

(1995) 03 MP CK 0053
In the Madhya Pradesh High Court
Case No : M.Cr.C. No. 1391 of 1995

Naresh Chandra

APPELLANT

Vs

Aksha Anand and Others

RESPONDENT

Date of Decision : 22-03-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 397, 401, 482

Citation : (1996) 2 DMC 104

Hon'ble Judges : Rajeev Gupta, J

Bench : Single Bench

Advocate : Prasant Mishra, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Rajeev Gupta, J.—Petitioner Naresh Chandra, husband of non-petitioner No. 2 Reshma Bai, has filed this petition u/s 482 Cr. P.C challenging the correctness and propriety of the order dated 23.9.94, passed by 1st Addl. Sessions Judge, Raigarh in Criminal Revision No. 50/94, where by the petitioner/husband was directed to give sample of his blood for "Paternity Test".

2. Non-petitioner Reshma Bai filed an application u/s 125 Cr. P.C. for grant of maintenance for herself and her son Aksha Anand, non-petitioner No.1, from petitioner Naresh Chandra. Petitioner Naresh Chandra, in his reply to the above application, denied the fact of marriage between himself and non-petitioner Reshma Bai. The petitioner also denied that non-petitioner No. 1 Aksha Anand was his son.

3. During the pendency of the proceedings u/s 125 Cr. P.C, non-petitioner Reshma Bai applied for examination of sample of blood of the petitioner and of non-petitioner No. 1 for establishing that petitioner Naresh Chandra was the father of non-petitioner No. 1 Aksha Anand. The Trial Magistrate vide order dated 23.7.92 dismissed the above application. 1st Addl. Sessions Judge, Raigarh, in Cr. R. No. 30/92, vide order dated 11.2.93 allowed the revision and so also the

application for blood test and the impugned order of the Trial Court dated 23.7.92 was set aside.

4. After having collected the information regarding the procedure and other necessary details of conducting the blood test, non-petitioner wife again applied on 21.12.93, for directing petitioner Naresh Chandra to remain present, at Delhi, for giving sample of his blood for the purposes of "Paternity Test". The trial Magistrate vide order dated 21.12.93 rejected the above application.

5. The above order passed by the trial Magistrate, on 21.12.93, was the subject matter of Cr.R. No. 50/94, which was allowed by the Revisional Court vide impugned order dated 23.9.94.

6. Mr. Prashant Mishra, the learned Counsel for the petitioner, relying upon a decision of the Apex Court in the case of Goutam Kundu Vs. State of West Bengal and another, , submitted that the Revisional Court has erred in directing the petitioner to remain present for taking sample of blood for the purpose of "Paternity Test". The learned Counsel for the petitioner argued that there is no provision either in the Criminal Procedure-Code or in the Evidence Act, for giving such a direction and no-one can be compelled to give sample of blood for analysis.

7. In the case of Gautam Kundu (supra) father of the child, while disputing his paternity applied for "Paternity Test". His prayer for the "Blood Group Test" was dismissed by the Magistrate and so also by the High Court, in revision. The Apex Court in para 27 of the judgment observed :

"Examined in the light of the above, we find no difficulty in upholding the impugned order of the High Court, confirming the order of the Addl. Chief Judicial Magistrate, Alipore in rejecting the application for blood test. We find the purpose of the application is nothing more than to avoid payment of maintenance, without making any ground whatever to have recourse to the test."

8. In the present case, the application for "Paternity Test" was filed by the mother of the child for establishing that non-petitioner No.1 Aksha Anand was the son of petitioner Naresh Chandra. The Revisional Court found "Paternity Test" necessary and in the interest of the child, for enabling him to get maintenance from his father under the provisions of Section 125 Cr.P.C. As the purpose for "Paternity Test" in the present case is altogether different from the one found in Gautam Kundu's case, no case is made out for any interference by this Court, u/s 482 Cr.P.C.

9. Otherwise also, this petition filed by the petitioner u/s 482 Cr.P.C is clearly not maintainable in view of the decision of the Apex Court in the case of Janata Dal Vs. H.S. Chowdhary and Others, , as revision petition was maintainable against the impugned order, passed by 1st Addl. Sessions Judge, Raigarh in Criminal Revision No. 50/94. For the reasons best known to the petitioner, instead of filing a revision petition u/s 397/401 Cr.P.C, the present petition u/s 482 Cr.P.C has

been filed. Even if the present petition, filed u/s 482 Cr.P.C is to be treated as criminal Revision filed Under/Sections 397/401 Cr.P.C, the same is hopelessly barred by limitation as the impugned order was passed on 23.9.94 and the certified copy, filed alongwith the petition, though was received by the petitioner on 24.9.94, the present petition was filed on 14.3.95 i.e. much beyond the prescribed period on limitation for a Criminal Revision Petition, to be filed Under Sections 397/401 Cr.PC

10. For the foregoing reasons, this petition being devoid of any substance, is hereby dismissed summarily.