IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

Crl.R.C.No.1077 of 2018 and
Crl.M.P.No.12486 of 2018

Mr.K.Perumal ... Petitioner

Vs.

1.S.Shakiladevi

2.Minor Vijayaraj ... Respondents

PRAYER : The Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure against the order dated 27.06.2018 passed in Cr.M.P.No.199 of 2017 in M.C.No.58 of 2014 on the file of the Chief Judicial Magistrate, Cuddalore.

For Petitioner : Mr.R.Gururaj
For Respondents : Mr.R.Meenal

O R D E R

The present criminal revision case has been filed against the order dated 27.06.2018 passed in Cr.M.P.No.199 of 2017 in M.C.No.58 of 2014 on the file of the Chief Judicial Magistrate, Cuddalore, dismissing the application filed by the petitioner herein for second DNA test.

2. According to the petitioner that he was married to the first respondent and a child was born after the marriage, the second respondent herein. But, according to the petitioner, he was not a biological father. Since the paternity of the second respondent was being questioned, a criminal miscellaneous petition was filed i.e., Crl.M.P.No.1005 of 2015, seeking for DNA test. The said Criminal miscellaneous petition was allowed. Both the parties were directed to appear before the Government Headquarters Hospital, Cuddalore. After completion of the DNA Test as per the direction of the Trial Court, a report was submitted before the Trial Court. Thereafter, while maintenance case was being taken up for hearing, the second application was filed by the petitioner herein for the DNA test stating that there was some discrepancy in the first DNA report.

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3. Before the learned Chief Judicial Magistrate, the learned counsel for the petitioner submitted that the second DNA test was necessary, since the paternity of the second respondent was being questioned. According to him, the blood samples collected were manipulated and therefore, only to prove the paternity of the second respondent, the second DNA test was imperative.

4. The above submission was repulsed by the learned Chief Judicial Magistrate stating that the blood samples were collected and the process was initiated in the presence of the Advocate Commissioner appointed by the Court below. Therefore, there is no necessity to order for second DNA test and such application filed on behalf of the petitioner, was intended to drag the proceedings and to avoid facing any order being passed in the maintenance case. The learned Chief Judicial Magistrate, after adverting to the submissions and materials on record, had dismissed the application seeking for second DNA test. The same is the subject matter of challenge in the present revision case.

5. This Court has perused the materials on record and a detailed order passed by the learned Chief Judicial Magistrate. The learned Chief Judicial Magistrate had infact relied on two decisions of this Court and on the basis of the guidelines laid down in the decisions, the learned Chief Judicial Magistrate had dismissed the petition. A detailed reasons have been recorded by the learned Chief Judicial Magistrate and the conclusion ultimately arrived at by learned Chief Judicial Magistrate appears to be well founded. The findings of the learned Chief Judicial Magistrate and the conclusion reached by the Trial Court as found in paragraph Nos.9 to 13, are extracted below:-

> "09. In S.Veeralakshmi Vs. The Superintendent of Police, datd 03.02.2015 [CDJ 2015 MHC 1353] our Hon'ble High Court after considering all relevant judgments regarding DNA test, Nandlal Wasudeo Badwaik Vs. Lata Nandlal Badwaik and another (2014-2- L.S. (Crl.) 621), Sakthivel Vs. Karpagam ((2005) 3 MLJ 483), Abdul Rahuman Vs. State, dated 31.03.2015 and issued the guidelines as follows:-
>
> > "16. For the foregoing discussion, this Court is of the view that the Criminal Original Petition is liable to be dismissed.
> >
> > Accordingly, while dismissing the present Criminal Original Petition, this Court could emerge the following in the matter of ordering second DNA test.
> >
> > vi)The Courts cannot compel the parties to undergo DNA test for the second time;

