

HONOURABLE JUSTICE G. SRI DEVI
CRIMINAL REVISION CASE No.2720 of 2018

ORDER:

The present Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C. aggrieved by the order, dated 12.09.2018, passed in CrI.M.P.No.507 of 2018 in M.C.No.14 of 2015 on the file of the Judicial Magistrate of First Class, Achampet, wherein an application filed by respondent Nos.2 and 3 herein under Section 45 of Indian Evidence Act to direct the revision petitioner herein to undergo D.N.A. Test, along with respondent Nos.2 and 3 herein, for determining the paternity of respondent No.3, was allowed.

2. As seen from the record, respondent Nos.2 and 3 herein, who are wife and daughter of the revision petitioner, filed M.C.No.14 of 2015 seeking monthly maintenance of Rs.5,000/- each from the revision petitioner. During pendency of the said M.C., respondent Nos.2 and 3 herein filed CrI.M.P.No.507 of 2018 under Section 45 of Evidence Act to direct the revision petitioner herein to undergo D.N.A. Test along with respondent Nos.2 and 3 herein, before the Director, Forensic Science Laboratory (FSL), Hyderabad or any other approved scientific institutions to determine the paternity of respondent No.3 herein. The averments in the said petition disclose that the

marriage between the revision petitioner and the 2nd respondent herein was solemnized about 21 years back at Srisailam of Kurnool District, they led conjugal life and were blessed with two daughters namely Swetha and Himabindu, out of whom, their elder daughter Swetha got married after attaining majority. Thereafter, the revision petitioner and his relatives started harassing the 2nd respondent physically and mentally; neglected to maintain her and her daughter. Hence, she along with her daughter filed the above Maintenance Case. The revision petitioner filed a Counter denying his relationship with the 2nd respondent/wife and also his paternity with the 3rd respondent/daughter. It is further stated that the 2nd respondent/wife has no documentary evidence to show their relationship with the revision petitioner/husband as the same was denied by the revision petitioner even in his evidence. Therefore, there is no other option except to file this petition seeking to direct the revision petitioner to undergo D.N.A. Test along with respondents 2 and 3 before the Director, Forensic Science Laboratory.

3. A Counter-affidavit came to be filed by the revision petitioner/husband denying his relationship with that of the respondents 2 and 3 herein. Since the 2nd respondent herself admitted that she has no material evidence or any document to

establish about the relationship with the revision petitioner including paternity of the 3rd respondent, the present petition filed by respondents 2 and 3 herein is not maintainable in law on the ground that the image of the revision petitioner will be tarnished if he is directed for DNA Test. It is further stated that in our Country any institute or agency can be managed to get favourable report. It is further submitted that to get a child, biological contact or physical contact is not required. It is also stated that the 2nd respondent had admitted that she did not file any documents to prove the marriage between herself and the revision petitioner. It is also stated that the 2nd respondent married one Katravath Jodya in 1990 and thereafter she married one Nenavath Shankar, R/o. Brahmanapally in the year 1994, without obtaining divorce from the said Katravath Jodya, which would suffice the contention of the revision petitioner that he is not having any kind of relationship whatsoever with respondents 2 and 3.

4. The trial Court having considered the pleadings and submissions made before it and following the ratio in *Dipanwita Roy v. Ronobroto Roy*¹ allowed the said petition. Challenging the same, the present Criminal Revision Case is filed by the revision petitioner.

¹ (2014) SCC Online SC 831

5. Heard learned Counsel for the revision petitioner; learned Additional Public Prosecutor for the 1st respondent and learned Counsel appearing for respondent Nos.2 and 3.

6. It has been submitted on behalf of the revision petitioner that without there being any *prima facie* evidence about the marriage between the revision petitioner and the 2nd respondent, the trial Court allowed the petition directing the revision petitioner to undergo D.N.A. test in a routine manner and the said direction is not being in accordance with law and the same is liable to be set aside.

