

Geetha Vs. State of Kerala

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Court : Kerala

Decided On : Mar-17-2005

Reported in : 2005CriLJ2780; II(2005)DMC286; 2005(2)KLT407

Judge : K. Hema, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 293, 293(1) and 293(4); [Constitution of India](#) - Article 141

Appeal No. : Cri. M.C. No. 8850 of 2002

Appellant : Geetha

Respondent : State of Kerala

Advocate for Def. : Santheep Ankarath, Adv. and; Thavamony, Public Prosecutor

Advocate for Pet/Ap. : P. Vijaya Bhanu and; Alan Pappali, Adv.

Disposition : Petition allowed

Judgement :

ORDER

K. Hema, J.

1. Can D.N.A. Finger Printing test report Issued from the D.N.A. Finger Printing & Diagnostic Centre, Ministry of Science and Technology, Hyderabad, which is a

Central Government undertaking be admitted in evidence without examining the Expert in Court This is the main question that I have to answer in this case.

2. The petitioner filed M.C. No. 132 of 1998 before the Judicial First Class Magistrate, Pattambi claiming maintenance at the rate of Rs. 500/- to her child. According to her the 2nd respondent herein is the father of the child. They allegedly developed illicit intimacy while she was working as housemaid in his house and in their illicit relationship the child was born to her. 2nd respondent did not take care of the child and he neglected and refused to maintain the child. Hence the claim.

3. The alleged father/2nd respondent denied paternity. The petitioner therefore took steps to get paternity determined by D.N.A. Finger Printing. Blood samples of the child and the 2nd respondent were sent through Court to the D.N.A. Finger Printing & Diagnostic Centre, Ministry of Science and Technology, Hyderabad, a Central Government undertaking for conducting D.N.A. test for determining the paternity of the child. According to the petitioner the result of the report is in favour of the petitioner and it will help her prove that the 2nd respondent is the father of the child.

4. Therefore, the report issued from the D.N.A. Finger Printing and Diagnostic Centre was sought to be admitted in evidence without examining the Scientific Expert who issued the same. But the request was turned down by the lower Court in view of the objections raised by the 2nd respondent's counsel that such report cannot be marked without examining the Expert since Expert who issued the report does not come under Section 293(4) of Cr.P.C. That order was passed during the course of the recording of evidence of P.W. 1, as disclosed from the deposition, Annexure-A. It is the said order that is challenged under various grounds stated in the petition.

5. To answer the question whether D.N.A. test report can be admitted in evidence without examining the expert, primarily the Court has to find out whether the report falls under Section 293 of Cr.P.C. or not. Learned counsel appearing for the petitioner vehemently contended that the report of D.N.A. Finger Printing is issued under the hand of a Government scientific expert and therefore it can be used in

evidence without examination of the expert as stated in Section 293 of Cr.P.C. According to him, petitioner is only a servant-maid who was working in the house of the 2nd respondent and due to financial stringency she cannot afford to meet the expenses for examining the expert. She has already spent a huge amount which is more than the bulk of her purse for getting the blood samples analysed at Hyderabad by the Expert.

6. In the above circumstances, it is contended that the report may be admitted in evidence without examination of the Expert. The counsel was over-assertive that the report can be admitted in evidence like any other reports of other Government Experts under Section 293 of Cr.P.C. So, let me consider whether the report can be admitted in evidence as stated by the petitioner under Section 293 of Cr.P.C. as argued. Section 293 reads as follows:

'Section 293. Reports of certain Government scientific experts.- (1) Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

(2) The Court may, if it thinks fit, summon and examine any such expert as to the subject-matter of his report.

(3) Where any such expert is summoned by a Court and he is unable to attend personally, he may, unless the Court has expressly directed him to appear personally, deputy any responsible officer working with him to attend the Court, if such officer is conversant with the facts of the case and can satisfactorily depose in Court on his behalf.

(4) This section applies to the following Government scientific experts namely:--

(a) any Chemical Examiner or Assistant Chemical Examiner to Government;

(b) the Chief Inspector of Explosives;

(c) the Director of Finger Print Bureau;

(d) the Director, Haffkeine Institute, Bombay;

(e) the Director (Deputy Director or Assistant Director) of a Central Forensic Science Laboratory or a State Forensic Science Laboratory; and

(f) the Serologist to the Government.'

7. The above section shows that a report issued by Government Scientific Expert upon any matter or thing duly submitted to him for examination or analysis may be used as evidence, without examining the Expert under certain circumstances. But, according to the Learned Counsel appearing for the alleged father/2nd respondent, the Expert who issued the D.N.A. Finger Printing Report is not the one enumerated under Sub-section (4) of Section 293 of Cr.P.C. and hence report of D.N.A. Finger Printing issued in this case cannot be admitted in evidence under Section 293 Cr.P.C. without examining the Expert. He vehemently contended that to dispense with the examination of the Expert under Section 293 Cr.P.C., such expert who issued the relevant report has to be one enumerated under Sub-section (4) of Section 293 Cr.P.C.

