

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON
02.07.2021

ORDERS PRONOUNCED ON
27.08.2021

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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Cr1.R.C.No.749 of 2015

Sofia Rani .. Petitioner/De facto Complainant

.. Vs ..

1. Lawrance
2. Saranya .. Respondents 1 & 2/Accused 1 & 2
3. Divyapiriyam .. 3rd Respondent/child to undergo
for DNA test
4. State rep. by its
Inspector of Police,
All Women Police Station,
Mettur Dam, Salem District. .. 4th Respondent/Complainant

PRAYER : Petition filed under Section 397 r/w. 401 of the Criminal Procedure Code, against the order passed by the learned Judicial Magistrate No.1, Mettur, in C.M.P.No.6843 of 2014, dated 29.04.2015.

For Petitioner : Mr.Arun
for Mr.A.Sundaravadhanan
For R-1 : Mr.S.Doraisamy
For RR-2 & 3 : No Appearance
For R-4 : Mr.R.Vinoth Raja
Government Advocate

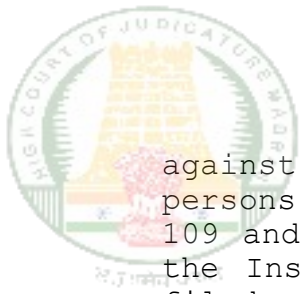
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ORDER

The matter is heard through "Video Conference".

This Criminal Revision Case has been preferred by the petitioner against the order passed by the learned Judicial Magistrate No.1, Mettur, in C.M.P.No.6843 of 2014, dated 29.04.2015.

2. The revision petitioner is the wife of the first respondent herein/A.1 and she has filed a private complaint



against her husband, one lady by name Saranya and another two persons for the offences under Sections 498(A), 494 r/w Section 109 and 506(ii) of IPC. When the investigation was in progress, the Inspector of Police, All Women Police Station, Mettur, has filed a petition in Crl.M.P.No.6843 of 2014 before the learned Judicial Magistrate No.I. Mettur, seeking an order for conducting DNA test to the respondents 1 to 3 herein viz., accused Nos.1 & 2 and the son of Saranya viz., Divyapiriyam.

3. The first respondent herein is the husband of the revision petitioner and they got two female children. While so, the first respondent/husband alleged to have had an illicit intimacy with one of the co-worker in his book stall by name Saranya, who has been arrayed as second accused. After association with the said Saranya, the first respondent/A.1 has subjected his wife/revision petitioner to mental cruelty. Thereafter, it is further alleged that the marriage of the respondents Nos 1 & 2 herein/A.1 and A.2 was solemnized at Mechery Malliyakurtham Murugan Temple and out of the said wedlock, they begotten a child by name Divyapiriyam.

4. To bring home the charge under Section 494 and 498(A) of IPC as to the offence of bigamy committed by husband while the first marriage is in existence, the above said petition in C.M.P.No.6843 of 2014 was filed by the Investigating Officer and the same was dismissed by the learned Judicial Magistrate No.1, Mettur, and hence, the criminal revision case has been preferred by the revision petitioner.

5. After hearing both the parties, I find that in order to find out the paternity of the child viz., Divyapiriyam, on the basis of the complaint given by the revision petitioner herein, the Inspector of Police, All Women Police Station, Mettur, has filed the above petition in C.M.P.No.6843 of 2014, seeking an order for conducting DNA Test to the respondents 1 to 3 therein viz., husband of the revision petitioner, alleged second wife and the son born to the second wife.

6. As stated supra, to conduct DNA test with a view to find out the paternity of the child when the charges are under Sections 494 IPC and 498(A) IPC as well, for which DNA test is warranted. Furthermore, there is a presumption under Section 112 of the Indian Evidence Act and besides, in view of the specific allegation that her husband is having sexual relationship with A.2, the request made by the Investigating Officer for conducting DNA test stands affirmed.

7. It remains to be stated that in the counter affidavit filed by the husband, a stand has been taken by him that there is no allegation of any sexual assault and furthermore, for



producing the respondents 1 to 3 herein to undergo DNA test is not in respect of the charge under Section 494 of IPC. No doubt, it is true that for a charge under Section 494 of IPC, it is for the complainant to prove that her husband has contracted a valid second marriage during the subsistence of the first marriage and she was subjected to cruelty. Herein, in addition to the charge under Section 494 of IPC, it is the specific plea of the wife that she was subjected to mental cruelty in view of the act of A.1 having sexual relationship with A.2 and begotten a baby and the same cannot be brushed aside slightly.

8 (a). To sum up, it is the specific case of the revision petitioner/wife that the first respondent herein had married the second respondent herein during the subsistence of their marriage and begotten the third respondent and thereby, she was subjected to mental cruelty as defined under Section 498(A) of IPC. The first respondent/husband has denied the paternity of the child. The only objection raised by the husband/first respondent in the counter affidavit that there is no allegation of any sexual assault and hence, the respondents 1 to 3 herein need not undergo for DNA test.

8 (b). Whether the revision petitioner/wife was subjected to mental cruelty due to the act of her husband/A.1 by marrying the second respondent herein and begotten the third respondent herein and on the other hand, denial of paternity of the third respondent/Divyapiriyam by the first respondent/husband in the counter assumes significance.

9. In view of the specific allegation that the husband/A.1 is married the second accused during the subsistence of the first marriage which was denied by A.1/husband and if the husband/A.1 has contracted valid marriage with the second wife/A.2, it will be essential ingredients for the charge under Section 494 of IPC. However, if the first accused/husband has chosen to live with the second accused [the present term being living-in relationship] and fathered a child viz., the third respondent, then it will definitely amounts to mental cruelty for a wife, who is legally married to the husband/A.1 and it will fall under mental cruelty as defined under Section 498(A) IPC.

10. The DNA test is more scientific method which accuracy by 99.9%. Here in this case, it is the specific stand of the first respondent/husband that he is not the biological father. As per the averments made in the petition, after the marriage, the revision petitioner and the first respondent were separated and the first respondent/husband of the revision petitioner was moving with his co-worker/second respondent herein and begotten the third respondent. Taking note of the specific denial of



paternity of the third respondent herein/Divyapiriyan by the first respondent/husband and also the accuracy of scientific method of DNA test, I am of the considered view that DNA test of respondents 1 to 3 herein would resolve the lis and put a quietus and hence, the dismissal order passed by the learned Judicial Magistrate No.1, Mettur, is liable to be set aside.

11. In the result, this Criminal Revision Case is allowed and the order passed by the learned Judicial Magistrate No.1, Mettur, in C.M.P.No.6843 of 2014, dated 29.04.2015, is set aside.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

Jrl

To

1. The Judicial Magistrate No.1,
Mettur.
2. The Inspector of Police,
All Women Police Station,
Mettur Dam, Salem District.
3. The Public Prosecutor,
High Court, Madras.

Copy to:

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.S.Dorai Samy, Advocate, S.R.No.43296

Cr1.R.C.No.749 of 2015

AJS(CO)
CB(17/09/2021)