



C.R.P.(MD).No.989 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	24.08.2023
Pronounced on	20.12.2023

CORAM

THE HON'BLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD)No.989 of 2023
and
C.M.P.(MD)No.4625 of 2023

Suvetha

... Revision Petitioner

Versus

Manimaran

... Respondent

Prayer : The Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.112 of 2022 in H.M.O.P.No.26 of 2022 on the file of the Sub Court, Aranthangi dated 21.02.2023.

For Revision Petitioner : Mr.R.Balakrishnan

For Respondent : No Appearance

ORDER



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This revision is preferred against the order passed in I.A.No. 112 of 2022 in H.M.O.P.No.26 of 2022 on the file of the Sub Court, Aranthangi, dated 21.02.2023.

2. The Revision Petitioner is the wife and the Respondent is the husband. The Respondent/Husband filed a divorce petition in H.M.O.P.No. 22 of 2022 before the Sub Court, Aranthangi under Section 13(1)(i-a) under the ground adultery by stating that the Revision Petitioner had a pre-marital relationship with another person and married the Respondent by concealing the above fact. During pendency of the above H.M.O.P, he filed I.A.No.112 of 2022 by stating that the marriage between the Revision Petitioner and the Respondent was solemnized on 23.05.2019 as per the Hindu Rituals. Within a few days after the marriage, the Revision Petition was found to be pregnant. The Revision Petitioner/Wife continued to have illegal marital affair. While so, on 06.01.2020, the Revision Petitioner gave birth to a male child, the Respondent found that it was not a premature delivery and baby was born with good health and therefore, suspecting its paternity prayed for DNA test for the Revision Petitioner's child. The Trial Court allowed the said application and ordered for steps for taking DNA test. Aggrieved by



this, the Revision Petitioner preferred this present revision.

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3. According to the Revision Petitioner, even before her marriage with the Respondent, there was love affair between herself and the Respondent and they even had physical relationship. Due to the said physical relationship, she became pregnant even before their marriage which took place on 23.05.2019. After the marriage, the Revision Petitioner noticed drastic changes in the character of the Respondent and found that he was addicted to Alcohol. Knowing well that the Revision Petitioner became pregnant only due to her physical relationship with the Respondent, the Respondent started humiliating her by stating that she was pregnant even before her marriage and suspected her character. Thereafter, the Respondent started torturing the Revision Petitioner and her minor child and at one point of time, the Revision Petitioner and her minor child were forcibly thrown out from the matrimonial home and thereafter, she started living with her parents along with her minor child.

4. While so, the Respondent filed H.M.O.P.No.26 of 2022 for divorce before the Sub Court, Aranthangi, in which the Revision Petitioner



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had filed her detailed counter. During the pendency of the above H.M.O.P, the Respondent took out an application in I.A.No.112 of 2022 under Section 75(e) read with Order 26 Rule 10(A) of Code of Civil Procedure seeking for the relief of appointment of Advocate Commissioner for undergoing DNA test to prove the paternity of her child. The Revision Petitioner also filed her detailed counter denying the allegations made in the above petition and also stated about their physical relationship even before their marriage.

5. However, the Trial Court erroneously allowed the above application filed by the Respondent and appointed one Mr.K.Prasath as Advocate Commissioner for medical examination to conduct DNA test in a Forensic Lab.

6. The learned counsel appearing for the Revision Petitioner would submit that DNA test cannot be conducted in a routine manner as roving enquiry and no circumstances warrant for conducting DNA test in the above case. He would submit that inspite of mentioning in the counter affidavit filed by the Respondent that she had love affair with the



Respondent even as early as on 10.01.2019 and subsequently marriage was performed only at the instance of the elders of the family to fulfill their desire. As such taking advantage of the same, the Respondent cannot insist the Revision Petitioner to undergo DNA test. However, the Trial Court without considering the fact and law in proper perspective manner mechanically allowed the application filed by the Respondent.

7. He would further submit that the DNA test cannot normally be ordered by Court unless a strong case of non access of the husband was made out by the person questioning the legitimacy on whom burden of rebuttal of presumption of legitimacy lies. No one can be compelled to give the sample of blood for analysis unless there is a strong *prima facie* case. The husband must establish non access in order to dispel the presumption arising under Section 112 of Evidence Act. He would further submit that the Court must carefully examining as to what would be the consequences of ordering the blood test; whether it will have the effect of branding the child as bastard and the mother as an unchaste women.

8. He would further submit that in the present case, the purpose



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of the application was nothing but to harass and humiliate the Revision Petitioner and without making any ground whatever to have recourse to the test. Therefore, the impugned order passed by the Trial Court is liable to be set aside. To support his contention, he has relied upon the decision case made by the Hon'ble Supreme Court in ***Goutam Kundu Vs. State of West Bengal and Another*** reported in ***(1993) 3 SCC 418***.

9. In spite of the notices served on the Respondent, the Respondent/Husband failed to appear.

10. Heard and perused the records.

11. It is not in dispute that the Revision Petitioner was married to the Respondent on 23.05.2019. It is also not in dispute that the male child was born on 06.01.2020. According to the Respondent, the baby was born within 228 days whereas for the baby to grow in the womb requires 280 days. The contention of the Respondent in the affidavit filed in I.A.No.122 of 2022 is that it was not a premature delivery and the baby was born with



good health. Hence, suspecting the paternity of the child, he filed an application for DNA test. Aggrieved by the order of the Trial Court, a revision was preferred before this Court. According to the learned counsel appearing for the Revision Petitioner, as per Section 112 of Evidence Act, where during the continuance of valid marriage, if a child is born that is the conclusive proof about the legitimacy of the child. In the cited case on the side of the Revision Petitioner which is reported in **(1993) 3 SCC 426**, the Hon'ble Supreme Court has made a reference to the case as follows :

“18. Blood grouping test is a useful test to determine the question of disputed paternity. It can be relied upon by courts as a circumstantial evidence which ultimately excludes a certain individual as a father of the child. However, it requires to be carefully noted no person can be compelled to give sample of blood for analysis against his/her will and no adverse inference can be drawn against him/her for this refusal.”

12. Examining in the light of the above, the Trial Court is



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incorrect in allowing the said application filed by the Respondent for DNA test to prove the paternity of the child. Accordingly, the order passed by the Trial Court is set aside and this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

20. 12.2023

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Index:Yes/No
Speaking Order : Yes/No

To
The Sub Court,
Aranthangi



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K.GOVINDARAJAN THILAKAVADI,J.

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ORDER MADE IN

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and

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20.12.2023