Murugan Vs. State

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SooperKanoon Citation : sooperkanoon.com/911993

Court : Chennai

Decided On : Mar-18-2011

Judge : R.Mala, J.

Acts : Evidence Act - Section 112; Code of Criminal Procedure (CrPC) (Cr.P.C) - Sections 53, 173(8); Indian Penal Code (IPC) - Sections 376, 417; Dowry Prohibition Act - Section 4

Appeal No. : CRL.R.C.No. 686 of 2007 & M.P.Nos.1 and 2 of 2007

Appellant : Murugan

Respondent : State

Advocate for Def. : Mr.S.Rajakumar, Adv.

Advocate for Pet/Ap. : Mr. M.C.Swamy, Adv.

Judgement :
ORDER

1. This revision has been preferred against the impugned order passed in C.M.P.No.41 of 2007 in S.C.No.118 of 2006 on 14.03.2007 under Section 112 of Indian Evidence Act and under Sections 53 and 173(8) of Cr.P.C.

2.The case of the prosecution is as follows:

(i) The case has been registered by the respondent against the petitioner/accused under Sections 376, 417 I.P.C. and 4 of the Dowry Prohibition Act. The respondent filed the petition in C.M.P.No.41/2007 in S.C.No.118/2006 to direct the petitioner/accused person to part with his blood sample as well as to direct P.W.1/Mahalakshmi to part with the blood sample of her male child for D.N.A test before the Forensic Science Laboratory, Madras.

(ii) The petitioner/accused filed his counter affidavit stating that the D.N.A test ought to have been done by the prosecution during the time of investigation. Now, investigation is over, charge sheet was filed and witnesses were examined. So there is no necessity for conducting D.N.A. Test. He further submitted that he cannot be compelled to submit himself for D.N.A. Test to prove the guilt of the accused. So the D.N.A. test is not necessary. Hence he prayed for the dismissal of the petition.

(iii) The learned Sessions Judge, Mahila Court, after considering the arguments of both sides counsel, allowed the petition by directing the petitioner/accused to part with his blood sample for D.N.A. Test to prove the paternity of the child born to P.W.1/complainant, against which, the petitioner/accused has come forward with this revision.

3.The learned counsel for the petitioner/accused submitted that as per the ingredients of Sections 376, 417 I.P.C. and 4 of the Dowry Prohibition Act, this paternity test is not required. But the trial Court has not considered this aspect, ordered for conducting D.N.A. Test. On the basis of the complaint given by P.W.1, the case has been registered against the petitioner/accused. Investigation is over and final report has been filed. The case was taken on file and charges were framed. Witnesses P.W.1 to P.W.7 were examined and Exs.P1 to P4 were marked. During the pendency of the sessions case, the respondent come forward with the petition for directing the petitioner/accused to submit himself for D.N.A. Test, is unwarranted. To substantiate his arguments, he relied upon the decision reported in the Apex Court and prayed for allowing this revision.

4.Refuting the same, the learned Government Advocate (Crl.side) submitted that it is true that there is no D.N.A. Test for the offences under Section 4 of the Dowry

Prohibition Act, as per the prosecution case, the petitioner/accused himself gave false promise to one Mahalakshmi, who is P.W.1 and had sexual intercourse with her for several times. As a result, she conceived. But the petitioner/accused refused to marry her. Thereafter, he demanded 50 sovereigns of jewels. Hence she was forced to file the complaint and the case has been registered against the petitioner/accused under Sections 376, 417 I.P.C. and 4 of the Dowry Prohibition Act. During the cross-examination of P.W.1, a suggestion was posed by the defence that the accused is not having sexual intercourse with P.W.1, which was denied by P.W.1. In such circumstances, to prove the guilt of the accused for the offences under Sections 376, 417 I.P.C., D.N.A. Test is necessary. So the trial Court considered this aspect in proper perspective and allowed the petition and hence there is no irregularity or illegality in the order passed by the trial Court. Hence he prayed for the dismissal of the revision.

5.Considered the rival submissions made on both sides.

