
(1989) 03 MAD CK 0069
In the Madras High Court
Case No : Criminal R.C. No. 596/87

S. Thangiah

APPELLANT

Vs

Thangamani Alex and Vidya (Minors represented by their mother Vasuki)

RESPONDENT

Date of Decision : 13-03-1989

Acts Referred:

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

Citation : (1989) LW(Cri) 229

Hon'ble Judges : Arunachalam, J

Bench : Single Bench

Advocate : V. Manoharan, for the Appellant; M. Venkataraman and Mr. V. Chandrakanthan, for the Respondent

Judgement

Arunachalam, J.—The Petitioner is the alleged father of the Respondents, who are minors represented by their mother Vasuki. Vasuki filed M.C. No. 121 of 1987 on the file of the Chief Metropolitan Magistrate, Egmore, Madras u/s 125 Cr.P.C., claiming maintenance for herself as the wife of the Petitioner and for her children, the Respondents, alleging that they were born out of the wedlock. Vasuki put forth her case on the basis that she married the Petitioner initially in 1975 and again in 1977 after conversion to Hinduism. The two Respondents are said to have been born on 18-8-1977 and 21-7-1979 respectively. To substantiate her case, Vasuki apart from examining herself as P.W.1, examined one Paut-doss as P.W.2 and Natarajan as P.W.3. She also filed Exs.P1 to P14 out of which Exs.P1, P5, P10, P12, P13 and P14, may be relevant for consideration in this revision. The Petitioner examined himself as R.W.1 and filed Ex.D1 the deposition of Vasuki, in S.C. No. 14 of 1975 on the file of the Court of Session, Pondicherry.

2. The case of the Petitioner before the trial court was that he did not marry Vasuki at any point of time and the Respondents were not born to him. He admitted that in or about 1982 he allowed Vasuki and her children, the

Respondents to reside in a portion of his house as tenants. Excepting humanitarian consideration, arising out of which he rendered some help to Vasuki and her children, he had no further connection with them. The trial Magistrate, on an appreciation of the evidence adduced before him found that Vasuki had not established her marriage with the Petitioner, to entitle her to claim maintenance. However, the trial Magistrate took the view that the Respondents were liable to be maintained by the Petitioner in view of the paternity having been proved through Exs P5, P12 and P13, coupled with the alleged admission of the Petitioner that even from 1977 he had taken Vasuki to his house and kept her there.

3. Thiru V. Manoharan, learned Counsel for the Petitioner contends that the trial Magistrate has misread the evidence about the alleged admission of the Petitioner having kept Vasuki in his house from 1977. He would further contend that Exs.P5, P12 and P13 cannot establish paternity in law, and the order of maintenance made by the trial court will have to be necessarily set aside.

4. Per contra, Thiru M. Venkataraman, learned Counsel for the Respondents seeks to place reliance on Exs.P1 and P14 which have been primarily filed to establish the marriage between the Petitioner and Vasuki. He would also place reliance on Ex.P10 the Ration Card, issued in the name of the Petitioner as well as Exs.P12 and P13 in which the Petitioner had signed for school admission, as parent of the minor children.

4a. Before going into the documentary evidence to find out whether the paternity has been established, it is better to dispose of the ground of alleged admission of the Petitioner on which the trial Magistrate has based his foundation to award maintenance to the Respondents. In paragraph 9 of the order, the trial Magistrate, has stated that during his deposition, the Petitioner as R.W.1 had admitted that even in 1977 he took Vasuki and kept her in a portion of his house. Then referring to Ex.P14, the trial Magistrate took the view that it was plausible to conclude that even in 1976 there was a possibility of joint living of the Petitioner and Vasuki, and in any event since joint living had been admitted from 1977 onwards, the children (Respondents) must be deemed to have been born to the Petitioner and Vasuki.

5. I have carefully perused the evidence of R.W.1 (Petitioner). There is no such admission. On the contrary, it is his definite case that though he had met Vasuki in March, 1976, at Kalas Nagar, Pondicherry, and again in the beginning of 1977 at Kodambakkam, when he had promised to extend all possible help, on Vasuki's expression of her difficulties, he is categorical that only in or about May 1982, he had permitted Vasuki to be a tenant in the house belonging to him, on a monthly rental of Rs. 100. It is therefore obvious that the trial Magistrate has misread the evidence of R.W.1 to base his conclusion on the so-called admission. This finding of "alleged admission of the Respondent" is therefore liable to be set aside.