8. It was also strenuously argued that Sub-section (1) of Section 293 itself lays down that reports that can be used without examination of the expert are such reports issued under the hand of a Government Scientific Experts enumerated under Sub-section (4) of Section 293 Cr.P.C. Since the said Expert from D.N.A. Finger Printing & Diagnostic Centre, Hyderabad is not specifically enumerated in Sub-section (4) of Section 293 Cr.P.C., the report in this case cannot be marked without examination of the expert. It is true that the Expert who issued the report in this case is not the one included under Sub-section (4) of Section 293 Cr.P.C. On a plain reading of Section 293 Cr.P.C., it will also appear that only a report of such Government scientific experts who are enumerated in Sub-section (4) can be used as evidence without examining the Expert.

9. But Learned Counsel for the petitioner drew my attention to a decision of the Supreme Court in *State of H.P. v. Mastram* ((2004) 8 SCC 660) and contended

that the report in this case cannot be refused to be admitted in the light of the dictum laid down in the said decision. On going through the said judgment I find that in a more or less similar situation, one of the High Courts held that a Junior Scientific Officer (Ballistic Expert) of the Central Forensic Science Laboratory, Chandigarh was not an expert enumerated under Sub-section (4) of Section 293 Cr.P.C. and hence the said report was not admissible in evidence without examining the Expert. While considering the correctness of the above decision of the High Court, the Supreme Court criticised the reasoning given by the High Court as 'fallacious' and observed in Mastram's case cited above as follows:

'The report of the ballistic expert (Ext.P-X) was signed by one Junior Scientific Officer. According to the High Court, a Junior Scientific Officer (Ballistic) is not the officer enumerated under Sub-section (4) of Section 293 of the Code of Criminal Procedure and, therefore, in the absence of his examination such report cannot be read in evidence. This reason of the High Court, in our view, is also fallacious. Firstly, the forensic science laboratory report (Ext.P-X) has been submitted under the signatures of a Junior Scientific Officer (Ballistic) of the Central Forensic Science Laboratory, Chandigarh. There is no dispute that the report was submitted under the hand of a Government Scientific Expert. Section 293(1) of the Code of Criminal Procedure enjoins that any document purporting to be a report under the hand of a Government Scientific Expert under the section, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under the Code, may be used as evidence in any inquiry, trial or other proceeding under the Code. The High Court has completely overlooked the provision of Sub-section (1) of Section 293 and arrived at a fallacious conclusion that a Junior Scientific Officer is not an officer enumerated under Sub-section (4) of Section 293. What Sub-section (4) of Section 293 envisages is that the Court is to accept the documents issued by any of the six officers enumerated therein as valid evidence without examining the author of the documents.'

10. Going by what is said by the Supreme Court in Mastram's case, report of D.N.A. Finger Printing cannot be rejected on the sole ground that the Government Scientific Expert who issued the same is not enumerated under Sub-section (4) of Section 293 of Cr.P.C. On the other hand, it has to be admitted in evidence under

Sub-section (1) of Section 293 as a report which is issued under the hand of a Government Scientific Expert. The situation in this case is identical as the one stated in Mastram's case referred above. The report sought to be marked in this case without examination of the Expert is admittedly one issued under the hand of a Government Scientific Expert. Therefore, with due respect, I can only reject the arguments advanced by the Learned Counsel appearing for the 2nd respondent.

11. Learned Counsel appearing for the 2nd respondent also stressed on the point that Supreme Court omitted to take note of the fact that Sub-section (1) of Section 293 will apply only to such experts who are enumerated under Section 293(4) and hence Sub-sections 1 and 4 cannot be read independently etc. It was also argued that since in Mastram's case the Supreme Court failed to note the above fact, the said decision cannot be applied to the facts of this case. I am unable to accept this argument especially in the light of what Supreme Court laid down in Suganthi Suresh Kumar v. Jagadeeshan (AIR 2002 SC 681). Supreme Court held therein that it is impermissible for the High Court to overrule the decision of the Apex Court on the ground that Supreme Court laid down the legal position without considering any particular point. It is worthy to extract in this context, the relevant portion from the above decision which is as follows:

'It is impermissible for the High Court to overrule the decision of the Apex Court on the ground that Supreme Court laid down the legal position without considering any other point. It is not only a matter of discipline for the High Courts in India. It is the mandate of the Constitution as provided in Article 141 that the law declared by the Supreme Court shall be binding on all Courts within the territory of India. It was pointed out by this Court in Anil Kumar Neotia v. Union of India, AIR 1988 SC 1353 that the High Court cannot question the correctness of the decision of the Supreme Court even though the point sought before the High Court was not considered by the Supreme Court'

12. Apart from all these, Learned counsel appearing for the petitioner also requested this Court to bear in mind the financial incapacity and the sad plight of the petitioner before taking a crucial decision in this matter. The petitioner is a servant-maid who is too poor to bear the expenses for examining the expert,

especially after having already spent a huge amount for sending blood samples to Kyderbad for getting the report. It was also pointed out that in the nature of this case, the solitary piece of evidence to prove paternity is that of the petitioner herself. If she fails to examine the expert in support of her case solely because of her poverty, it will result in serious miscarriage of Justice. It was also submitted that the evidence of a woman like the petitioner has the inherent stigma and therefore, depicting her as a 'woman of easy virtue' etc., it is likely that her evidence will be scrutinised with a tint of prejudice. The Court has to caution itself about this before passing the verdict.

