

HIGH COURT OF KERALA**Bench: Justices Raja Vijayaraghavan V and P.M. Manoj****Date of Decision: 23rd May 2024**

ORIGINAL PETITION (FAMILY COURT) NO. 284 OF 2024

A.J. STEPHEN ...PETITIONER**VERSUS****ROSEMARIYA (MINOR, REPRESENTED BY NEXT FRIEND
MOTHER SHANI E.S.) ...RESPONDENT****Legislation:**

Article 227 of the Constitution of India

Section 151 of the Code of Civil Procedure, 1908 (CPC)

Order XXXII of the Code of Civil Procedure, 1908 (CPC)

Section 376 of the Indian Penal Code, 1860 (IPC)

Article 8 of the Convention on the Rights of the Child

Subject: Petition under Article 227 challenging the Family Court order rejecting the application for a DNA test to determine the paternity of the minor child, Rosemariya.**Headnotes:**

Family Law – Paternity Dispute – DNA Test – Petition challenging Family Court’s order rejecting application for DNA test to determine paternity – Petitioner had earlier been acquitted in a rape case involving the mother of the minor child – Petitioner had entered into an agreement admitting paternity and agreeing to pay maintenance and compensation – Held: Petitioner estopped from challenging paternity due to previous acknowledgment and agreement – Petition dismissed. [Paras 1-11]

Equitable Estoppel in Paternity Cases – Analysis – Held: Applying the doctrine of Paternity by Estoppel, based on equitable estoppel, once a man has held out a child as his own, he cannot later deny paternity – Precedent from Pennsylvania Supreme Court and reliance on Article

8 of the Convention on the Rights of the Child support the preservation of familial identity – Ensuring stability and security for the child considered paramount. [Para 9-10]

Decision – Petition Dismissed – Court upheld the Family Court’s decision, finding no merit in the petitioner’s challenge – The petitioner had acted in a manner accepting paternity, and his later denial was deemed impermissible – Public policy considerations regarding the child’s right to identity emphasized. [Para 11]

Referred Cases:

- T.E.B. v. C.A.B. v. P.D.K. Jr., 74 A.3d 170
- Brinkley v. King, 2013 Pa. Super. 211
- Aparna Ajinkya Firodia v. Ajinkya Arun Firodia, 2023 SCC OnLine SC 161

Representing Advocates:

M. Sasindran for petitioner

Athul Babu for respondent

Pranoy K. Kottaram for respondent

JUDGMENT

Raja Vijayaraghavan, J.

Under challenge in this petition filed under Article 227 of the Constitution of India is the order dated 10.01.2024 in I.A No.1 of 2023 in O.P No.1530 of 2022 on the file of the Family Court, Kannur. By the aforesaid order, the application filed by the petitioner herein arraying his 8-year-old daughter as respondent with a prayer to pass an order under Section 151 of the CPC to undergo DNA test was rejected.

2.Short facts which led to the filing of the petition are as

under:

According to the petitioner, he was arrayed as the respondent in MC No.345 of 2014 on the file of the Family Court, which was instituted by the respondent minor child, through her guardian. In the aforesaid maintenance case, it was contended that the petitioner was conducting a private English Medium School at Sankarampett in the State of Andhra Pradesh in the name and style as Don Bosco School.

The mother of the child had worked as a nursery teacher in the school for the period from 2008 to July 2013. She contended that her mother was accommodated in the residential home of the petitioner. It is alleged that the petitioner subjected the mother of the child to rape on various occasions. The mother became pregnant. In the meanwhile, her marriage was fixed with a certain Sibi, and the betrothal ceremony was held on 24.8.2013. Even thereafter, the petitioner continued to subject her mother to rape. Later, her mother married the aforesaid Sibi after about one month of the betrothal ceremony. Immediately after marriage, the mother of the child showed signs of pregnancy and when she was taken to the hospital, it was revealed that she was 5 ½ months pregnant. The child's mother was abandoned by her husband. Immediately thereafter, the mother of the child approached the police and lodged a complaint levelling allegations of rape and based on the same, Crime No.548 of 2013 of the Irikkur Police Station was registered inter alia under Section 376 of the IPC. Investigation was conducted and the case was taken cognizance by the Fast Track Special Court, Thaliparamba and the same was numbered was S.C.No. 318 of 2015 on the files of the said court. The petitioner states that the case was tried and he was acquitted of all charges by judgment dated 31.08.2021.

