

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 28.11.2019

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THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.R.C.No. 912 of 2019

Sankar .. Petitioner

Vs

Raja Rangammal .. Respondent

Prayer:- This Criminal Revision has been filed, under Section 397 read with 401 of Cr.P.C., to call for the entire records in Connection with Crl.Appeal No.03 of 2019 on the file of the Principal District Sessions Judge, Thiruvannamalai and set aside the order passed by the Principle District Sessions Judge, Thiruvannamalai in Crl.Appeal No. 3 of 2019 dated 06.08.2019 confirming the Dismissal Order passed by the learned Judicial Magistrate No.2, Thiruvannamalai in Crl.MP.No. 4231 of 2017 dated 26.10.2018.

For Petitioner : Mr.S.SilambuSelvan
For Respondent : M/s.S.Suseela devi

ORDER

The present revision has been filed against the order passed by the learned Principal District Judge, Thiruvannamalai District on 06.08.2019 in C.A.No.3/2019, dismissing the appeal and confirming the order passed in Crl.M.P.No. 4231 of 2017 dated 26.10.2018 in D.V.Case No. 01/ 2016 passed by the learned Judicial Magistrate, No.II, Tiruvannamalai.

2. For the sake of convenience, the parties are referred as husband and wife. The revision petitioner is the husband and the respondent is the wife. The wife had filed a petition in DV.No.01/2016 against her husband and four others claiming relief under Sections 18, 19, 20 & 28 (II) of the Domestic Violence Act. In the petition, the wife had contended that the marriage between them took place on 01.07.1993 at Thiruvannamalai and that she delivered a male child on 19.03.2012 and she had claimed maintenance for herself and her child.

3. During the pendency of the proceedings in D.V. Case No. 01/2016, the Revision Petitioner/husband filed a Miscellaneous Petition under Section 112 of the Indian Evidence Act in Crl.M.P.No.4231 of 2017 contending that the male child S.Karuneshraj was not born to him out of the wedlock with his wife. He further contended that his wife developed illicit intimacy with one Kandam due to which, she conceived and delivered the child. The wife had filed counter contending that she does not have illicit relationship with any person and her husband had filed the petition only to drag on the proceedings and to evade paying maintenance amount to her as well as to the child. Further she had contended that no valid ground had been made out in the petition to displace the presumption under Section 112 of the Evidence Act and that the marriage was held on 01.07.1993 and the birth of the child was on 19.03.2012 and no attempt had been made out to prove that the husband did not have access to the wife, during the relevant period and thereby, she refused to subject herself to DNA test.

4. The Trial Court, after hearing both sides found that the husband had not shown any acceptable evidence to displace the presumption that the child is not born to him by strong preponderance and dismissed the petition filed for DNA test. Against the order, the husband had filed the Appeal before the learned Principal District and Sessions Court, Tiruvannamalai and the Appellate Court holding that a petition for DNA test cannot be mechanically allowed as a matter of right as per Section 112 of the Indian Evidence Act had dismissed the appeal and confirmed the orders passed by the learned Judicial Magistrate No.II, Tiruvannamalai. Challenging the same, the present Revision petition is filed.

5. The learned counsel for the Revision Petitioner/husband would submit that through there is a presumption under Section 112 of the Indian Evidence Act in favour of the wife with regard to the legitimacy of the child born during the continuance of a valid marriage, the husband cannot be denied the opportunity to have a DNA test conducted to conclusively prove that the child is not born to him. He would submit that Section 112 of the Indian Evidence Act was enacted at a time when the modern scientific advancement and DNA test were not even in contemplation of the legislature. The result of DNA test is said to be scientifically accurate and that when there is a conflict between conclusive proof envisaged under law and proof based on scientific advancement (DNA Test) which is accepted by the World Scientific Community to be correct, the latter must prevail over the former. Interest of Justice is best served by ascertaining

truth with scientific proof rather than to bank upon presumption unless science has no answer to facts.

In support of his contention he relied on the judgement of the Apex Court in Nandlal Wasudeo Badwaik Vs Lata Nandlal Badwaik reported in (2014) 2 SCC 576.

6. The learned counsel appearing for the revision petitioner would further submit that ultimately what remains is that truth alone should prevail and without prejudice to his legal rights in order to confirm the truth, the petitioner is even prepared to make a pre-deposit of Rs.2,50,000/- and bear the cost of DNA Test. He would further submit that the petitioner is even prepared to take further risk and if in the event if it is proved by scientific evidence that the child is born to him, he is also irrespective of any other claims made by the wife, is prepared to pay an additional amount of Rs.2,50,000/- to the child alone.

7. The learned counsel appearing for the respondent / wife would submit that though as per Section 112 of the Evidence Act, the wife is not liable to subject herself to DNA test, however, in order to avoid further delay in the proceedings, she is willing and ready to subject herself and the child to DNA Test to confirm the paternity subject to the husband making predeposit of the amount agreed by him.

8. Based on the submissions and undertaking given by the counsel for the Petitioner, this Court had directed the revision petitioner/husband to file an affidavit agreeing to make a pre deposit of Rs.2,50,000/- and to deposit a further amount of Rs.2,50,000/-, after the DNA result/ Expert Opinion if it is concluded during enquiry that the revision petitioner is the father of the child. The Revision petitioner had expressed willingness to pre-deposit the amount of Rs.2,50,000/- before the learned Judicial Magistrate, No-II, Thiruvannamalai and to further deposit an amount of Rs.2,50,000/-, if the male child is confirmed to be his son. The affidavit is taken on record.

9. In view of the submissions and consent given by both parties and the undertaking given by the petitioner, this Court is inclined to dispose of the revision petition with the following directions;

(i) The parties are directed to appear before the trial Court on the next hearing date or within two weeks from the date of receipt of the copy of the order and file necessary memos submitting themselves and the child for DNA Test.

(ii) The petitioner/husband shall at the time of filing the memo make a deposit of Rs.2,50,000/- (Rupees Two lakhs Fifty Thousand Only) before the trial Court.

(iii) On such deposit being made the Trial Judge shall fix a date for appearance of the parties along with the child before the Dean, Medical College Hospital, Thiruvannamalai along with their respective counsels.

(iv) The Dean shall take steps to draw samples from the petitioner, respondent and her child and send it to the concerned Scientific Expert to obtain DNA report with regard to the paternity of the child.

(v) Based on the DNA report/Expert Opinion, the trial Judge shall conduct the enquiry in accordance with law to arrive at a conclusion regarding the paternity of the child.

(vi) The expenses for the DNA Test shall be borne by the petitioner/husband.

(vii) If it is proved after enquiry that the petitioner is the father of the child Karuneshraj, the petitioner shall deposit further amount of Rs.2,50,000/- as agreed and undertaken by him and the respondent is entitled to withdraw the entire amount of Rs.5,00,000/-.

The trial Court shall conclude the enquiry with regard to deciding the paternity of the child within one month from the date of receipt of the report and dispose D.V.No. 1 of 2016 as expeditiously as possible.

(viii) In the event, it is concluded that the child Karuneshraj is not born to the petitioner, the petitioner is entitled to withdraw the amount of Rs.2,50,000/- deposited.

10. The Criminal Revision Petition stands disposed of with the above directions.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To:

1. The Principal District Sessions Judge,
Thiruvannamalai

2. The Judicial Magistrate No.2,
Thiruvannamalai

+lcc to Mr.Silambu Selvan Advocate sr99602
+lcc to Mrs.S.Suseela Devi Advocate sr99531

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