed under Article 227 of the Constitution of India are interconnected, they are disposed of by this common order.

3) The facts in issue are as under:

The respondent herein filed F.C.O.P.No.130 of 2014 on the file of the Judge, Family Court-cum-V Additional District Judge, Tirupati, seeking maintenance at Rs.10,000/-per month and also claiming past maintenance. Pending the said O.P. these two I.A.s came to be filed to re-open the case and for sending the male child alleged to have been born to him and the respondent herein for D.N.A.Test. It is stated in the petition that he married one Navamani @ Jamuna in the year 1973. Initially he worked as rickshaw puller and later joined as Server in S.V.University, Tirupati. It is his case that for the sake of money, he underwent vasectomy (family planning) operation in Government Hospital, Gudiyattam of Tamilnadu State in the year 1972 and as such the

possibility of he giving birth to a male child through the respondent herein on 20.09.1989 would not arise. In order to prove his case he intends to undergo D.N.A. test after obtaining blood sample from the petitioner and the son of the respondent.

4) A counter came to be filed by the respondent stating that the respondent along with her son filed O.S.No.246 of 1991 against the petitioner for grant of maintenance, which was allowed. In the said case the petitioner is said to have engaged an advocate and is contesting the suit. The counter also refers to filing of pauper suit in O.P.No.41 of 1989.

5) After considering the rival submissions made and after perusing the record, the trial Court rejected the request for D.N.A.test. Challenging the same the present revisions are filed.

6) The main ground urged by the learned counsel for the petitioner is that the reason for rejection is that the petitioner has not made the person, whose blood sample is to be sent for test, as party to the proceedings. He submits that as the petitioner is not aware about the existence of such person, the question of making him as a party would not arise. He further submits that if the respondent herein furnishes the name and address of said person, he would definitely make him as party. The same is strenuously opposed by the learned counsel for the respondent stating that the petitioner herein has intentionally not made the child born through him as party to the proceedings though he is aware about his name and address. It is his case that

earlier O.S.No.246 of 1991 was filed by the respondent herein claiming maintenance for herself and for her child, which was allowed. The said judgment has become final as the petitioner herein did not challenge the said order. It is submitted that when the petitioner failed to make any payment, an E.P. came to be filed which was allowed ordering attachment, for recovery of maintenance awarded by the Court. In view of the above, it is urged that the question of petitioner pleading ignorance of the child born to him is misconceived.

7) It is not in dispute that O.S.No.246 of 1991 was filed by the respondent herein claiming maintenance for herself and for the child. The said suit was decreed though the petitioner claims that it is an exparte order, but till date no appeal has been filed. The averments in the said O.S. clearly show that her marriage with the petitioner herein was performed on 04.09.1987 and out of wedlock she was blessed with a child on 20.09.1989. The said suit was allowed. An order of attachment also came to be passed for recovery of maintenance awarded. For reasons best known, the said order has not been challenged by the petitioner herein till date. No reasons are forthcoming as to why the petitioner has not challenged the said order. That being the position, the argument of the learned counsel for the petitioner that he is not aware about the name of the child cannot be accepted since there is a specific reference to the name, age and address of the child in O.S.No.246 of 1991. One of the grounds taken by the trial Court in rejecting the request of the petitioner is that the petitioner has

not made the son as a party to the proceedings. In view of the above, the argument of the learned counsel for the petitioner that he is not aware about the name and address of the child cannot be accepted.

8) Relying upon the judgment of the Apex Court in *Dipanwita Roy v. Ronobroto Roy*¹ learned counsel for the petitioner would submit that in the interest of justice it would be just and proper to direct the parties to undergo D.N.A. test, to decide the issue of paternity once for all.

9) There is no dispute with regard to the proposition of law laid down by the Apex Court in *Dipanwita Roy v. Ronobroto Roy* (1 *supra*) but at the same time it is also to be noted that the Apex Court in *Banarsi Dass v. Teeku Dutta (MRs) and another*² has categorically held that D.N.A. test is not to be directed as a matter of routine and only in deserving cases such a direction has to be given. In the said case, the Apex Court held as under:

“We may remember that [Section 112](#) of the Evidence Act was enacted at a time when the modern scientific advancements with deoxyribonucleic acid (DNA) as well as ribonucleic acid (RNA) tests were not even in contemplation of the legislature. The result of a genuine DNA test is said to be scientifically accurate. But even that is not enough to escape from the conclusiveness of [Section 112](#) of the Act e.g. if a husband and wife were living together during the time of conception but the DNA test revealed that the child was not born to the husband, the conclusiveness in law would remain irrebuttable. This

¹ (2015) 1 SCC 365

² (2005) 4 SCC 449

may look hard from the point of view of the husband who would be compelled to bear the fatherhood of a child of which he may be innocent. But even in such a case the law leans in favour of the innocent child from being bastardised if his mother and her spouse were living together during the time of conception. Hence the question regarding the degree of proof of non-access for rebutting the conclusiveness must be answered in the light of what is meant by access or non-access as delineated above.”

10) From the judgment of the Apex Court in Banarsi Das (2 supra) it is clear that the Courts may not order D.N.A. in a routine manner. It has to be done depending upon the facts and circumstances of each case. In the instant case, there is already an order of maintenance granted in favour of the child which has become final and has not been challenged though it is said to be an ex parte order. Having regard to the observations made by the Apex Court in Banarsi Das (2 supra) and in view of the order in O.S. it is not proper for this Court to consider the request of the petitioner, for ordering D.N.A. Test.

11) For the aforesaid reasons, I do not find any illegality or irregularity in the order passed by the trial Court. Accordingly, both the Civil Revision Petitions are dismissed. There shall be no order as to costs. Miscellaneous petitions, pending, if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

09.02.2017
gkv