6.Admittedly, on the basis of the complaint given by P.W.1, the case has been registered against the petitioner/accused under Sections 376, 417 I.P.C. and 4 of the Dowry Prohibition Act. The case of the prosecution and P.W.1 is that the petitioner/accused, after giving false promise that for marry her, had an intercourse with P.W.1, she became pregnant. Since the petitioner/accused refused to marry her, she gave a complaint. At the time of giving complaint, she was pregnant. Now she gave birth to a male child. At the time of cross-examination of P.W.1, the petitioner/accused has denied that he has no access with P.W.1. In such circumstances, to prove the paternity of the child born to P.W.1, D.N.A. Test has been sought for by prosecution.

7.The learned counsel for the petitioner/accused submitted that P.W.1 herself admitted that she attended the betrothal of the petitioner/accused. If really he gave false promise for marry her and had sexual intercourse with her, she may not attend the betrothal. Admittedly she attended the betrothal, which shows the petitioner is innocent. Hence there is no need to order for conducting D.N.A. Test. Considering P.W.1's oral evidence, it was suggested that the petitioner/accused has no access or sexual intercourse with P.W.1. So he disputed that the child is

not born to him. It is not the case of the petitioner/accused that the P.W.1 has voluntarily consented herself for sexual intercourse with him. In such circumstances, to prove that whether the petitioner/accused gave false promise to P.W.1 that he is ready to marry her and whether he had intercourse with her and whether he is the father of the child born to P.W.1, paternity of the child to be decided. If really the petitioner/accused is not having any illegal relationship with P.W.1, why should he get fear to submit himself for D.N.A. Test?

8.At this juncture, it is appropriate to consider the decision relied upon by the learned counsel for the petitioner reported in 2010 STPL (LE)44042 SC (Bhabani Prasad Jena v. Convenor Secretary, Orissa State Commission for Women and Another) in paragraph-16, it reads as follows: "16.This Court then finally concluded, thus:

"(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 under Section 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." "

The learned counsel culled out paragraph-15 of the above judgement in Goutam Kundu case, wherein, there is a dispute between the spouses in the maintenance for child. The father disputed the paternity of the child and prayed for blood group test of the child to prove that he is not the father of the child. In that case, blood test cannot be ordered as a matter of course. Husband must establish non-access in order to dispel the presumption arising under Section 112 of the Indian Evidence Act. But, admittedly, the petitioner/accused and P.W.1 are not husband

and wife. They are not married. The case has been registered only under Sections 376 and 417 I.P.C. for giving false promise and had an intercourse, resulting which, P.W.1 conceived and gave birth to a child. In such circumstances, the decision relied upon by the learned counsel for the petitioner's counsel is not applicable. In para-21 of the above citation, it reads as follows:

"21. In a matter where paternity of a child is in issue before the Court, the use of D.N.A. is an extremely delicate and sensitive aspect. One view is that when modern science gives means of ascertaining the paternity of a child, there should not be any hesitation to use those means whenever the occasion requires. The other view is that the court must be reluctant in use of such scientific advances and tools which result in invasion of right to privacy of an individual and may not only be prejudicial to the rights of the parties but may have devastating effect on the child. Sometimes the result of such scientific test may bastardise an innocent child even though his mother and her spouse were living together during the time of conception."

9.Here, as already stated that P.W.1 and the petitioner/accused are not spouse. When P.W.1/complainant was in witness box before the trial Court, he totally denied that he has no access with P.W.1. Since the case has been registered under Sections 376, 417 I.P.C. and 4 of the Dowry Prohibition Act to prove that whether the petitioner herein gave a false promise and had sexual intercourse with P.W.1, as a result of which, she was conceived and gave birth to a child, a D.N.A. Test is necessary. In such circumstances, I am of the view that the trial Court is correct in held that the D.N.A test is necessary to decide the paternity of the child born to the victim girl under Sections 376, 417 I.P.C. It is not the case that if the paternity of the child is proved, the child will be the son of the petitioner/accused. If it is not proved, he is not called as bastard son. Since P.W.1 is not married, if the paternity of the child is proved, the child will be got himself recognised in the society. Hence I am of the view that the trial Court has considered this aspect in proper perspective and allowed the petition. I do not find any illegality or irregularity in the order passed by the trial Court. Hence it is liable to be confirmed and it is hereby confirmed.

10.In fine,

The Criminal Revision Case is dismissed.

Impugned Order passed by the Sessions Court is confirmed.

Consequently, connected miscellaneous petitions are closed.