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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2021

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl.R.C.No.1289 of 2017
and
Crl.M.P.No.12438 of 2017

1.Jayalakshmi
2.Minor Jeny
3.Minor Dharshini
The minors are rep by their mother and
natural guardian Mrs.Jayalakshmi ...Petitioners

Vs.

Datte Shankar More ...Respondent

PRAYER: Criminal Revision Petition has been filed under Sections 397 and 401 of Cr.P.C, prayed to set aside the order dated 01.09.2017 passed in C.M.P.No.116 of 2017 in M.C.No.9 of 2014 on the file of the Judicial Magistrate, Coonoor.

For Petitioners : Mr.Guruprasad
for M/s.Rajmakesh

For Respondent : Mr.L.Mouli

O R D E R

This Criminal Revision Petition has been filed seeking to set aside the order dated 01.09.2017 passed in C.M.P.No.116 of 2017 in M.C.No.9 of 2014 on the file of the Judicial Magistrate, Coonoor.

2. The first petitioner claimed that she lived together with the respondent from October 1996 to February 2012 at Italy. The first petitioner further states that two female children were born out of their relationship, namely, Jeny, born on 12.08.2004, studying 4th standard and Dharshini, born on 09.03.2009, studying L.K.G. The first petitioner returned from Rome, on 12.02.2012 and from then on, the respondent has been not taking care of the petitioners herein. Hence, the first



petitioner filed a petition in M.C.No.9 of 2014 before the learned Judicial Magistrate, Coonoor and prayed for maintenance in a sum of Rs.50,000/- per month for herself and her two children. During the pendency of the above said M.C.No.9 of 2014, the petitioners have filed C.M.P.No.116 of 2017 praying for conducting DNA test between petitioners 2 and 3 and the respondent in order to establish that the children were born out of their relationship. However, the said petition was dismissed. Challenging the dismissal order, the present revision petition is filed.

3. Mr.Guruprasad, learned counsel appearing for the petitioners would submit that though the first petitioner had married one C.Krishnan and is his wife, but, however, the petitioners 2 and 3 were born out of the relationship of the 1st petitioner with the respondent. The 1st petitioner and the respondent were living together between October, 1996 and February, 2012 and the two children were born out their relationship and to prove the parentage of petitioners 2 and 3, it is necessary to conduct DNA test between petitioners 2 and 3 as well as the respondent. Unless the DNA test is conducted, the biological status of the second and third petitioners will not be established. Accordingly, he prays for allowing this petition.

4. The learned counsel appearing for the respondent submits that admittedly, the first petitioner is the wife of C.Krishnan and the revenue records indicates that the children were born out of the wedlock between the first petitioner and C.Krishnan. When all the records shows that C.Krishnan is the father of the children and husband of the first petitioner and there is no necessity to conduct any DNA test. As per Section 125 Cr.P.C., unless the 1st petitioner proves that the children were born out of the relationship with the respondent, they are not entitled for claiming maintenance. It is the further submission of the learned counsel for the respondent that the respondent is not the husband of the 1st petitioner and only with a view to extract money from the respondent, the 1st petitioner has indulged in such an act. The trial court has adverted to all the materials and the proposition of law and has given a well considered finding and, therefore, no interference is warranted with the said order.

5. This Court gave its anxious consideration to the submissions advanced by the learned counsel on either side and also perused the materials available on record.

6. It is not in dispute that the 1st petitioner is not the wife of the respondent, though the 1st petitioner claims that petitioners 2 and 3 were born to the 1st petitioner and the respondent at the time when they were residing together at



Italy. Though such a stand is taken by the 1st petitioner, however, no material whatsoever has been placed before the court below to show that the 1st petitioner was staying along with the respondent as her wife and that during the said period, petitioners 2 and 3 were born. Further, no material relating to the birth of petitioners 2 and 3 has been placed before the trial court. Mere pleading would not be sufficient to accede to the prayer of the 1st petitioner for conducting DNA test. Firstly, the 1st petitioner has to establish her stay with the respondent and secondly that during the said period of stay, petitioners 2 and 3 were born. However, as stated above, no material whatsoever on that aspect has been placed before the trial court. The 1st petitioner cannot, under the guise of conducting a DNA test to establish the parentage of petitioners 2 and 3, harass and the respondent and drag and besmirch by filing such petitions. Without any material, the 1st petitioner, through a fishing expedition of DNA test, cannot impose upon the respondent to submit himself to DNA test. The trial court has adverted to the decisions of the Hon'ble Supreme Court and this Court and has rightly dismissed the prayer of the petitioners for conduct of DNA test, which cannot be said to be illegal or perverse warranting interference. Therefore, this Court is not inclined to interfere with the order passed by the Trial Court. However, this Court, at this point of time is not expressing any opinion on the merits of the case and leaves it to the parties to raise all issues at the time of trial.

6. With the above observation, this Criminal Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

rsi

To

1. The Judicial Magistrate, Coonoor.

2. The Public Prosecutor, High Court, Madras.

+1cc to M/s.L.Mouli, Advocate, S.R.No.39801

CrI.R.C.No.1289 of 2017 and

CrI.M.P.No.12438 of 2017

PMK(CO)

RGA(13/10/2021)