

(1998) 07 AP CK 0080
In the Andhra Pradesh High Court
Case No : Criminal RC No. 235 of 1996

Anil Kumar

APPELLANT

Vs

Turaka Kondala Rao and another

RESPONDENT

Date of Decision : 13-07-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (1998) 5 ALD 44 : (1998) 2 ALD(Cri) 625 : (1999) 1 ALT(Cri) 44 :
(1998) CriLJ 4279 : (1999) 2 DMC 683 : (1999) 2 RCR(Criminal) 338

Hon'ble Judges : V. Bhaskara Rao, J

Bench : Single Bench

Advocate : Mr. C. Praveen Kumar, for the Appellant; Mr. T. Niranjan Reddy and
Public Prosecutor, for the Respondent

Judgement

1. The order in MC No. 11 of 1995 on the file of Family Court, Vijayawada, dated 21-12-1995 refusing maintenance to the petitioner holding that the petitioner failed to establish that the respondent is his putative father and hence there is no obligation to maintain the petitioner upon him, is assailed in this Criminal RC.

2. The facts in brief are that the petitioner's mother and her sister were taken away by the respondent who was working as Station Superintendent of Bellamkonda Railway Station during 1989-90 with the permission of their father. It so happened that the mother of petitioner's mother died and hence the respondent approached her father asking him to send both these girls with him. Accordingly the petitioner's mother and her sister were lodged in the Railway quarters where he was residing with his wife. He did not get any children through his wife. Some time later he shifted the mother of the petitioner and her sister to a rented house at Nadikudi. It is the case of the petitioner that the respondent developed illicit intimacy with his mother and kept her as his wife. The petitioner was born on 7-12-1990 at St. Joseph's Hospital, Guntur. He sought for maintenance of Rs.500/- per month on the ground that the respondent was drawing a salary of Rs.3,500/- and he owned a house at

Winchipet, Vijayawada worth Rs.3 lakhs. The respondent resisted the petition denying the above allegations. He contended that the mother of the petitioner developed illicit intimacy with one Sanjeeviah, Inspector of Works, South Central Railway, Nadikudi and one Patnaik, Assistant Station Master at Bellamkonda Railway Station.

3. The parties adduced evidence in support of their respective versions. PW1 M Solomy is the mother of the petitioner; PW2K- Ramaiah is her father and PW3 Miryala Pal is a neighbour. Exs.P1 to P8 have been marked on behalf of the petitioner. In rebuttal the respondent examined himself as RW1. Besides his own evidence, he also examined RWs.2 to 4 to substantiate his case and he got Exs.R1 to R6 marked.

4. The Family Court formulated the following points for consideration :

1. Whether the petitioner is the illegitimate son of the respondent ?
2. Whether the respondent is liable to maintain the petitioner ?
3. To what relief?

After a close scrutiny of the above oral and documentary evidence, the Family Court held on point No.1 that the petitioner did not place sufficient material to show the intimacy between his mother and RW1 to conclude that the respondent is the putative father and point No.2 that the respondent was not under any obligation to maintain the petitioner. Accordingly, the petition has been dismissed. Hence this Criminal Revision Case.

5. Sri C. Praveen Kumar, learned Counsel for the revision petitioner has taken me through the impugned order and also the evidence on record. He pointed out the following observations from the impugned order : "Not even blood test much less DNA test was suggested to clinch the paternity of the petitioner". Taking to clue from the above observation, Sri Praveen Kumar sought for a DNA test being conducted and the respondent, represented by Sri T. Niranjan Reddy, submitted himself to DNA test with his own free volition. Thus, the petitioner as well as the respondent were referred to the Centre for DNA Finger Printing and Diagnostics, CCMB Campus, Hyderabad. After conducting necessary test, a Report has been received from the Officer-on-Special Duty of the above Centre forwarding opinion of Dr. G. K Rao, Scientist and the result of examination as certified by Dr. G. K Rao is as under:

"On comparison of DNA profiles of Master Anil Kumar (source of exhibit B) with Ms. M. Salami, mother (source of exhibit A) and Mr. Kondala Rao (source of exhibit C), it is concluded that Mr. T. Kondala Rao (source of exhibit C) is the biological father of Master Anil Kumar, disputed child (source of exhibit B), whose biological mother is Ms. M. Salomi (source of exhibit A).

