

HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

Criminal Petition No.10971 OF 2022

Between:

Mohammed Munawar @ M.Manohar

... Petitioner

And

The State of Telangana,
rep. by its Public Prosecutor,
High Court for the State of Telangana,
Hyderabad & others

... Respondents

DATE OF JUDGMENT PRONOUNCED: 04.01.2023

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

- 1 Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
- 2 Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
- 3 Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

K.SURENDER, J

* THE HON'BLE SRI JUSTICE K. SURENDER

+ CRL.P. No. 10971 of 2022

% Dated 04.01.2023

Mohammed Munawar @ M.Manohar

... Petitioner

And

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rep. by its Public Prosecutor,
High Court for the State of Telangana,
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... Respondents

! **Counsel for the Petitioners:** Sri. E.Poornachander Rao

^ **Counsel for the Respondents:** Sri S.Sudershan

Additional Public Prosecutor for R1

>HEAD NOTE:

? Cases referred

¹ Criminal Appeal No.1569 of 2022, dated 15.09.2022

² (2022) 1 Supreme Court Cases 20

³ 2014 (2) ALD 131

⁴ AIR 2010 SC 2851

⁵ 2022 SCC OnLine SC 1047

HON'BLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION No.10971 OF 2022****ORDER:**

1. The petitioner(Husband) is questioning the orders of the learned Additional Family Court Judge dated 29.11.2022 in CrI.M.P.No.44 of 2020 in M.C.No.243 of 2017 directing the him to undergo DNA test to determine whether he is the father of the minor namely Mohammed Rayyam Ahmed/3rd respondent(Son) herein. The said petition was filed by the 2nd respondent herein(Wife) before the Family Court. For convenience the parties will be referred as "Husband", 'Wife' and "Son'.

2. According to wife of the petitioner, after marriage they were blessed with the child on 02.11.2013. On the ground of continued harassment, an application was filed under Section 125 of Cr.P.C by the wife. In the counter affidavit filed by the husband, he denied the marital relationship and also stated that he is not the biological father of the child. For the said reason, to determine the paternity of the child, the wife filed the petition under Section 45 r/w Section 112 of the Indian

Evidence Act praying the Court to direct DNA testing to determine the paternity of the child.

3. Learned counsel appearing for the petitioner would submit that as a matter of routine, the courts cannot direct parties to undergo DNA testing. Further no foundation is laid or facts are narrated by the Court to order such test. In support of his contention, he relied on the judgment of the Hon'ble Supreme Court in the case of **Inayath Ali v. State of Telangana**¹. In the said case, the trial Court while trying a case under Sections 498-A, 323, 354, 506 and 509 of IPC, directed DNA testing to determine the paternity of the two minor daughters. In revision, this court held that the orders of the learned trial Court was proper and upheld the said orders. When the matter was carried to the Hon'ble Supreme Court, the Hon'ble Supreme Court held that when the paternity of the children was not in question in the said proceedings, mechanically directing the petitioner therein to subject himself to DNA testing does not arise.

¹ Criminal Appeal No.1569 of 2022, dated 15.09.2022

4. Counsel also relied upon the judgment of Hon'ble Supreme Court in the case of In the case of **Ashok Kumar v. Raj Gupta**², **Davu Gopal Lunani v. Siva Gopal Lunani**³ and also in the case of **Bhabani Prasad Jena v. Convenor Secretary, Orissa State Commission for Women and others**⁴.

5. In the present case, the petitioner is denying the marriage itself and also that he is the biological father of the 'son'. Both the wife and son are claiming maintenance from the petitioner herein. While granting maintenance, the competent court has to look into the relationship of spouse and also the relationship of the children. Section 125 of Cr.P.C enables the orders for maintenance of wife, children and parents. The maintenance can be ordered if the wife is unable to maintain herself or children or parents, subject to proof of the necessity to grant maintenance.

² (2022) 1 Supreme Court Cases 20

³ 2014 (2) ALD 131

⁴ AIR 2010 SC 2851

6. The Hon'ble Supreme Court in the case of **Priyanka Janardhan Patil v. Janardhan Raghunath Patil**⁵ has refused to interfere with the order of direction by the lower Court to determine the paternity by DNA testing. The Hon'ble Supreme Court held as follows:

“4. Be that as it may, to resolve the dispute once and for all, this Court refrains from interfering with the direction for paternity/DNA Test. The paternity/DNA test may be conducted at the All India Institute of Medical Sciences, New Delhi, for which the petitioner and the respondent shall give samples as required. It is made absolutely clear that if on testing, it is found that the allegations are based on suspicion and the respondent is, in fact, the father of the child, the respondent shall pay compensation of Rs.30,00,000/- (Rupees thirty lakhs only) to the petitioner, in addition to usual maintenance and other costs and charges as the respondent may be directed to pay for the petitioner and for the child.”

7. In the judgment relied by the learned counsel for the petitioner in the case of **Bhabani Prasad Jena (supra)**, it was held that when there is an apparent conflict between the right to privacy of a person not to submit himself forcibly to medical examination and duty of the Court to reach the truth, the Court must exercise its discretion only after balancing and

⁵ 2022 SCC OnLine SC 1047

keeping in view of the interests of the parties. Unless the DNA test is imperative, no such orders can be granted.

8. In the case of **Inayath Ali v. State of Telangana (supra)**, since the issue was not paternity, the Hon'ble Supreme Court interfered and directed that there was no necessity of DNA testing. In the case of **Bhabani Prasad Jena (supra)**, the State Commission for Woman constituted under Section 3 of the Orissa (State) Commission for Women Act 1993 as found by the Hon'ble Supreme Court, the Commission did not have any authority or competency to order DNA testing. Accordingly, the orders were disallowed. However, the Hon'ble Supreme Court observed that it will not preclude the claim for maintenance.

9. In the present case, two applications have been filed under DVC Act and the Maintenance Case by 'Wife' and 'Son'. In DVC No.21 of 2017, similar petition was filed for conducting DNA test, which was allowed. However, this Court in CRLP.No.4695 of 2018 stayed the orders of the DNA testing for a period of two months and thereafter, the said stay was not

extended. The family Court having considered all the facts of both the cases filed for maintenance, found that the application for determining paternity can be allowed.

10. Since the DNA testing would resolve the issues involved in both the Maintenance Case and the DVC proceedings, I do not find any illegality in the order of the learned Family Court Judge in ordering DNA testing to determine the paternity.

11. Though the Courts shall not as a matter of course direct paternity test, in the present facts, the 'wife' has filed documents to substantiate that there was a marriage and thereafter 'Son' was born. The ground raised by the learned counsel for the petitioner is that there are no reasons given in the order that there is a necessity to conduct DNA testing is not correct. Learned Family Court Judge has given adequate reasons and also after discussing the back ground of the cases, has ordered the petitioner herein to undergo DNA testing.

12. Courts should be cautious that a child could be bastardized on the basis of result of DNA testing and any refusal by the husband to submit himself to medical examination, the Court will be entitled to draw an adverse inference against husband and proceed with the case on the presumption that the husband is the biological father of the child. However in the present facts of the case, I do not find any illegality in the impugned order.

13. In the result, the Criminal Petition is dismissed. As a sequel thereto, miscellaneous applications, if any, shall stand closed.

K.SURENDER, J

Date: 04.01.2023

Note: L.R.Copy to be marked

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HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.10971 OF 2022

Date: 04.01.2023.

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