
(2011) 02 MP CK 0014
In the Madhya Pradesh High Court
Case No : M.Cr.C. No. 5273 of 2010

Lallu Lal Patel

APPELLANT

Vs

Smt. Anar Kali @ Tannu Bai Yadav and Another

RESPONDENT

Date of Decision : 21-02-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 482, 53
Evidence Act, 1872 — Section 112

Citation : (2011) ILR (MP) 1605

Hon'ble Judges : M.A Siddiqui, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.A. Siddiqui, J.—This petition u/s 482 of Code of Criminal Procedure has been filed by the Petitioner to invoke the extra ordinary powers of this Court to order for DNA test of Respondent No. 2 Sanju Yadav @ Munna Lal Yadav in proceeding u/s 125 Code of Criminal Procedure Code.pending before JMFC, Mandla.

2. In brief, the petition is that Respondent No. 1 is not the wife of Petitioner and Respondent No. 2 is not the legitimate/illegitimate son of Petitioner. Proceeding for maintenance of Respondent No. 2 is pending before JMFC, Mandla where n application for DNA test of Respondent No. 2 has been filed. On 19.1.10 the application for DNA test has been rejected by JMFC, Mandla and on revision by Cri. Revision No. 21/10, on 19.4.10, request for DNA test has been refused. It is alleged that it is necessary not -2 -only for deciding the case, but also to wash off the stigma of illegitimate child which Respondent No. 2 has to carry with him through out his life. Respondent has objected the test. Aggrieved by the orders, this petition has been filed by the Petitioner.

3. Learned Counsel for Petitioner submits that Petitioner is not the husband of Respondent No. 1 and he got declaration through a civil suit and she wrongly filed a case u/s 125 Code of Criminal Procedure not for herself but for her son Sanju. Petitioner has got acquittal from the criminal case of rape in ST No.

153/98 on 22nd April,1999. He got the decree from civil suit that he is not the husband of Respondent No. 1. Petitioner has rightly moved application for DNA test of the boy Sanju to ascertain the paternity, but same has been wrongly refused by the two Courts below. He prays that direction to do the DNA test of the boy Sanju may be given.

4. Respondents have opposed the request and supported both the orders of the Courts below on the ground that both are reasoned orders and it has been rightly discussed that it is the duty of the Petitioner to prove his own case and he cannot make the Court as a tool to collect the evidence and DNA test is a test which cannot be ordered against the Will of the person.

5. Learned Counsel for Petitioner submitted the case law of Kerala High Court in *Sajeera v. P.K. Salim*, 2000 Cri.L.J.1208 which has also been relied on by the trial Court in which it has been held that u/s 112 of Evidence Act, for evidence of legitimacy and paternity of child, no one can be compelled to undergo blood test. Blood test should be conducted only with the consent of the person. Learned Counsel for Petitioner has placed reliance on *H.M. Prakash alias Dali Vs. State of Karnataka*, which is based on Section 53 of the Code of Criminal Procedure and which is about direction to the police officer and it has no relevancy with the case in hand. In *C. Rajaram v. Jothi and another* Cri.O.P. No. 35499 of 2007 order of DNA test was given as lady gave birth to a child before nine months of the marriage. So this authority is also of no relevance.

6. Learned Counsel for Petitioner has placed reliance on a decision of Apex Court in *Buridi Vanajakshmi Vs. Buridi Venkata Satya Varaha Prasad Gangadhar Rao and Another*, wherein it has been held that under Hindu Marriage Act for the dispute as to paternity of child, DNA test could be ordered by the High Court under its inherent powers, but against it is the authority of Apex Court *Goutam Kundu Vs. State of West Bengal and another*, wherein it has been held that nobody can be compelled to give sample of blood for analysis. Almost similar view has been reiterated in *Smt. Selvi and Others Vs. State of Karnataka*, wherein it has been held that for Narco analysis consent is a must.

7. In *Shri Banarsi Dass Vs. Mrs. Teeku Dutta and Another*, it has been held that u/s 112 and 4 of Evidence Act, the conclusiveness of presumption u/s 112 cannot be rebutted by DNA test. The proof of non-access between the parties to marriage during the relevant period is the only way to rebut that presumption and DNA test is not to be directed as a matter of routine, it is to be directed only in deserving cases.

8. So, looking to the above circumstances of the case, I find no ground to invoke the extra ordinary jurisdiction of this Court u/s 482 Code of Criminal Procedure Petition being devoid of merits is hereby dismissed.