

CASE NO.:
Appeal (crl.) 1139 of 2002

PETITIONER:
DIMPLE GUPTA (MINOR)

RESPONDENT:
RAJIV GUPTA

DATE OF JUDGMENT: 12/10/2007

BENCH:
S.B. SINHA & HARJIT SINGH BEDI

JUDGMENT:
JUDGMENT

Harjit Singh Bedi, J.

1. This appeal by special leave arises out of the following facts.

2. The appellant herein, Dimple Gupta, filed an application under section 125 of the Code of Criminal Procedure through her mother Narain Dassi claiming maintenance at Rs. 500/- per month from the respondent Rajiv Gupta alleging that he was her father as she had been born out of a relationship between him and her mother. It was alleged in the application that she was living with her mother at village Nogali Tehsil Rampur, Himachal Pradesh at the time of the filing of the petition and that she had been conceived out of wedlock when her mother was a student in the Xth Class in the Government High Court School at village Nogali. It was further alleged that when the respondent got to know that Narain Dassi had concived she had been taken by him to Chandigarh in order to get the foetus aborted but the Doctor advised that as the pregnancy was at an advanced stage it was not possible to undergo the procedure. It was further alleged that the respondent had then abandoned her mother whereafter she was born on 8.7.1991 at village Kalpa.

3. The Trial Magistrate after recording evidence and in the course of an elaborate judgment held that the appellant was indeed the illegitimate child of Rajiv Gupta born from Narain Dassi. For arriving at this conclusion the Magistrate relied on the ocular evidence of Narain Dassi PW1, Smt. Kanchuk Doma PW2, Smt. Chandra Devi PW3 and PW4 Bhag Rath Pradhan of village Kalpa who proved an abstract (Ex. PW-4/A) of the Birth and Death Register showing Rajiv Gupta as the father of Dimple Gupta, and PW5 Devender Singh a Teacher who proved the admission forms filled in at the time of the appellant's admission in school on 3.9.1996 showing her caste to be Gupta. The attempt of the respondent on the other hand to show that Narain Dassi was a woman of loose character and had been available to several other male companions was sought to be proved by the evidence of RW-3 Hem Raj, the Manager of Gopal Guest House at Rampur who brought the record showing that a girl under the name of Kavita would often entertain guests in the Guest House and that Kavita was in fact Narain Dassi as he knew her personally.

4. Aggrieved by the judgment of the trial Judge, respondent Rajiv Gupta filed Criminal Revision No. 62 of 2001 in the High Court at Shimla. The learned Single Judge of the High Court reversed the judgment of the trial Judge holding that in the light of several judgments of the High Court in identical matter it had been held that in a case of a child born out of an illicit relationship the mother was in the capacity of an accomplice to the crime and as such it was essential that her statement be corroborated by other evidence to prove the case. The High Court also observed that it was not sufficient for the applicant to show that the respondent was indeed her father but the court had also to give a finding that in all reasonableness no one else could have been the father and examining the evidence in the

light of the above principles discarded the statement of PW1 Narain Dassi an unworthy of credence and also rejected the evidence of PW2 Kanchuck Dolma on the ground that as she had disowned her initial statements in Court after she had been re-called for evidence and had supported the respondent's case, whereas PW3 Chandra Devi was a liar as she had admitted that at the relevant time she may have been in Sri Lanka and thus could not have witnessed the presence of Narain Dassi and Rajeev Gupta in the Guest House. The court also observed that in the school admission form Ex.D.A. the column pertaining to the father's name had been left blank whereas in the Birth entry Ex.PW4/A the father's name had been entered as Rajiv Kumar and as such could not be connected with the respondent whose name was Rajiv Gupta. The High Court accordingly upset the judgment of the trial Magistrate, allowed the revision petition and dismissed the application leading to the filing of this appeal.

5. At the very outset, the learned counsel for the appellant has pointed out that the finding recorded by the trial Magistrate was based on a correct appreciation of the evidence and the statement of Narain Dassi had been corroborated by several other witnesses and documentary evidence on record and that the High Court was not justified in reversing the judgment without adequate reason and on mere conjectures. The learned counsel for the respondent has, however, placed reliance on Nand Lal Misra v. Kanhaiya Lal Misra, AIR (1960) SC 882 to argue that a matter such the present one did not justify the entertainment of a petition under Article 136 of the Constitution and that in any case the findings recorded by the High Court called for no interference as it had been held in several judgments that in the case of a claim based on illegitimacy, the statement of the mother was to be treated with some suspicion and could only be accepted with other corroborative evidence.

6. We have considered the arguments advanced by the learned counsel for the parties. Concededly Narain Dassi and Rajiv Gupta were not married. The appellant therefore have virtually no rights which she can enforce during her minority except through an application under Section 125 of the Code of Criminal Procedure. We are of the opinion that the entertainment of a petition under Article 136 of the Constitution of India is thus justified on the facts of the case and this is also the ratio of the judgment in the Nand Lal's case. We have also perused the judgments of the trial Magistrate and the High Court. We find no reasons to justify a reversal of the findings that had been recorded by the trial Magistrate as the application was supported by the Statement of PW1 Narain Dassi and several other witnesses. PW3 Chandra Devi specifically deposed that Narain Dassi and respondent Rajiv Gupta had stayed in her house in village Kalpa several years earlier. The High Court has held that statement of PW3 could not be relied upon as it appeared that she had been in Sri Lanka at the relevant time and could not have therefore been host to Narain Dassi and Rajiv Gupta in Kalpa. We are of the opinion that in such matters it is impossible to lay down with precision the chain of events more particularly when illiterate villagers with no sense of time are involved. We find no reason therefore to hold as to why the statement of PW3 should not be believed. Likewise we find that PW4 Bhag Rath Pradhan of village Kalpa had proved the extracts of the birth register Ex.PW-4/A which shows the father's name of Dimple Gupta as Rajiv Kumar whereas PW5 Devender Singh, a teacher has proved the admission form of Dimple Gupta where the column pertaining to the father's name has been left blank as would perhaps be expected from an unwed mother as it would be best to keep silent on the subject to avoid embarrassment to all concerned particularly at the time when the child was being admitted to school. Much has been made of the fact that the PW2 Kanchka Dolma who had not supported the claim of the appellant although she had been cited as her witness. In this connection it has to be noticed that when PW2 had first been examined in court on 25.10.1994 she had fully supported the case of the applicant but on recall for evidence on 29.2.1996 she did a volte face and disowned her earlier statements. The trial Magistrate was therefore justified in observing that this witness had been won over in the interregnum.

7. The High Court has placed reliance on Dorje Wangial v. Kaaram Singh (1997) 2 Sim.L.C. 277 to contend that the statement of Narian Dassi being in the nature of accomplicae evidence was liable to be corroborated by other evidence to be accepted. Even assuming this statement to be a correct enunciation of the Law we find that Narain Dassi's statement gets adequate corroboration from the evidence which we have already noted above. We accordingly allow the appeal, set aside the judgment of the High Court and restore that of the trial Magistrate. The appellant shall be paid all the arrears upto date within a period of three months from today and continue to receive the maintenance regularly as per law.

JUDIS