The above tests (Bpf 3.8, single locus probe and STR analyses) conclude that Mr. T. Kondala Rao is the biological father of Master Anil Kumar, disputed child,

whose biological mother is Ms. M. Salomi."

6. It is noteworthy that the learned Family Court exonerated PW1 mother of the petitioner from the allegation of adulterous life either with Sanjeeviah or Patnaik and that finding of fact has reached finality since the respondent has not filed any revision. In that view of the matter, the reasoning in para 35 of the order would go to show that in the absence of blood test much less DNA test, it cannot be clinchingly held that the respondent is the putative father of the petitioner. If the above report of DNA test is read along with the evidence on record, it would clinch the issue in favour of the petitioner.

7. Next question for consideration would be as to what is the value to be attached to DNA test. Sri Praveen Kumar quoting from a Digest-Supreme Court on Criminal Law argued that DNA test is a sure test of parentage. The following is the passage from the above Digest:

"DNA (Deoxyribonucleic Acid) tests from a sophisticated new method for criminal identification. This test was developed by Dr. Alec Jefferys in 1985 in England and was later accepted by the legal system as evidence. It gained legal validity in India in 1989 in paternity case. The coded genetic information hidden in the DNA is unique for every individual. All billions of cells in the human body come from the multiplication of a single one that is formed by the fusion of the male sperm and the female ovum. Each cell has an equal number of chromosomes from the father and mother. The chromosomes in turn contain DNA, which encodes the person's unique genetic make up. Hence, a body can be identified by a blood sample or even hair, sperm, muscle, nerve or tissue sample. Compared to blood tests the odds of DNA finger printing going wrong are one in 30,000 million. The analysis look for patterns in the samples which reflect the unique genetic pattern of an individual. As a sequence of base pairs constitutes the genetic code responsible for inheritance, these are matched and paternity can be established."

8. This Court referred child and the parent for DNA test in Criminal RC Nos.81 and 82 of 1996 and accepted the DNA report by an order dated 11-3-1997.

9. Having regard to the facts and circumstances on record and especially in view of the result of DNA test, I have no hesitation in my mind to hold that the respondent is putative father of the petitioner. It follows that there is obligation upon him to maintain the petitioner though he is illegitimate son of the respondent. The petitioner was born on 7-12-1990. Evidently the child can be said to be unable to maintain itself. The evidence of PW1 shows that there is no source of income for the petitioner and the respondent has neglected to maintain him. Thus, I am satisfied that the ingredients of Section 125 of Code of Criminal Procedure are made out.

10. Next question for consideration is the quantum of maintenance. The respondent has been working as Station Superintendent in South Central Railway. Although his Pay Certificate is not filed, his pay is stated to be Rs.3,500/- per month. The petitioner claimed Rs.700/- per month for his

maintenance, but only Rs.500/- is the maximum that can be allowed u/s 125 of Code of Criminal Procedure. Sri Niranjana Reddy during the course of hearing submitted that the respondent has since retired and that he is Paralysis-stricken and he is hospitalised and therefore, he himself needs a lot of money for his treatment etc. In any case- the petitioner is entitled for maintenance and even if nominal amount is to be awarded, the petitioner will be entitled to a minimum of Rs.300/- per month. Thus, the petitioner is awarded Rs.300/- per month towards his maintenance against the respondent from the date of petition. Since the respondent is now Paralysis-stricken, he is permitted to pay the arrears of maintenance from the date of petition to this day in 12 equal monthly instalments, failing which the petitioner will be entitled to enforce the maintenance order for full amount.

11. In the result, the Criminal Revision Case is allowed setting aside the order of the Family Court, Vijayawada and consequently MC No. 11 of 1995 is allowed awarding maintenance at Rs.300/- per month from the date of the petition.