
(2007) 10 PAT CK 0045
In the Patna High Court

Ranjeet Sinha @ Ranjeet Prasad Singh APPELLANT
Vs
The State of Bihar and Another RESPONDENT

Date of Decision : 04-10-2007

Acts Referred:

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

Citation : (2008) 1 PLJR 262

Hon'ble Judges : Ghanshayam Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ghansyam Prasad, J.—Heard.

2. The proceeding in Question is u/s 125 Cr.P.C. The final order has already been passed directing the petitioner to pay maintenance to the opposite party No. 2. The petitioner preferred revision against that order bearing Cr. Revision No. 705 of 1996. In that very revision, the petitioner filed a petition dated 12.3.2007 praying to set the D.N.A. test of the petitioner and the child born out of (sic) of opposite party No. 2 in order to arrive at right conclusion with regard to dispute of the marriage. The learned 1st Additional Sessions Judge vide impugned order dated 20.3.2007 refused to allow prayer of the petitioner.

3. The learned Counsel for the petitioner submits that the D.N.A. test of the child is important to establish the fact of marriage of the petitioner with opposite party No. 2. Therefore, for the ends of justice, the Lower court should be directed to hold D.N.A. test of the petitioner and the child of opposite party No. 2.

4. From the facts and submission of the learned Counsel it is a elite clear that the petitioner wants to disprove the marriage with the opposite party No. 2 by disputing the paternity of the child. Now the Question is can a person be allowed to resort to D.N.A. test of child for collateral reason to assist him in his claim? In this respect, a decision of the Supreme Court reported in 1993 Supreme Court

2295 Goutam Kundu v. State of West Benaal and Anr. is relevant. In that very case also, the issue was with regard to D.N.A. test of the child in a proceeding u/s 125 Cr.P.C. In paragraph-26 of the decision the law in this regard has been laid down which runs as follows:

26. From the above discussion it emerges:-

- (1) that courts in India cannot order blood test as a 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 strong prima facie case in that the husband must establish non-access in order to dispel the presumption arising u/s 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 the child as a bastard and the mother as an unchaste woman.
- (5) No one can be compelled to give sample of blood for analysis.

Ultimately in para-27, it has been held as follows:

27. 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 amount whatever to have recourse to the test, Accordingly the SLP will stand dismissed.

5. The learned Counsel for the petitioner relied upon a decision of the Supreme Court reported in 2003(2) BBJ 174 and submitted that in view of the aforesaid decision the son of the opposite party No. 2 can be subjected to D.N.A. test for conclusive decision on the point of marriage. It is further submitted that in above decision. The aforesaid decision of the Supreme Court of 1993 has also been considered.

6. I have gone through the aforesaid decision of the Supreme Court. On perusal of the judgment. it is quite apparent that the facts and circumstances in the aforesaid decision is entirely different. It is in respect of blood test of party to a Divorce Suit. It is not in respect of blood test of any child. Apart from it to a great extent reliance has also been placed over the aforesaid decision of 1993 (Supra). After referring para-26 of the decision. It has been held as follows in para-39 of the judgment:-

39. Gautam Kundu (supra) is, therefore, not an authority (sic) for the proposition that under no circumstances the Court can direct that blood tests be conducted. It having regard to the future of the child, has of course sounded a note of caution as regards mechanical passing of such order. In some other jurisdiction, it has been held that such directions should ordinarily be made if it is in the

interest of the child.

7. So far facts of the case is concerned, the case u/s 125 Cr.P.C. was filed in the year 1992 and the judgment was passed in the year 1996. No prayer was made curing enquiry before the lower court for D.N.A. test of the child. The prayer for D.N.A. test was made after lapse of 15 years of the institution of the case before Revisional Court. Apparently, the purpose of filing such application is to avoid payment of maintenance to the hapless wife and child. In such situation the court below has rightly rejected the prayer for D.N.A. test.

8. The proceedings u/s 125 Cr.P.C. is summary in nature. Unlike matrimonial proceeding in a proceedings u/s 125 Cr.P.C. strict, proof of marriage is not required as it does not finally determine the rights and obligation of the parties. Therefore it would also not be proper to subject the child for D.N.A. test in order to disprove the marriage.

9. Thus, having regard to the facts and circumstances. I find no merit in this application. Accordingly, the same is rejected. The court below is directed to dispose of the main criminal revision on merit at the earliest.