
(2015) 05 AHC CK 0101
In the Allahabad High Court
Case No : Criminal Revision No. 1538 of 2015

Musafir Yadav

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 08-05-2015

Acts Referred:

Evidence Act, 1872 — Section 112, 4

Citation : (2015) 3 ACR 2675 : (2015) 6 ALJ 280 : (2015) 90 ALLCC 911

Hon'ble Judges : B. Amit Sthalekar, J

Bench : Single Bench

Advocate : Sudhir Kumar Singh, for the Appellant

Judgement

B. Amit Sthalekar, J—Heard Shri Sudhir Kumar Singh, learned Counsel for the revisionist and the learned A.G.A. for the State. This revision has been filed seeking quashing of the order dated 1.4.2015 whereby the application of the revisionist for conducting D.N.A. test of Ankur, on the ground that Ankur is not his son rather he is the son of someone else born through the opposite party No. 2 has been rejected.

2. It is not disputed by the parties that the said Ankur is now about 18 years of age. The application dated 26.2.2014, filed as Annexure-1 to the affidavit does not mention anywhere as to how this doubt arose in the mind of the revisionist that Ankur is not his son.

3. It has also not been stated anywhere that at the time when Ankur was conceived the opposite party No. 2 was not living in the house of the revisionist and that he had no access to her.

4. The Supreme Court in the case of Goutam Kundu Vs. State of West Bengal and another, AIR 1993 SC 2295 : (1993) CriLJ 3233 : (1993) 2 Crimes 481 : (1993) 2 DMC 162 : (1993) 3 JT 443 : (1993) 2 SCALE 994 : (1993) 3 SCC 418 : (1993) 3 SCR 917 , has held in paragraphs 24, 25 and 26 as under:

"24. This section requires the party disputing the paternity to prove non-access in order to dispel the presumption., "Access" and "non-access" mean the existence or non-existence of opportunities for sexual intercourse; it does not mean actual cohabitation.

25. The effect of this section is this: there is a presumption and a very strong one though a rebuttable one. Conclusive proof means as laid down under section 4 of the Evidence Act.

26. From the above discussion it emerges:--

- (1) that Courts in India cannot order blood test as matter of course;
- (2) wherever applications are made for such prayers in order to have roving inquiry, the prayer for blood test cannot be entertained.
- (3) There must be a strong prima facie case in that the husband must establish non-access in order to dispel the presumption arising under section 112 of the Evidence Act.
- (4) The Court must carefully examine as to what would be the consequence of ordering the blood test; whether it will have the effect of branding a child as a bastard and the mother as an unchaste woman.
- (5) No one can be compelled to give sample of blood for analysis."

5. Further in Smt. Dukhtar Jahan Vs. Mohammed Farooq, AIR 1987 SC 1049 : (1987) CriLJ 849 : (1987) 1 Crimes 245 : (1987) 1 JT 221 : (1987) 1 SCALE 92 : (1987) 1 SCC 624 : (1987) 1 SCR 1086 : (1987) 1 UJ 683 , the Supreme Court held in paragraph 12 as under:

"12.Section 112 lays down that if a person was born during the continuance of a valid marriage between" his mother and any man or within two hundred and eighty days after its dissolution and the mother remains unmarried, it shall be taken as conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at anytime when he could have been begotten. This rule of law based on the dictates of justice has always made the Courts incline towards upholding the legitimacy of a child unless the facts are so compulsive and clinching as to necessarily warrant a finding that the child could not at all have been begotten to the father and as such a legitimation of the child would result in rank injustice to the father. Courts have always desisted from lightly or hastily rendering a verdict and that too, on the basis of slender materials, which will have the effect of branding a child as a bastard and its mother an unchaste woman."

6. Thus on the facts of the case and the law laid down I do not find any merit in the revision. The impugned order dated 1.4.2015 does not suffer from any illegality or infirmity. The revision is accordingly dismissed.