



Crl RC .No.476 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl RC No.476 of 2018
and Crl MP No.5719 of 2018

P.Senthil Kumar ..Petitioner /Petitioner /Respondent
Vs.

1. Krishnaveni (Madhubala)

2. Minor Deepshika
Represented by her next Friend
Natural Guardian, her mother
Krishnaveni ...Respondents / Respondents /
Petitioners

Prayer: Criminal Revision case is filed under Section 397 (1) r/w 401 of Cr.PC to set-aside the order passed in Crl.MP No.134 of 2017 in MC No.28 of 2017 on the file of the Family Court, Erode dated 06.02.2018 and allow the Criminal Revision petition.



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For Petitioner : Mr.V.Balamurugane

For Respondent : Mr.C.S.Saravanan

ORDER

This Criminal Revision case has been filed against the order passed by the Family Court, Erode, in Crl MP No.134 of 2017 in MC No.28 of 2017 dated 06.02.2018, dismissing the petition filed by the petitioner under Section 45 of the Indian Evidence Act in order to send the minor child for DNA test and to find out the paternity of the child.

2. Heard Mr.V.Balamurugane, learned counsel for the petitioner and Mr.C.S.Saravanan, learned counsel for the respondents.

3. The petitioner was married to the 1st respondent on



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12.06.2014 and the 1st respondent delivered the child (2nd respondent) on 07.04.2015. In the meantime, there was some misunderstanding between the parties and the 1st respondent had filed a petition under Section 125 of Cr.PC seeking for the payment of maintenance against the petitioner.

4. The petitioner filed a counter affidavit and took a stand that the 1st respondent has made false allegations against him and that the petitioner and the 1st respondent hardly lived for one week. The petitioner also took a stand that the 1st respondent was a person with questionable moral character and she was having affairs with other persons. Accordingly, the petitioner sought for the dismissal of the maintenance petition.

5. During the pendency of the maintenance petition, the petitioner filed Cr.M.P.No.134 of 2017 under Section 45 of the



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Evidence Act to send the minor child for DNA test in order to determine the paternity of the child. This petition was filed on the ground that the 1st respondent was a person with questionable moral character and that the 2nd respondent was not born to the petitioner. The 1st respondent filed a detailed counter affidavit and refuted all the allegations. She took a stand that the petition itself has been filed only to harass her and to avoid payment of maintenance. The 1st respondent also pleaded various facts in the counter affidavit to show that the petitioner himself had come to the hospital and signed the relevant records one day prior to the 1st respondent delivering the child on 07.04.2015.

6. The Court below has taken into consideration the evidence that was available and also the legal position with regard to Section 112 of the Evidence Act and has come to a conclusion that the petitioner did not make out a case for sending the child



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for DNA test. Aggrieved by the same, the present Criminal Revision case has been filed before this Court.

7. To start with, the Criminal revision case that has been filed before this Court is not maintainable. The order passed under Section 45 of the Evidence Act is clearly in a nature of an interim order and hence, no revision petition is maintainable in the light of Section 397(2) of Cr.PC. It was so held by this Court in ***[P.Pattabiraman vs. S.R.Eswar]*** in ***Crl OP (MD) No.17441 of 2017 dated 25.09.2019.***

8. Even on the merits of the case, this Court finds that the order passed by the Court below is unassailable as before subjecting a child to DNA test, it must be shown that the husband had no access to the wife and this is in view of the conclusive proof



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that has been provided under Section 112 of the Indian Evidence Act. Mechanically, sending the children for DNA test will have an adverse impact on the child and it will never be ordered as a matter of course. Useful reference can be made to the judgement of this Court in **[Selvaraj Vs. Dhatchayani] reported in 2019 1 LW 528** and **[Thamarai Selvi Vs. Govindaraj] reported in 2019 4 LW 916**.

9. In the instant case, the Court below has taken into consideration the fact that the petitioner himself was very much available in the hospital and he had jointly signed the records along with the 1st respondent one day prior to the delivery of the child. That apart, the petitioner was married to the 1st respondent on 12.06.2015 and the child was born on 07.04.2015 and this child was born within 280 days from the date of marriage. This clearly brings this case within the ambit of Section 112 of the Evidence Act. Even



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assuming that the petitioner had lived with the 1st respondent for a week, that period is sufficient for the 1st respondent to conceive and to deliver a child. The Court below has given cogent reasons as to why the child cannot be subjected to DNA test in this case. To support such a view, the Court below has also taken into consideration the judgement of the Apex Court in **Goutam Kundu** case.

10. This Court is in complete agreement of the findings rendered by the Trial Court and there is no ground to interfere with the same.

11. Apart from the question of maintainability, this Court does not find any merits in this Criminal Revision case and accordingly, the same is hereby dismissed. There shall be a direction to the Family Court, Erode, to dispose of the case in MC



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No.28 of 2017 within a period of two months from the date of receipt of a copy of this order. No costs.

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Internet : Yes
Index : Yes
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N. ANAND VENKATESH, J.

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To
The Family Court, Erode

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