

(2001) 03 AP CK 0121

In the Andhra Pradesh High Court

Case No : Criminal RC No. 989 of 2000

Syed. Mohd. Ghouse

APPELLANT

Vs

Noorunnisa Begum and Others

RESPONDENT

Date of Decision : 14-03-2001

Acts Referred:

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

Citation : (2001) 2 ALD 734 : (2001) 1 ALD(Cri) 590 : (2001) 1 ALT(Cri) 322 :
(2001) CriLJ 2028 : (2001) 2 DMC 454 : (2001) 3 RCR(Criminal) 92

Hon'ble Judges : T. CH. Surya Rao, J

Bench : Single Bench

Advocate : Mr. P.R. Prasad, for the Appellant; Mr. R. Timma Reddy, for the Respondent

Judgement

1. The petitioner assails the docket order dated 18-8-2000 passed by the learned Judge. Family Court of Hyderabad. The revision petitioner is the respondent in MC No.13 of 1998 pending on the file of the Family Court, Hyderabad. The respondents 1 and 2 herein are the petitioners in the said MC No. 13 of 1998. They filed the petition u/s 125 of the Cr.PC, seeking maintenance on the premise that the first petitioner married the respondent in the year 1983 as per Muslim Personal Law at Hyderabad, and during their lawful wedlock, the second petitioner-minor was born to them, and that the respondent after the marriage ill-treated the first petitioner and harassed her demanding more dowry from the parents and eventually deserted both the petitioners. It is further averred in the petition that the respondent being the Superintendent in Anwar-ul-uloom Boys High School, Nampally, drawing a monthly salary of Rs.10,000/-, besides income he is getting from tuitions in an amount of Rs.5,000/- per month and rents from his own house at Rs.2,000/- and thus having had sufficient means, neglected and refused to maintain the petitioners.

2. That petition was resisted by the respondent mentioning inter alia, in the counter filed by him that the petitioners are utter strangers to him and he is at a

loss to understand as to what prompted them to file the maintenance petition with false and mischievous allegations.

3. When the petition was coming up for enquiry, the learned Judge, Family Court, passed the impugned docket order to the following effect.

"PW2 present. Respondent is directed to undergo DNA Test to know the paternity of the child - Both the parties are directed to appear before the Director of CCMB, Hyderabad on 5-9-2000 at 10-30 a.m. Respondent is directed to deposit a sum of Rs.8,000/- temporarily as charges by 1-9-2000, Call on 7-9-2000."

4. As aforesaid, the revision petitioner assails the said order. The moot question that crops up for determination is whether the Court can direct the respondent to submit himself to the DNA Test. The Apex Court in *Goutam Kundu Vs. State of West Bengal and another*, held in Paragraph 26 thus:

"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 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. That was a case where the wife and minor daughter filed a petition for maintenance against the appellant. The marriage between the parties was not denied. However, the paternity of the child was denied. Consequently, the liability to pay maintenance to the child was also denied. At that stage, the husband filed a petition for blood test of the minor and of himself so as to prove that he was not the father of the child. When that application was dismissed, a revision was filed before the High Court, which also dismissed the same. Consequently, he approached the Apex Court. The Apex Court, while reviewing the law prevailing in various foreign countries and the law prevailing in the country, ultimately deduced the five points enumerated supra.

6. Obviously, the marital tie between the parties, inter se, was not in dispute in that case and only the paternity of the child was every much in dispute. Taking the recourse to the presumption u/s 112 of the Evidence Act, the Apex Court was of the view that it is for the appellant to prove non-access so as to dispel the presumption of legitimacy that could be drawn u/s 112 of the Evidence Act.

7. That was a position prior to the advent of the DNA Test. DNA Test is now a developed test, which conclusively determines, with reference to the gene

characterises, the paternity of a child. The Apex Court expressed its concern about the ramifications of such a blood test in the interests of the child. However, the decision does not say that such blood test cannot be ordered at all. It all depends upon the facts of a particular case. Nonetheless, the Apex Court was so emphatic on one aspect that no one can be compelled to give sample of blood for analysis.

8. It is thus obvious that before ordering the blood test, either for DNA or other test the Court has to consider the facts and circumstances of the given case and the ramifications of such an order. But the Court cannot compel a person to give the sample of blood. However, if that person refuses to give blood sample without any valid reason the Court is at liberty to draw the inference as a necessary corollary in sequel thereof.

9. In view of this authoritative pronouncement of the Apex Court, the impugned order directing the respondent to submit himself to DNA test cannot be sustained. In the result, the revision petition is allowed in the light of the observation made inter alia in the order and consequently the impugned order is hereby set aside.