
(1997) 11 MAD CK 0142

In the Madras High Court

Case No : Criminal R.C. No. 739 of 1997 and Criminal M.P. No. 5657 of 1997

Venkatachalam

APPELLANT

Vs

Anandha Jothi @ Rasathi and Others

RESPONDENT

Date of Decision : 20-11-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (1997) 2 CTC 763 : (1998) 1 DMC 454 : (1998) 1 LW(Cri) 187

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : G. Jeremiah, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

M. Karpagavinayagam, J.—This is a petition praying to set aside the order dated 18.6.1997 made in M.P. No. - of 1997 in M.C. No. 10 of 1996 on the file of learned Judicial Magistrate No. 2, Sankari.

2. The petitioner is the husband. The first respondent is the wife. The second and third respondents are the children. The respondents in the year 1996 filed a petition for maintenance u/s 125 of Cr.P.C. against the petitioner.

3. On receipt of summons, the petitioner, the husband filed a counter before the lower Court admitting the marriage between himself and the first respondent and denying the paternity of the children, the respondents 2 and 3 herein through him. The said counter was filed in February, 1997.

4. On the eve of the commencement of the proceeding, the petitioner filed an application u/s 125(2), Cr.P.C. in April, 1997 before the lower Court with the prayer to direct the first respondent to take the respondents 2 and 3 to Madras and produce them before the concerned Medical Officer attached to Forensic Science Department for ascertaining the paternity of the children.

5. The said application was resisted by the first respondent by filing a counter

stating that the application was filed with an oblique motive to drag on the proceeding unnecessarily. She also stated that the second respondent is aged only 5 years and the third respondent is aged only 3 years and that since they are small babies, it may not be justifiable to put them into medical test.

6. After hearing the parties concerned and perusal of the petition and counter, the lower Court passed the order rejecting the prayer of the petitioner. Hence, the revision.

7. This revision has to be dismissed on a short ground.

8. In *Goutam Kundu Vs. State of West Bengal and another*, , the Supreme Court would observe as follows :

"It is a rebuttable presumption of law that a child born during the lawful wedlock is legitimate, and that access occurred between the parents. This presumption can only be displaced by a strong preponderance of evidence, and not by a mere balance of probabilities.

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 a 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."

9. In view of the above observation made by the Apex Court, I do not find any ground to entertain this revision. The paternity could be proved only at the time of trial after examination of witnesses, on perusal of the documents filed by the parties and the evidence deposed by the witnesses.

10. The proceedings u/s 125, CrI.P.C. is a summary one. Therefore, the Criminal Courts in 125 proceedings cannot embark upon a roving inquiry on the matter of paternity.

11. Hence, the petition presented before the Magistrate for blood test cannot be maintained, especially when it is objected to by the wife on behalf of the children.

12. For the reasons stated above, the revision, which has no merit, fails and the same is dismissed. Consequently, Cri. M.P. No. 5657 of 1997 is also dismissed.