3. The petitioner contended in the application that he reasonably doubts the paternity of the minor child. It is in the afore circumstances that he had approached the Family Court seeking a declaration that he is not the father of the child.
4. A counter affidavit was filed by the respondents. It was contended therein that the petition itself was not maintainable before the Family Court as there is no family relationship between the petitioner and the mother of the child. It is further stated that the failure of the petitioner to file an application under Order XXXII of the CPC is fatal to the application. It was contended that when S.C.No. 318 of 2015 was posted for trial, the petitioner approached the mother of the child for a

negotiated settlement, and after considering the best interest of the child, an agreement was entered into on 21.4.2021. As per the terms of the agreement, the mother undertook not to depose in terms of the prosecution version in the case in which the petitioner herein was the accused. Consequently, the accused was acquitted of all charges. It is further stated that the child had filed M.C.No.345/2014 before the Family court seeking maintenance. She filed an application as C.M.P.No. 1007/2015 seeking to subject the petitioner to a DNA test. Despite the vehement objections raised by the petitioner, the court allowed the application and directed the petitioner to appear for the test. Since the petitioner failed to appear, the test could not be conducted. Consequently, the Family court proceeded to pass an ex parte order on 5.1.2016 in the maintenance case. The petitioner thereafter approached the Family court and filed an application to set aside the ex parte order. The application was allowed on payment of a cost of Rs.10000/-. Since the petitioner failed to pay the cost, his application was rejected and he was ordered to pay maintenance at the rate of Rs.5000/- to the minor child from 20.8.2014. The petitioner has been paying the maintenance in terms of the directions issued by the court. According to the respondent, it was much later, i.e., on 1.10.2022, that the petitioner has come up with a fresh petition seeking declaration which according to her is not maintainable.

5. The Family Court, after evaluating the facts and circumstances, came to the conclusion that the petitioner had suppressed material facts before the court. The court concluded that the petitioner was acquitted as the mother of the child turned hostile to the prosecution in compliance with the terms of the agreement entered into between the parties. In the agreement, the petitioner had accepted the paternity of the child and had agreed to pay maintenance as well as compensation to the child. The petitioner had refused to subject himself to DNA Test in the application filed by the child before the Family Court seeking maintenance. Though the petitioner had preferred R.P.(F.C.) No.176/2018 before this Court assailing the order of maintenance passed in M.C.No.345/2014, the said Revision Petition was dismissed as withdrawn. The Family Court noted that none of these aspects were stated by the petitioner in the petition filed by him before the court below. The fact that he has been paying maintenance to the child and that he had sought for visitation

rights was also adverted to. Finally, it was held that the fresh application had been filed after a lapse of several years and his only assertion in the petition is that he reasonably suspects the paternity of the child.

6. We have heard Sri.M.Sasindran, the learned counsel appearing for the petitioner, and the learned counsel appearing for the respondent.

7. We have carefully gone through the records.

8. The instant petition was filed seeking a declaration that the petitioner herein is not the biological father of the minor respondent. The records disclosed that such a contention is raised by the petitioner for the first time only on 1.10.2022, on which day, this petition was filed. However, the facts disclosed that a crime was registered in the year 2013 itself at the instance of the mother of the respondent wherein the allegation is that the petitioner had subjected her to rape in the month of June and July, 2013, before, and thereabouts. The aforesaid case has ended in acquittal as rightly contended by the petitioner. However, we find that the petitioner had entered into an agreement with the mother of the respondent admitted that they had a relationship, and accepted the paternity of the child. He had agreed to pay maintenance to the respondent and also agreed to pay compensation of Rs.4 lakhs. In terms of the agreement, the mother of the respondent did not depose in tune with the prosecution version and it was in the said circumstances that the petitioner was acquitted. We also find that when the petitioner failed to pay maintenance, the respondent instituted M.C.No.345/2014 which was allowed. When the petitioner challenged the paternity of the respondent in the said proceeding, an application was filed by the respondent to subject the petitioner to DNA test. However, the petitioner objected to the request. Though an order was passed against him, he refused to appear for the test. We also find that the revision petition filed by the petitioner before this Court was dismissed as withdrawn as early as in the year 2018. None of these aspects were mentioned by the petitioner in his application.

The overwhelming materials against the petitioner clearly disentitle the petitioner from challenging the paternity of his child.

1 9. In the above context, we were able to come across a persuasive precedent rendered by the Pennsylvania Supreme Court in **T.E.B. v. C.A.B. v. P.D.K. Jr.**¹, which has a bearing on the facts of the instant case. The facts of the American case make interesting reading. Essentially the question was whether a man who has held out a child as 74 A.3d 170 his own would be precluded from challenging the paternity of the child at a later time. Applying the doctrine of Paternity by Estoppel, which is based on the concept of equitable estoppel, it was held that once a man, by his conduct, has held out to be a child's father, he will not be permitted to deny the child's parentage. The above judgment was passed relying on an earlier judgment in **Brinkley v. King**² wherein it was held that "estoppel is based on the public policy that children should be secure in knowing who their parents are. If a certain person has acted as the parent and bonded with the child, the child should not be required to suffer the potentially damaging trauma that may come from being told that the father he had known all his life is not in fact his father".

10. Furthermore, Article 8 of the Convention on the Rights of the Child states that "State Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognised by law without unlawful interference". It is thus a matter of public policy to ensure that the familial identity of a child is preserved. The Supreme Court in **Aparna Ajinkya Firodia v.**

2 2013 Pa. Super. 211

Ajinkya Arun Firodia³ relying on Article 8 of the Convention on the Rights of the Child held that long-accepted notions about a child's parentage must not be frivolously challenged before Courts of Law.

11. We are satisfied that the order passed by the Family Court is reasonable and does not warrant any interference. This petition is dismissed.

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4 *Disclaimer: Always compare with the original copy of judgment from the official website.

