

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.07.2018

Pronounced on : 10.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.19123 of 2011

and

M.P.No.1 of 2011

Latha @ Premalatha,
W/o.Sundararaman. Petitioner/Defacto-
complainant

Vs.

1.Sundararaman,
S/o. Swaminathan. Respondent/Accused

2.State representd by
The Inspector of Police,
W 26, All Women Police Station,
Ashok Nagar, Chennai - 83,
Crime No.9 of 2009. Respondent/Complainant

3.A.Gnana Kumar,
S/o.Alagurathinam Respondent

[Impleaded the third respondent as per
the Orders of this Court dated
22.04.2014 in M.P.No.1 of 2014.]

PRAYER: Criminal Original Petition is filed under Section 482
of the Code of Criminal Procedure, to direct the second
respondent to subject the first respondent to DNA test for
ascertaining the paternity of the child by name Shyam Harish
borne by the petitioner herein pending Trial in C.C.No.616 of
2009, on the file of the IX Metropolitan Magistrate, Saidapet,
Chennai - 600 015.

For Petitioner : Mr.A.M.Rahmath Ali

For R2 : Ms.M.Saratha Devi
Government Advocate (Crl.Side)

For R1 & R3 : No appearance

O R D E R

This Criminal Original Petition is filed to direct the second respondent to subject the first respondent to DNA test for ascertaining the paternity of the child by name Shyam Harish borne by the petitioner herein pending Trial in C.C.No.616 of 2009, on the file of the IX Metropolitan Magistrate Court, Saidapet, Chennai - 600 015.

2.The petitioner herein has filed this direction petition to direct the second respondent to subject the first respondent, who is an accused in C.C.No.616 of 2009 pending on the file of the IX Metropolitan Magistrate Court, Saidapet, Chennai for DNA test for ascertaining the paternity of the child by name Shyam Harish, son of the petitioner.

3.The petitioner herein is the defacto-complainant on whose complaint a case under Section 417 and 506 (ii) came to be registered against the first respondent.

4.The crux of the issue is that the first respondent impregnated the petitioner herein as a result she gave birth to a boy child namely Shyam Harish. The first respondent disputed the paternity of the child. During the course of investigation, the second respondent made an application before the IX Metropolitan Magistrate, Saidapet, Chennai for subjecting the petitioner and the child to DNA test to ascertain the paternity of the child.

5.On the application made by the second respondent dated 12.08.2009, the IX Metropolitan Magistrate, Saidapet, Chennai passed an order dated 22.03.2010 in CrI.M.P.No.352 of 2010 directing the first respondent subjecting him to DNA Test to ascertain the paternity of the child. Pursuant to the said order, the first respondent disregarded the direction of the IX Metropolitan Magistrate instead of filing an application before the IX Metropolitan Magistrate praying to recall the order directing respondent to DNA test, which was dismissed by the IX Metropolitan Magistrate, Saidapet, Chennai by order dated 22.03.2010, against which the present petition has been filed. In the meanwhile, the investigation was completed and the case was charge sheeted and taken on file by the IX Metropolitan Magistrate, Saidapet, Chennai as C.C.No.616 of 2009. Hence, it may become imperative for the petitioner/defacto-complainant to bring her clinching evidence against the accused/first respondent, who is disputing the paternity of the child. Therefore, sought direction of this Court to subject the first respondent to DNA Test to ascertain the paternity of the child, as it is absolutely essential.

6. When the case came up on 03.07.2008, the learned Government Advocate had produced the Death Certificate of Mr. Sundararaman, the respondent, who seems to have died on 29.08.2016. The Death Certificate issued by the Greater Chennai Corporation in Death Certificate No.D4912510039/2016 has been produced.

7. There has been no representation for the petitioner and the third respondent. In view of which the case was listed to be posted on 05.07.2018 "For dismissal". On 05.07.2018, the petitioner was present and admitted the death of Mr. Sundararaman.

8. The learned counsel appearing for the petitioner submitted that the sole accused in C.C.No.616 of 2009 i.e., the first respondent reported dead. It is left open to the petitioner to workout her remedy to establish the paternity of the child namely Shyam Harish in an appropriate forum, as per law.

9. With the above direction, the Criminal Original Petition stands disposed off. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The IX Metropolitan Magistrate,
Saidapet, Chennai - 600 015.

2. The Inspector of Police,
W 26, All Women Police Station,
Ashok Nagar, Chennai - 83,
Crime No.9 of 2009.

3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.A.M.Rahmath Ali, Advocate, S.R.No.44879
+1cc to Mr.S.Ramesh, Advocate, S.R.No.44751

Cr1.O.P.No.19123 of 2011

BS (CO)
GSP (24/07/2018)