

**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE AND
JMFC.,AT DEVANAHALLI.**

Present: Sri. PRATHAP KUMAR. N.,B.A. L.L.B.,
Prl. Civil Judge & JMFC.,
Devanahalli.

Dated this the 16st day of January, 2023

Crl. Misc. No.447/2014

Petitioner: Smt. Pavithara. D.K

V/s

Respondent: Sri. Ambarish

PARTIES IN I.A. NO.II & III

**Applicant/
respondent** :Sri. Ambarish

-V/s-

**Opponent/
petitioner** : Smt. Pavithara. D.K

ORDER ON I.A. No.II & III

This order arising out of application filed by respondent U/s 45 of evidence Act and Section 28 of Protection of women from Domestic violence Act seeking to direct the CDFC, Hyderabad to conduct scientific test of paternity relating

to the child Inchanna and give the report to this Hon'ble court.

2. In support of application respondent contended that, petitioner has filed this petition under protection of women from Domestic Violence Act as sought maintenance, petitioner is not entitled any relief as sought for for reason that petitioner is got herself impregnated by living with on Praveen, hence much before this solemnization of marriage the petitioner was pregnant and after marriage she has given birth female child by filing false complaint against respondent and pressured by relative and Doddaballapura police to marry the petitioner, therefore this petition is not maintainable. Hence prays to collect the sample of child and sent to FSL Hence prays to allow this petition.

3. On the other hand petitioners has resist application filed by respondent sand stating that, application filed by respondent is not maintainable under law or on fact, further the allegation made in the application is not tenable under the law, further there is no relationship between praveen and petitioner as alleged by respondent, if such is allegation respondent has not revealed the full name of Mr. Praveen, his

father name occupation and address, however, respondent has badly allegation against to petitioner, further respondent sleeping over his rights and raising false allegations against petitioner, when the respondent has every right challenge the marriage certificate, respondent is to entitled any relies as sough in the application. Hence prays to dismiss the application.

4. Heard on both side.

5. Upon perusal of pleadings as well as documents, the following points are arisen for my consideration.

1. Whether the application filed by respondent are maintainable?

2. What order?

6. My findings on the above points are as follows:

Point No.1 : In the Affirmative

Point No.2 “ As per final order for the following:

REASONS

7. **POINT No.1:** The petitioner has filed this petition by invoking provision U/s 12 of DV Act, thereafter respondent was

appear through his counsel and field objection, thereafter trial has been completed on both side, then respondent has filed this application.

8. On gone through records it appears that, marriage between petitioner and respondent was solemnized on 17-06-2013 and which was rastered before Sub-Registrar Doddaballapura on the very same day as Ex.P1. On gone through Ex.P2 and 3 i.e., complaint lodged by petitioner against respondent about cruelty and harassment and which was register FIR in Channarayapatana P.S as Ex.P3 for the offense punishable U/s 498(a) and 494 of IPC.

09. Ex.P1 to 3 are clearly goes to shows that, respondent marriage was solemnized with petitioner on 17-06-2013, soon after marriage respondent was got second marriage with one Sowmya, thereafter respondent was started quarrel with petitioner, wherein on gone through Ex.P3 i.e., birth certificate of child, it is disclose that, female baby was born on 23-01-2014 in the wedlock of petitioner and respondent, wherein marriage was solemnized between petitioner and respondent

on dated 17-06-2013, therefore it is bounden duty of petitioner has to be prove baby was born out of their wedlock.

10. On gone through entire records it appears that, respondent was specifically denied paternity of child born out of wedlock of petitioner and himself since from beginning of the case, therefore respondent having right question paternity of child by name Inhana as alleged in the petition.

11. The petitioner counsel has vehemently argued that, Section 112 of evidence Act is clearly emphases conclusive proof and it is not required test of paternity of child, wherein on gone through affidavit, marriage certificate and birth certificate it appears that, no child was born within 6 months from the date of regency, under such circumstance it is bounden duty of petitioner to prove she was present before her marriage accompanying with respondent, wherein petitioner is not shown any grounds in her petition about relationship between petitioner and respondent prior to their marriage, under such circumstance Section 112 of evidence act is not applicable, therefore argument address by petitioner

counsel is not tenable under the law.

12. Further respondent counsel has vehemently argued that, respondent has denied paternity of child born out of wedlock, court has to be sent sample to blood to FSL for examination of DNA test, in support of argument respondent counsel had relied on decision of Hon'ble Apex court in the case of ***Nandlal Wasudeo Badwaik V/s Lata Nandlal Badwaik and another*** reported in **2014(1)203**, ***Somanth Sarkar V/s Utpal Basu Malick and another*** reported in **2014 (2) KCCR SN 75 (SC) and 2014(2) KCCR SN 79 KHC** in between **Subhash V/s State of Karnataka and other.**

13. On gone through the decision of Hon'ble apex court and High court of Karnataka are aptly applicable case on hand. **Hence I answered point No.1 in the affirmative.**

14. **POINT No.2** In view of my answer on point no.1 and 2, I passed the following:

ORDER

I.A No.II and III filed respondent
is hereby allowed.

Accordingly, petitioner and respondent are directed to giving blood sample along with child by name Inchana.

The respondent is directed to deposit Analiese fee as prescribed by the CDFC, Hyderabad.

Both parties are directed to present when the court directed to collect sample blood.

No order as to be cost.

(Dictated to the Stenographer directly through on computer by him, then same is corrected and signed by me and then pronounced in the Open Court on this 16th day of January, 2023)

(Sri. Prathap Kumar. N)
Prl. Civil Judge and JMFC.,
Devanahalli.

