



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.R.C. (MD) No.627 of 2016
and
Crl.M.P. (MD) .No.8196 of 2016

R.Govindaraj

: Petitioner

Vs.

1.G.Muthammal

2.G.Prabha

: Respondents

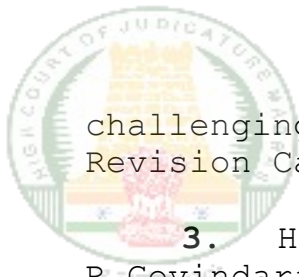
PRAYER: Criminal Revision Case is filed under Section 397 r/w 401 of the Criminal Procedure Code praying to set aside the order passed in C.M.P.No.2650 of 2015, in M.C.No.44 of 2011, on the file of the Judicial Magistrate No.II, Thanjavur, dated 26.08.2015.

For Petitioner	: Mr.K.Kumaravel
For Respondent	: Mr.P.Ganapathi Subramaniam
For Respondent No.2	: No Appearance

O R D E R

For the sake of convenience, the parties will be referred to by their name.

2. It is the case of G.Muthammal that she got married to R.Govindaraj and through the wedlock, a daughter, by name, G.Prabha, was born. According to G.Muthammal, R.Govindaraj neglected to maintain her and her child and therefore, she filed M.C.No.44 of 2011, before the learned Judicial Magistrate No.II, Thanjavur, under Section 125 of the Code of Criminal Procedure, claiming maintenance for herself and her child. On notice, R.Govindaraj entered appearance and filed a counter stating that he had not married G.Muthammal at all and that G.Prabha was not born to him. Therefore, G.Muthammal filed C.M.P.No.2650 of 2015 in M.C.No.44 of 2011 for DNA profiling of all the three parties, namely, G.Muthammal, R.Govindaraj and G.Prabha. The Trial Court, after hearing both sides, allowed the said C.M.P.No.2650 of 2015, on 26.08.2015,



challenging which, R.Govindaraj has filed the present Criminal Revision Case.

3. Heard Mr.K.Kumaravel, learned counsel appearing for R.Govindaraj and Mr.P.Ganapathi Subramaniam, learned counsel appearing for G.Muthammal and G.Prabha.

4. The learned counsel for R.Govindaraj submitted that at the drop of a hat, DNA profiling should not be done, because, that will lead to serious prejudice to the matrimonial life of a person. Mr.K.Kumaravel, learned counsel, in support of his contention, placed strong reliance on the Judgment of the Supreme Court in **Banrasi Dass Vs.Teeku Dutta and another** [2005 (3) CTC 227].

5. However, Mr.P.Ganapathi Subramaniam, learned counsel appearing for G.Muthammal and G.Prabha refuted the said contention and submitted that when R.Govindaraj was disputing the very paternity of G.Prabha, the Court had no other alternative, but to order DNA profiling. The learned counsel placed strong reliance on the Judgment of the Supreme Court in **Nandlal Wasudeo Badwaik Vs. Lata Nandlal Badwaik and another**, [2014 (2) SCC 576].

6. This Court gave its anxious consideration to the above submissions made by the learned counsel on either side.

7. It is true that in **Banrasi Dass** [supra], the Supreme Court has given a caution that the presumption under Section 112 of the Indian Evidence Act, 1872, should not be dislodged by ordering DNA profiling on the mere asking of a party. It may be necessary to state that in **Nandlal Wasudeo Badwaik**, [supra], the Supreme Court has considered the case of **Banrasi Dass** [supra], but, however, in Paragraph No.19, the Supreme Court has held as follows:-

"19. The husband's plea that he had no access to the wife when the child was begotten stands proved by the DNA test report and in the face of it, we cannot compel the appellant to bear the fatherhood of a child, when the scientific reports prove to the contrary. We are conscious that an innocent child may not be bastardized as the marriage between her mother and father was subsisting at the time of her birth, but in view of the DNA test reports and what we have observed above, we cannot forestall the consequence. It is denying the truth. "Trust must triumph" is the hallmark of justice".

8. In the facts of this case, when R.Govindaraj is denying the very paternity of G.Prabha, the way, by which the issue can be determined conclusively, is only via DNA profiling and therefore, this Court does not find any infirmity in the order passed by the Court below warranting interference.



9. In the result, this Criminal Revision Case is devoid of merits and it is, accordingly, dismissed. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar

To

The Judicial Magistrate No.II,
Thanjavur.

+ 1 CC TO Mr.P.GANAPATHI SUBRAMANIAN, ADVOCATE IN SR No. 45395

NB

TE/KK/SAR-2 : 12/02/2018 : 3P/3C

ORDER MADE IN
Crl.R.C.(MD)No.627 of 2016 and
Crl.M.P.(MD).No.8196 of 2016
Dated:-29.01.2018