6. It is now to be considered as to whether the paternity of the two minor

children had been established on the entire evidence on record, oral and documentary. If the evidence of P.W.1, the mother of these Respondents were to be acceptable, there would have been no problem whatsoever, in trying to seek material to lend assurance to her version and decide the paternity, in these proceedings, which are summary in nature, intended to provide relief to neglected wives and children. Unfortunately the evidence of P.W.1 is so shabby and does not commend itself for acceptance. P.W.1 Vasuki has stated in her evidence that she was married to one Gurka when she was 17 years old and the said Gurka left her when she was three months pregnant. Later, on her own admission, she led a wayward life as a prostitute at Pondicherry. She then met one Pandian with whom she lived as his wife and gave birth to two children. She continued to lead a life as a prostitute even with the connivance of her husband Pandian. For all practical purposes, P.W.1 calls Pandian her husband and it is apparent that they had been living together for several years. There is no material on record to indicate as to what happened to the first husband of Vasuki. P.W.1 further admits that when she was living with Pandian, she came into contact with one Bhaskaran, which intimacy on being noticed by her husband Pandian, led to his attacking Bhaskaran, resulting in registration of a crime against Pandian. In that crime, culminating in S.C. No. 14/75, P.W.1 had deposed admitting all these aspects. However, as P.W.1 in this maintenance proceeding she had even denied her having married the Gurka initially and later having married Pandian after the disappearance of the Gurka. She further denies her having lived together with Pandian and begotten children through him. Thus the evidence of P.W.1 is worthless and deserves rejection. P.W.2 Pauldoss acting Headmaster of Don Bosco School, M.R.P. Nagar, Vyasarpadi has been examined to prove Exs.P-12 and P-13 which are respectively the application forms for admission in school of the two Respondents, signed by the Petitioner in the column "signature of the parent". These applications are dated 27-5-1982. In column 3 "Name of the parent or guardian", the word "guardian" has been struck off. P.W.2 fairly concedes that there was no space in the application forms for the signature of guardian and the guardian also will have to sign at the place where it reads "signature of the parent". P.W.2 has not chosen to identify the petitioner as the person who presented the application forms. However, we have the admission of the Petitioner himself who states that in fact he had signed in Exs.P-12 and P-13, on humanitarian grounds as guardian, since Vasuki was a tenant in the house belonging to him. He specifically denies having struck off the word "guardian" in these application forms. It is in this context we have to appreciate the truth of the version of the Petitioner as R.W.1 since he admits having signed as a guardian for two other children of Vasuki who are not even alleged to have been born to him. When the evidence of the Petitioner appears to be true, Vasuki when examined as P.W.1 had even disclaimed her having mothered the two other children through Pandian, to take up the stand that she was only maintaining them as adopted children, contrary to Ex.D-1, Vasuki is thus prepared to go to any extent to utter falsehood. While appreciating the documentary evidence, one cannot completely overlook the oral evidence of

Vasuki brimming with falsity. In the Ration Card Ex.P-10 which is sought to be relied on by the learned Counsel for the Respondents, I find that the names of these Respondents Vidya and Thangamani Alex do in a place. This Ration Card cannot help the case of the Respondents. At this juncture it is better to dispose of the argument of paternity based on Ex.P-1 which is a certificate of conversion into Hinduism made on 9-1-1977 at the Arya Samaj, Madras. The previous name of the husband is shown as Solomon. T and the previous name of the wife has been entered as S. Vasuki. Along with the name of S. Vasuki, it is mentioned "one female child aged about two months". If one takes into consideration the chequered life led by Vasuki, on this entry of "one female child aged about two months", it cannot be held that the Petitioner is the father of that female child. Ex.P14 which is a Suddhi certificate issued by Arya Samaj on the same day, cannot advance the case of the Respondents any further. In the column family members, totalling ten, it is stated wife-one, self-one, and child-one. The learned Counsel for the Respondents would submit that since it is mentioned as self and child, it should be presumed that the child was born to the Petitioner, since he is the person who had signed and received the certificate. It will be too difficult to accept such a broad proposition when there is no material to safely conclude about the paternity of the female child referred to in Ex.P1 to P14.

7. What remains to be considered are documents Exs.P5, P12 and P13. Ex.P5 is the birth extract issued by the Corporation of Madras to a child born on 21-7-1979 to Thangiah and Vasuki. Obviously this is sought to connect the paternity of the 2nd Respondent. None have been examined either from the Corporation of Madras or from R.S.R.M. Hospital to substantiate the entries found in Ex.P5. It may be that Ex.P5 is a public document, but to conclude paternity on the basis of Ex.P5, does not in law, appear to be easily plausible when there is no evidence to show that the alleged father was the informant or that he gave some information constituting an admission of paternity. No presumption of paternity can arise in proceedings u/s 125 Cr.P.C., merely upon the entries found in a certificate of Birth Register extract. The view of mine is fortified by the pronouncement of Anantanarayanan, J., in Mahadeva Rao v. Yesoda Bai 1961 M.W.N. Cri. 164, Ex.P5 thus gets excluded.

8. Ex.P12 and Ex. P13 in the light of the evidence of R.W.1 (Petitioner), cannot be taken as admissions by the putative father. It is the duty of the mother to prove that she had no access with her husband the Gurka or Pandian whom she admits to have married after the running away of her first husband, the Gurka. In proceedings u/s 125 Cr.P.C., the admission of paternity of an illegitimate child, by the alleged putative father is totally irrelevant, in view of the clear wording of Section 112 of the Indian Evidence Act. If the applicant's mother fails to prove that she and her husband had no access at the time when the child for whom she claims maintenance could have been begotten, the burden of proof is not upon the alleged putative father of the children, but it is for the mother claiming maintenance for the children to show that they were born only to the alleged father through an exclusive relationship with him. This view has been

consistently taken in *Rajabai Ammal v. Nather Sahib* 1941 M.W.N. Cri. 161, and in

9. The explanation put forth by the Petitioner regarding his signatures in Exs.P12 and P13 is credit-worthy and gets further strengthened in the light of the untrustworthy evidence of Vasuki. Exs.P12 and P13 therefore will have to be eschewed from consideration, to prove paternity. Once the oral and documentary evidence do not support the claim of paternity, the net result would be that the award of maintenance made in favour of the Respondents by the trial court will have to be necessarily set aside.

10. Accordingly, I set aside the order of maintenance made in favour of the Respondents by the Chief Metropolitan Magistrate, Egmore, Madras in M.C. No. 121/86. This revision is allowed.

11. This being a summary criminal proceeding, the observations herein are without prejudice to the rights of the parties to have the paternity and all liabilities arising therefrom determined in proper civil proceedings.