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vii)The earlier DNA test cannot be treated as doubtful or set aside mere based on bald and vague allegations made by the party against whom the result of the said test was declared negative;

viii)When already DNA test report is available, there is no need to order second DNA test unless it is proved by the party who raised objections, that it has been exposed to reasonable degree of suspicion and the said report has been obtained by the influence of the Expert who gave the report;

ix)Direction to conduct DNA test more than once cannot be granted since it would lead to unhealthy practice where the parties repeatedly seeking to send the sample till they get a favourable report and different reports may also lead to confusion;

x)DNA test report is only a piece of evidence (though of course a strong piece of evidence) in determining the paternity of a child, but it is to be noted that the said report is to be analysed along with the facts and other evidence to be adduced by the parties in support of their case. It is always open to them to raise objections regarding the DNA test during the course of trial;

xi)In order to avoid unnecessary doubts in the minds of the parties, it is necessary that the blood samples of the parties concerned are to be taken in the presence of each other and send to the lab and the entire process is to be recorded by video at the expenses of the party who is interested in such video recording."

10. In this regard, it is worthwhile to refer the decision of our Hon'ble High Court reported in Sakthivel Vs.Karpagam ((2005) 3 MLJ 482), wherein, in order to determine the paternity of the child, the plea of the husband for sending the blood samples for DNA test for the second time has been declined. Paragraphs 11 and 15 are relevant and they are extracted as under:-

"11. It is a matter of common experience that Tamil Nadu Forensic Science Laboratory is a Government Organisation.

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There could be no inference that the respondent/wife has influenced the officials who have conducted the DNA test. The procedure adopted for DNA test and the report thereon is an official act done in the Forensic Science Laboratory. When that official act is proved to have been done under Sec.114-III(e) of Indian Evidence Act, it will be presumed to have been regularly done. The presumption is as to the regularity of the official act. Once a DNA test has been conducted and the report confirms the paternity of the child., the presumption is that of formalities have been complied with and that the proper test has been conducted.

15. As rightly submitted by the respondent/wife, if the samples are sent to three different places, three different reports might lead to confusion. The petitioner cannot seek to send blood samples for DNA test for the second time which would lead to unhealthy practice where the parties repeatedly seeking to send the sample till they get a favourable report. Such request of the revision petitioner/husband to send the blood samples of the spouse for DNA test for the second time cannot be acceded to."

11. Expert evidence is of value in case where the courts have to deal with the matters regarding the paternity. The D.N.A. Test report is only a piece of evidence (though of course a strong piece of evidence) in determining the paternity of the child. It supplements the oral evidence. The opinion evidence/expert evidence is only to assist the Court in determining the paternity. The D.N.A test report is to be analyzed along with the facts and other evidence to be adduced by the parties. The D.N.A test report is onlya supporting evidence in favour of either party. During the trial, it is for the petitioner/husband to establish that the earlier D.N.A test is exposed to reasonable degree of suspicion. But the petitioner cannot seek for conduct of another D.N.A examination.

12. In view of the facts and circumstances and having regard to the decisions of the Hon'ble Supreme Court and Hon'ble High Court narrated above, this Court is of the view that it is not appropriate to

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order for second DNA test. As already discussed supra, when the report of the DNA test conducted earlier was available on the file, which was given by the Scientific Officer, Regional Forensic Science Laboratory, Chennai, against which, no reasonable defect was pointed out or any allegations of mala fide were made out against the said expert by the petitioner, the same cannot be easily brushed aside merely based on her surmises and bald and vague allegations.

13. In the result, this application is dismissed. No costs."

6. From the above, it is very clear that the order came to be passed on the basis of the principles laid down by this Court in the decisions relied on by the learned Chief Judicial Magistrate. Once the earlier DNA test was ordered and the samples were taken in the presence of the Advocate Commissioner, appointed by the Court below and the report was submitted, there cannot be any legitimate apprehension on the part of the petitioner that the process of DNA test was being manipulated. The apprehension expressed by the petitioner appears to be non-bona fide and the same is unfounded and baseless and cannot stand the test of judicial scrutiny. Therefore, the Lower Court has rightly dismissed the application and this Court does not find any infirmity in the order passed by the learned Chief Judicial Magistrate and therefore, the present revision case is without any merits and the same is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

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gsk Sub Assistant Registrar

To

The Chief Judicial Magistrate,
Cuddalore.

+1cc to M/s.R.Meenal, Advocate, S.R.No.82825

+1cc to M/s.R.Gururaj, Advocate, S.R.No.82604

Crl.R.C.No.1077 of 2018

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