

**Ravichandran Vs. the Sub Inspector of Police**

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**SooperKanoon Citation :** [sooperkanoon.com/838708](http://sooperkanoon.com/838708)

**Court :** Chennai

**Decided On :** Mar-31-2006

**Reported in :** 2006(2)CTC827

**Judge :** J.A.K. Sampath Kumar, J.

**Acts :** Code of Civil Procedure (CPC) - Sections 151; Evidence Act - Sections 112; [Constitution of India](#) - Article 21; Indian Penal Code (IPC) - Sections 294, 417 and 506(2); Code of Criminal Procedure (CrPC) - Sections 53 and 125

**Appeal No. :** Crl. R.C. No.938 of 2004 and Crl. M.P. No. 6435 of 2004

**Appellant :** Ravichandran

**Respondent :** The Sub Inspector of Police

**Advocate for Def. :** Arul, Govt. Adv. (Criminal)

**Advocate for Pet/Ap. :** Sirajudeen, Adv.

**Disposition :** Petition dismissed

**Judgement :**

**J.A.K. Sampath Kumar, J.**

1. This revision is filed against the order of the Judicial Magistrate, Perambalur in Crl.M.P.No. 9017 of 2003 in C.C.352 of 2003 dated 26.3.2004 in and by which he

has granted the permission to the police to perform DNA typing test on the accused as well as the complainant and her child.

2. Heard the learned counsel for the petitioner and the learned Govt. Advocate (Criminal side).

3. The point for consideration is that whether the order of the trial Court in permitting the police with a direction to perform D N A typing test on the accused as well as the complainant and her child can sustain.

4. The case of the prosecution is that the accused Ravichandran and the victim Kalaiyarasi are the resident of Arumbavur village. From the child-hood onwards they are friendly, approached with each other and for the past 2 years, the accused Ravichandran is closely related to the victim Kalaiyarasi and the accused Ravichandran told the victim that he had 3 daughters from the second accused and there is no son from her and he wants to marry one girl for the successor of son and for the purpose of successor of son, instead of marry to any other girl, he was assured to marry to the victim since the victim was related to him from the childhood onward.

5. On such representation, about 8 months prior to 28.8.2003, the accused Ravichandran shared his bed with victim Kalaiyarasi on the pretext of she would be married in future, if she was willing to cohabit with him.

6. Believing the representation, the victim Kalaiyarasi was also amenable to his request which would not have happened but for such representation. Out of such relationship, Kalaiyarasi became pregnant. Now, the accused refused to marry the complainant. He further disowned the pregnancy of the complainant Kalaiyarasi, resulting in filing the complaint against the accused under Section 417 and 294(b) IPC.

7. Since the accused disowned paternity of the child of the complainant, the prosecution has come forward with a petition to submit the complainant, accused and the child for D N A typing test to prove the paternity of child. The learned counsel for the petitioner/accused vehemently opposed this application and

contended that the accused cannot submit for such test as it is against the provisions of the Article 21 of the [Constitution of India](#). He further submitted that the right to life means the right to live with honour and dignity. Right of personal liberty is also very important. To compel a person to undergo or to submit himself or herself to a medical examination of his blood group or the like, without his consent or against his wish tantamount to interference with his fundamental right of life or liberty, particularly even there is no provision either in the Code of Civil Procedure or the Evidence Act or any other Law which may be said to authorise the Court to compel a person to undergo a medical test such as a blood group test or the like against his wish , and to create doubt about the chastity of a women or create doubt about the man's paternity.

8. He further submitted that Section 112 read with 4 of Evidence Act have the effect of completely closing and debarring the party from leading any evidence with respect to the fact, which the law says will be conclusive proof of legitimacy and paternity of child covered by S. 112 of Evidence act, except by showing that during the relevant period of time as referred to in S. 112 the parties to the marriage had no access to each other.