13. Yes, I do understand the anxiety expressed. I can also hear now, the sobs and sighs of many other similarly placed women of this country also, as I dictate this judgment. I can also comprehend the probable prejudices that the society can have against such women -- women who are slighted because they are wrongdoers in the eyes of society. The masses around her seldom bother to cognize what propelled her to the wrongs and what drove her to the forbidden. Categories of such women are many. Woman who is vulnerable, hence exploited. Woman who is penniless, hence misused. Tagged as 'woman of easy virtue or loose morals' she is left to suffer the contempt, whether she deserves such stigma or not. I do agree that the Indian society cannot be blamed. But, can the Courts swear any justification to deny what she legally deserves

14. It has to be remembered that the petitioner is before the Court not in chase of any charity; her arms are stretched and spread, not in begging either. She is before the Court with a claim which is permitted by Law. Her demand for maintenance for the child is only legal provided she proves that the person who denied the paternity is the father of the child. Law would uphold her claim, however immoral she might be. Character of the woman is thus irrelevant in this context. She cannot therefore be condemned, nor can her lawful cause be painted sub-hue with any shade of prejudice. She cannot be non-suited even if she be a willing partner to love and lust. The only question before the Court will be whether the person who denies paternity is actually the father of the petitioner's child or not. No Court shall therefore be prejudiced against the woman in cases of this nature on the ground that she is either immoral or unchaste. This is for the simple

reason that illegitimacy itself is the very foundation of the claim.

15. When such a woman approaches the Court, ignoring all possible scorns from the society, Court cannot frown at her. Court is bound to honour her claim and respect it because Law recognises right of the woman to make the demand. Neither time, money nor any other disability should be a barrier to her in getting the legal protection that she deserves. It goes without saying that examination of the same Expert in the different Courts of this country will be time-consuming also. Taking all the above facts into consideration, I find that this Court must be hasty to apply the dictum in Mastram's case to answer the question in favour of the petitioner. Thus, I hold that Report of D.N.A. Finger Printing issued from D.N.A. Finger Printing & Diagnostic Centre, Hyderabad which is a Central Government undertaking for conducting D.N.A. test can be admitted in evidence without examination of the expert under Section 293 of Cr.P.C.

16. I would also mention in this context that several deserving women in this country are denied the opportunity of examining the expert to prove paternity, only on account of their poverty. There are also yet other category of women, though financially sound are caught in the cob-web of insult and suffers the brunt of disgrace, since paternity is denied. Denial is easy but the injury is painful. There are also men who face false charges of paternity and they will wholly depend upon scientific evidence to get themselves exonerated from the blame. In their case, assertion by the woman is easy but rebuttal is too difficult and tough. Thus, whether male or female, poor or rich, many of them build up their hopes on the report of D.N.A. Finger Printing issued by Government Scientific Experts to a great extent to prove an issue which is critical.

17. But, in view of non-inclusion of such Government Scientific Experts issuing reports of D.N.A, Finger Printing in Section 293(4) of Cr.P.C., arguments are-still raised that the examination of such experts in Court is unavoidable. This puts the needy to needless trouble and delay. At the time when Section 293 was brought into the Code, D.N.A. Finger Printing might have been an alien theme which was not even in the making and so much so, it would not have struck the attention of the Legislature. Time and tide played a long game thereafter. Science and

Technology developed considerably and swiftly. Many of the citizens of country now look forward to D.N.A. Finger Printing reports to prove paternity as a strong piece of corroborative scientific evidence. Many true cases remain unproved for want of scientific evidence. Destitutes and the down-trodden are the more affected ones very often. I cannot therefore manage to shut my eyes any more to the sad problem of a particular section of the society.

18. I recollect what Benjamin Cardozo said long back: 'the inn that shelters for the night is not the end of the journey. Law like the traveller must be ready for tomorrow.' D.N.A. Finger Printing has risen like a new star in the horizon of Law. Let us catch its shine before it is too late and be ready for tomorrow. Let necessary inclusion be made into the statute for a worthy cause. I cannot therefore stop my journey here. I would call upon the Central Government to consider the question whether Government Scientific Experts dealing with D.N.A. Finger Printing should also be enumerated under Section 293(4) of Cr.P.C. or not. In my view, if the Legislature so intends to do it, it will clear further confusions in the matter.

19. In the light of the discussion made above, I find that the order under challenge is unsustainable. The document sought to be marked is directed to be admitted in evidence under Section 293 Cr.P.C., subject to all conditions stated in the said Section. However, it is made clear that this order will not stand in the way of 2nd respondent in getting the expert examined at his expense, if he is so advised.

20. I direct Registrar of this Court to forward a copy of this judgment to the Secretary to the Government of India, Ministry of Law and also Secretary to Government of India in the Legislative Department for appropriate action, in the light of the observations made in this order.

21. I also direct the Registrar to circulate copy of this judgment to all the Magistrates in the State.

With these observations, this petition is allowed.