
(2014) 01 AP CK 0139

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 1404 of 2013

Smt. S. Swarnalaxmi

APPELLANT

Vs

The State of A.P. and Another

RESPONDENT

Date of Decision : 22-01-2014

Acts Referred:

Constitution of India, 1950 — Article 20(3)
Criminal Procedure Code, 1973 (CrPC) — Section 164, 164-A, 53A
Evidence Act, 1872 — Section 45
Penal Code, 1860 (IPC) — Section 373, 376, 417, 493

Citation : (2014) 1 ALD(Cri) 719

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Advocate : T.N.M. Ranga Rao, Advocate for the Appellant; D. Sangeetha Reddy for Respondent No. 2, Advocate for the Respondent

Judgement

R. Kantha Rao, J.—This Criminal Revision Case is filed against the order passed by the Principal Assistant Sessions Judge, Eluru, West Godavari District dated 27-06-2013 in CrI.M.P. No. 62 of 2013 in S.C. No. 110 of 2010.

2. The respondent/accused is being tried by the learned Principal Assistant Sessions Judge, Eluru, West Godavari District for the offences punishable under Sections 376, 493, 373 and 417 of I.P.C. In the said case, entire evidence was over, arguments were heard and the case was posted for Judgment. At that stage, the petitioner/de facto complainant filed a petition before the trial Court under Sections 53A and 164 of Cr.P.C., r/w. Section 45 of Indian Evidence Act, seeking second DNA test.

3. According to the de facto complainant, the said petition was not received by the learned Assistant Sessions Judge and she filed a Criminal Petition No. 1442 of 2013 before this Court and this Court directed the learned Assistant Sessions Judge to dispose of the application filed by the petitioner on merits. Thereafter, the trial Court heard both sides and passed an order dismissing CrI.M.P. No. 62 of

2013 filed by the de facto complainant. Against the said order, the present Criminal Revision Case is filed.

4. The allegations against the respondent/accused are that he developed physical contact with the de facto complainant by promising to marry her. Ultimately, she became pregnant through the respondent/accused and gave birth to a male child. Admittedly during the course of investigation, the investigating officer collected the blood samples of the petitioner/de facto complainant, her male child and also the respondent/accused and sent them to Andhra Pradesh Forensic Science Laboratory, Hyderabad for conducting DNA test. The samples were analysed and the Expert gave a report stating that the respondent/accused is not the biological father of the male child born to the de facto complainant.

5. The petitioner/de facto complainant filed a petition before the learned Assistant Sessions Judge under Sections 53A, 164-A of Cr.P.C., r/w. Section 45 of the Indian Evidence Act for again collecting blood samples of the respondent/accused and the minor boy for the purpose of sending them for second DNA test to another Forensic Science Laboratory. The trial Court dismissed the said petition.

6. Now, the point for consideration is: Whether the order passed by the learned Principal Assistant Sessions Judge, Eluru requires any interference in this revision?

7. The learned counsel appearing for the petitioner would contend that after introduction of Section 53A of Cr.P.C., (Amendment Act, 2005); a police officer not below the rank of Sub Inspector can request the Medical Officer to conduct examination of the accused person and can use such force reasonably necessary for that purpose and the intention of the legislature is to enable the investigating agency to collect required evidence in the offence of rape and therefore, on the same analogy, the respondent/accused can again be compelled to give blood samples for second DNA test.

8. In support of his contention, he relied on the decision reported in Sri Halappa @ Harthal Halappa Vs. The State of Karnataka, , wherein, the learned Single Judge of Karnataka High Court held as follows:-

The amendment by introducing Section 53A Cr.P.C., was brought to overcome the difficulty of the prosecuting agency to detect the serious offences of rape and this Section is not ultra vires of the Constitution. Drawing of the blood sample for the purpose of civil proceedings without the consent of the party is not desirable. But, drawing of the blood sample for detection of the offence of rape, the investigating agency can make the accused to undergo medical examination and furnish blood samples. Even if a reasonable force is used by the investigating offence for the said purpose does not violative of Article 20(3) of the Constitution.

9. There is no doubt about the proposition laid in the aforesaid decision, but the said decision is not relevant for the purpose of disposing of the present Criminal

Revision Case.

10. The question to be determined in the present Criminal Revision Case is when already there is a DNA test report, whether the accused can be compelled to give blood samples again for the purpose of second DNA test and such a request made by the de facto complainant for the second DNA test can be accepted by the trial Court?

11. Obviously, the report relating to DNA profiling is not conclusive of the factum of paternity of the respondent/accused. Already, the investigating officer during the course of investigation, took blood samples of three persons and sent them for analysis to the Andhra Pradesh Forensic Science Laboratory, Hyderabad and report was obtained, wherein it was stated that the respondent/accused was not the biological father of the child born to the de facto complainant.

12. The prosecution has to establish that the respondent/accused by playing deception and fraud and under a promise to marry the de facto complainant, had sexual intercourse with her. If the prosecution succeeds in proving that the respondent/accused is the biological father of the child born to the de facto complainant, that would be only a piece of evidence and that by itself cannot establish any offence of rape.

13. In any event, the crucial question in this case is whether a second DNA test can be directed by the trial Court on the request of the de facto complainant.

14. The learned counsel appearing for the petitioner/de facto complainant relied on the decision reported in Sakthivel Vs. Karpagam 2005 Law Suit (Mad) 1487, wherein, the learned Single Judge has dealt with a similar situation, when, a second DNA test was sought to be conducted on the ground that the earlier DNA report confirming the paternity of the petitioner (husband) was obtained by the respondent (wife) by influencing the scientific expert through one of her relatives in the Forensic Science Department. The learned Single Judge took the view that DNA report is only a piece of evidence in support of the paternity of the child. If the revision petitioner expressed doubts about the correctness of the report, it is open to him to put forth his objection at the time of trial, but the doubt expressed by the revision petitioner cannot be the reason for sending the sample again to the other laboratories.

15. In the instant case, except making a balled allegation that the DNA report was manipulated, no valid reasons have been assigned by the de facto complainant for doubting the DNA report, which was received during the course of investigation. Merely because a doubt was raised about the genuineness of the DNA report, if the samples were again taken and sent to another laboratory, it may result in conflict of opinions and the parties may resort to filing applications repeatedly and such a course shall not be encouraged.

16. Therefore, in the instant case, I am of the view that the learned Assistant Sessions Judge rightly rejected the request of the petitioner/de facto complainant

made for obtaining DNA report from another Forensic Science Laboratory. I do not find any error of jurisdiction committed by the learned Assistant Sessions Judge to interfere with in this revision.

17. Accordingly, the Criminal Revision Case is dismissed. The Miscellaneous Petitions pending if any shall stand closed.