7. Learned Counsel for respondent Nos.2 and 3 would submit that since the revision petitioner without any basis denied his relationship with respondent Nos.2 and 3, it became necessary for them to make an application before the trial Court for a direction to the revision petitioner to undergo D.N.A. test and the direction issued by the trial Court is justified and the said order does not require any interference in this revision.

8. The question that arises for consideration is whether respondent Nos.2 and 3 are entitled to insist upon the trial Court to issue a direction to the revision petitioner to undergo D.N.A. Test.

9. In *Sharda v. Dharmpal*² the Apex Court held as under:

“Therefore, when there is no right to privacy specifically conferred by Article 21 of the Constitution of India and with the extensive interpretation of the phrase "personal liberty" this right has been read into Article 21, it cannot be treated as absolute right. What is emphasized is that some limitations on this right have to be imposed and particularly where two competing interests clash. In matters of aforesaid nature where the legislature has conferred a right upon his spouse to seek divorce on such grounds, it would be the right of that spouse which comes in conflict with the so-called right to privacy of the respondent. Thus, the Court has to reconcile these competing interests by balancing the interests involved.

82. If for arriving at the satisfaction of the Court and to protect the right of a party to the lis who may otherwise be found to be incapable of protecting his own interest, the Court passes an appropriate order, the question of such action being violative of Article 21 of the Constitution of India would not arise. The Court having regard to Article 21 of the Constitution of India must also see to it that the right of a person to defend himself must be adequately protected.

83. It is, however, axiomatic that a Court shall not order a roving inquiry. It must have sufficient materials before it to enable it to exercise its discretion. Exercise of such discretion would be subjected to the supervisory jurisdiction of the High Court in terms of Section 115 of the Code of Civil Procedure and/or Article 227 of the Constitution of India. Abuse of the discretionary power at the hands of a Court is not expected. The Court must arrive at a finding that the applicant has established a strong prima facie case before passing such an order.

² (2003) 4 SCC 493

86. To sum up, our conclusions are

1. A matrimonial court has the power to order a person to undergo medical test.
2. Passing of such an order by the court would not be in violation of the right to personal liberty under Article 21 of the Indian Constitution
3. However, the Court should exercise such a power if the applicant has a strong prima facie case and there is sufficient material before the Court. If despite the order of the court, the respondent refuses to submit himself to medical examination, the court will be entitled to draw an adverse inference against him. “

10. From the judgment of the Apex Court referred to above, it is clear that the Court has a wide discretion to direct a party to undergo any medical test including the D.N.A. Test.

11. In the instant case, the revision petitioner denied any sort of relationship with respondent Nos.2 and 3. Respondent Nos.2 and 3 came forward with a specific case that about 21 years back the marriage of the 2nd respondent was performed with the revision petitioner at Srisailam and thereafter, they led conjugal life. The 3rd respondent and another daughter were said to have been born to the 2nd respondent through the revision petitioner during the wedlock. The revision petitioner contended that he is not having any sort of relationship with respondent Nos.2 and 3. In view of the total denial of relationship by the revision petitioner and making wild allegations against the 2nd respondent, the right of respondent

Nos.2 and 3 to establish their relationship has to be adequately protected by the trial Court. The learned trial Court upon considering the relevant material placed before it, arrived at the conclusion that directing the revision petitioner to under go D.N.A. Test is proper.

12. Having regard to the facts and circumstances of the case, this Court is of the opinion that the trial Court exercised discretion properly and allowed the petition. As this Court is of the view that the D.N.A. Test proposed to be conducted is essential to establish the rights of respondent Nos.2 and 3, the order passed by the trial Court does not require any interference in this revision.

13. For the aforesaid reasons, the Criminal Revision Case is dismissed. As a sequel to, miscellaneous petitions, if any, pending shall stand dismissed.

JUSTICE G.SRI DEVI

25.11.2019
gkv/Gsn