9. The learned counsel for the petitioner also relied on the decisions in (1) Pulavarthi Sreeramamurthi v. Pulavarthi Lakshmikanthan and Anr. : AIR 1955 AP207 (2) ; RM.PM Regnanathan Chettiar v. Chinna Lakshmi Achi : AIR1955 Mad546 (3) Goutam Kundu v. State of West Bengal and Anr. 1993 SC 2295 in support of his contention.

10.The learned Government Advocate (Criminal Side) opposing the said contention of the learned counsel for the accused, contended that the trial Court has got every right in permitting the investigating officer to take necessary step to submit the accused , complainant and her child for D N A test to find out the paternity of the child as a part of evidence for the prosecution cases. He has also relied on the decision in Solaimuthu v. State to support his case.

11. The principle laid down in the said rulings have been considered in detail. The case with reference to AIR 1955 ANDHRA 207 is related to Section 151 CPC. The case is one in civil nature. AIR 1955 MAD 546 is also with reference to the case

under Section 151 CPC. This case is also one in civil nature. The decision in Tusher Roy v.Smt Sukla Roy is with reference to Section 125 Cr.P.C.

12.Since all the cases are related to civil nature between husband and wife, Section 112 of the Indian Evidence Act was taken into consideration and dismissed the petition for medical test. Section 112 of the Indian Evidence Act enables the Court to presume that a husband of the women is the father of the child. It is for the husband to prove that during, relevant point of time he had no access to his wife, to disprove the paternity of the child. Only in such circumstances, the request of the wife for medical test was rejected. The same view was also taken in the decision in Goutam Kundu v. State of West Bengal and Anr. .

13. The case on hand is total different. The accused and the complainant, factually not married.It is also a fact that the complainant has given birth to a child. The accused in the eyes of law is not the husband of the complainant since there is no marriage between them. Moreso, the accused disowned the paternity of the child. Therefore, on the complaint of Kalaiyarasi, the respondent/police filed a case against the petitioner/accused under Section 417, 294(b), 506(2) IPC.

14.The learned Government Advocate (Criminal side) has rightly brought to my notice about the decision in Solaimuthu v. State wherein, it is held.10. In this context, it would be pertinent to extract Section 53 of the Criminal Procedure Code, which reads as follows' 53. Examination of accused by medical practitioner at the request of police officer- (1) When a person is arrested on a charge of committing an offence of such a nature and alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence, it shall be lawful for a registered medical practitioner, acting at the request of a police officer not below the rank of sub -inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the person arrested as is reasonably necessary in order to ascertain the facts which may afford such evidence and to use such force as is reasonably necessary for that purpose.

(2) Whenever the person of a female is to be examined under this Section, the examination shall be made only by, or under the supervision of, a female registered medical practitioner.

11. Therefore, from the above, it is clear that full power is given to the investigating agency to cause the accused to be examined by the Medical practitioner and the Section does not restrict to any particular test that has to be done by the Medical practitioner. A reading of the Section would disclose that all positive methods and necessary tests are included within the ambit of Section 53 of the Criminal Procedure Code. Therefore, in the circumstances of the case, I feel that the learned Magistrate is perfectly justified in directing the petitioner to undergo the blood test....

15. The principles laid down in *Goutam Kundu v. State of West Bengal and Anr.* 1993 SC 2295 was taken note of in the said ruling and rightly held that the facts in the cited cases is the converse of the case on hand.

16. The facts in the decision in *Solaimuthu v. State* and the facts on hand are one and the same. The principles laid in the said ruling squarely applicable to the facts on hand. Section 112 of the Indian Evidence Act is not applicable to the facts on hand as there is no relationship of wife and husband exists between the complainant and the accused. In fact, the trial Court has taken note of the principles laid down in the rulings referred to above and passed an order that D N A typing test is must for the case under Section 417 IPC and accordingly allowed the petition of the prosecution.

17. I do not find any infirmity in the finding of the trial Court. Accordingly, the Revision case fails and the same is dismissed. Consequently, connected Crl.M.P is also closed.