

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

CRIMINAL REVISION CASE NO. 529 OF 2013

ORDER:

Aggrieved by the order, dated 19-02-2013, passed in Crl.M.P.No.3046 of 2012 in M.C.No.40 of 2010 on the file of the court of Judicial Magistrate of First Class, Suryapet allowing the petition filed by the 1st respondent herein praying the court to send the blood samples of respondents and petitioner herein for conducting DNA test to prove the paternity of the 2nd respondent with the petitioner herein, the present Criminal Revision Case is filed.

2. The facts in brief are that the respondents herein have filed M.C.No.40 of 2010 against the petitioner seeking maintenance. Their case is that the marriage between the 1st respondent and petitioner was held on 15-06-1995 at Muthyalamma Temple, Panthangi village and they lived happily as husband and wife. Due to their wedlock, 2nd respondent was born to them. Thereafter, the petitioner deserted them. On these averments, they sought for maintenance. The petitioner herein filed counter and opposed the maintenance claim. He denied the marriage with the 1st respondent allegedly held on 15-06-1995. He further denied that 2nd respondent was born to him and the 1st respondent. He categorically denied the allegation that

he lived along with 1st respondent under one roof since after the alleged marriage. His contention is that the 1st respondent was married to one Oresu Narsimha of Sarvaram Village, Thipparthi Mandal and she was blessed with two sons viz., Yadagiri and Rakesh i.e., 2nd respondent herein and she has been residing at Kotinaik Thanda of Atmakur Mandal along with her sons. Therefore, her claim that she married the petitioner and begot the 2nd respondent through him is false. His further contention is that 1st respondent developed acquaintance with the petitioner during the year 1996 while he was aged about 22 years and she has lured him and in those circumstances the petitioner developed illicit intimacy with the 1st respondent and they both eloped to Khammam. After one week, the father of the petitioner traced them and brought back to Suryapet and held a local caste panchayat at Suryapet Police Station. The 1st respondent along with her father and elders demanded an amount of Rs.11,000/- as customary fine for petitioner having illicit intimacy with a married woman. The said amount was paid and having received the said amount on 05-07-1997, the 1st respondent left the petitioner and thereafter they both never lived together. Thereafter, the petitioner married one Devika on 02-11-1997 and living with her. Thus, he contended that he denied the marital relationship with the 1st respondent. In

the backdrop of the above allegations and counter allegations, 1st respondent filed CrI.M.P.No.3046 of 2012. The trial court having considered the inconsistent contentions put forth by the petitioner i.e, on one hand his contending that he had no connection with the 1st respondent and on the other hand his contending that in 1996 the 1st respondent lured him and thereby he had illicit relationship with her for few days, observed that the contents would clearly show that the petitioner had sexual contact with 1st respondent. The trial court further observed that as per the version of the 1st respondent, both of them lived as legally wedded husband and wife and thereby she gave birth to the 2nd respondent. In that view of the matter, whether the 2nd respondent was born out of the legal marriage or not cannot be decided at this stage and if really the petitioner has no relationship with the 1st respondent, the DNA report will help decide that aspect. The trial court ultimately allowed the petition. Hence the revision.

3. Heard both sides.

4. As can be seen from the respective contentions and as rightly observed by the trial court, on one hand the petitioner denied his marriage and begetting 2nd respondent through 1st respondent, and on the other side he takes a

plea that 1st respondent lured him and thereby he had illicit relationship with her for a short duration and there was no marital relationship. While so, it is the categorical case of the 1st respondent that she is the legally wedded wife of the petitioner and out of their wedlock, 2nd respondent was born to them. So, the fundamental questions that arise for consideration in this case are (1) whether there was a marriage between the petitioner and 1st respondent and (2) whether the 2nd respondent was born out of the wedlock between the petitioner and the 1st respondent. As rightly observed by the trial court, the DNA test which is considered to be an accurate and scientific one will assist the court in proving the paternity of the 2nd respondent with the petitioner. So far as the marital aspect between the petitioner and the 1st respondent is concerned, the same has to be established by way of producing cogent evidence to the satisfaction of the trial court. So in any view of the matter, referring the parties to a DNA test by the trial court cannot be found fault. In *Dipanwita Roy vs. Ronobroto Roy*(¹), the husband sought for divorce on the ground that wife was leading adulterous life. He also alleged that the child born to the wife does not belong to him. In that backdrop, the High Court of Calcutta ordered for DNA test

¹ AIR 2015 SC 418

to prove the paternity of the male child born to the wife. On an appeal, the Apex Court observed that in view of the categorical stand taken by the husband against the fidelity of his wife and also alleging that the male child born to the wife through a different person, but for DNA test it would be impossible for the respondent-husband to establish and confirm the assertion made by him. The Apex Court further observed that DNA test is most legitimate and scientifically perfect means, which the husband could use, to establish his assertion of infidelity. Thus, by upholding the order of the High Court the Apex Court gave liberty to the appellant-wife to comply with or disregard the order passed by the High Court and in case she accepted the directions issued by the High Court, the DNA test will determine conclusively the veracity of accusation leveled by the respondent-husband, against her. In case, she declined to comply with the direction issued by the High Court, the allegation would be determined by the concerned court, by drawing a presumption of the nature contemplated in Section 114 of the Indian Evidence Act, especially, in terms of illustration (h) thereof. Testing the present case on the anvil of the above precedential jurisprudence, the primary contention of the petitioner is that he has no marital relationship with the 1st respondent and he is not the father of the 2nd respondent. However, he takes a feeble plea that during

1996 1st respondent lured him and thereby for short period he had some illicit connection with her and the said affair was severed by paying fine before the mediators and thereafter he had nothing to do with the 1st respondent. So in a way the petitioner disowns the marital relationship with the 1st respondent and the parentage of the 1st respondent. In these circumstances, the 1st respondent cannot prove the parentage of the 2nd respondent except by resorting to DNA test, which is considered by the Apex Court as the most legitimate and scientifically perfect means to determine the parentage. In that view of the matter, the order of the trial court cannot be found fault with. However, following the above decision of the Apex Court, the petitioner herein is given liberty to either follow the order of the trial court and submit himself to the DNA test along with 2nd respondent or refuse to do so, in which case the trial court is empowered to draw a presumption in terms of Section 114(h) of the Indian Evidence Act at the end of the trial and during the judgment stage.

With these observations, the Criminal Revision Case is dismissed. No costs. Miscellaneous Petitions pending, if any, shall stand cancelled in consequence.

U.DURGA PRASAD RAO,J

6th November, 2018
TSNR