

[2019] 10 S.C.R. 1046

KATHI DAVID RAJU

v.

THE STATE OF ANDHRA PRADESH & ANR.

(Criminal Appeal No.1186 of 2019)

AUGUST 05, 2019

[ASHOK BHUSHAN AND NAVIN SINHA, JJ.]

Code of Criminal Procedure, 1973:

s.53- Caste Certificate ashaba paibagi thanggatlakpa FIR – Thijin-humjillingei (Investigation) manungda police na accused/appellant amadi mahakki mamma amadi machil-manao gi DNA test touge haibagi darkhash tharakpa- Civil Court na DNA Test tounabagi yathang pirakpa- Cr.P.C. gi Sec. 482 gi makhada, Civil Judge ki order adubu kakpiyu haina tharakkhiba darkhash adubu HC na yakhidaba- Supreme Court ta Appeal tourakpa- Warep: Section 53 na police ta DNA Test touge haina hangba yahanbagi shakti piri- Adubu hooujikki case asidadi da maru-oiba investigation toudaba maramna, DNA Test touge haibadu hathumalli- Maram aduna, Civil Judge ki order adu chatnayadre.

Appeal yaraduna, Court asina

Wareple: Cr.P.C gi Section 53 na police adhikari singna doctor gi shinpham pairiba (medical practitioner) amada mee-oi amagi phibambu yengbiyu haina hangba yahanbagi shakti piri. Houjikki case asidadi police adhikari singna makhoigi maru-oiba thijinbagi thabak adu pangthoktana DNA test toudaba yadre haina warepkhi. Aduga Additional Junior Judge nasu hairiba waphammasida mityeng changba wat-houba lei madudi, Court aduna appellant, amadi mahakki mamma amasung machil manao anigi DNA Test darkar oire haibadu lepnaba Thijin-humjilliba Adhikari (Investigating Authority) na makhoigi thijin-humjinba aduda utpa leite. Maram aduna Additional Junior Civil Judge na tang 22.01.2016 ta takhiba warep adu chatnaba yadaba warepni. High Court nasu makhoida Cr.P.C. gi Sec. 482 na piriba shakti adu sijinaduna hairiba warep adubu yade (chatnaba yade) haiduna kakthatlamdaba asi High Court ki asoibani. [Paras 11 amadi 12] [1049-F-H; 1050-A]

KATHI DAVID RAJU v. STATE OF ANDHRA PRADESH

CRIMINAL APPELLATE JURISDICTION: 2019 gi Criminal Appeal No.1186

Warep amadi yathang asi tang 04.06.2018 gi State of Telangana amadi State of Andhra Pradesh ki High Court of Judicature, Hyderabad ki 2017 gi Criminal Petition No.12458 dagini.

V. Sridhar Reddy, Abhijit Sengupta, Appellant gi U-kil sing.

Mahfooz A. Nazki, Poamki Gowtham Avinash Tripathi, Guntur Prabhakar, Ms. Prerna Singh, Guntur Pramod Kumar, Prashant Chaudhary, Respondent singgi U-kil sing.

Court adugi warep pikhiba adu

ASHOK BHUSHAN, J. ni

1. Appeal toubagi ayaba pire.

2. Eikhoina partieski (kangbu animakki) u-kilsing (learned counsel) bu tare.

3. Hairiba appeal asi Additional Junior Civil Judge, Bapatla na tang 22.01.2016 takhiba yathang adubu kakpiyu haina Code of Criminal Procedure gi Section 482 gi makhada appellant na tharakhiba darkhash adubu yarakkhidaba tang 04.06.2018 ki warep adubu wakatlakpani. Cr.P.C. gi Section 482 gi makhada tharakhiba darkhash adu High Court na hairiba warep aduda yakhidabani. Hairiba appeal asi tharakhiba adugi samlappa waridi:

4. Respondent No.2 na tang 06.01.2016 ta IPC gi Section 465, 468, 471 amadi 420 gi makhada First Information Report asi appellant ki mayokta tharakkhi. FIR adu thanggat lakhibagi maru-oiba waphamdi, appellant asina ‘Yanadi’ haiba caste adugi shajinba/ashaba Caste Certificate pai adubu tasengbadi mahak asi ‘Telanga’ caste ki manung chanbani. Makha tana thanggatlakliba waphamdi appellant asina hairiba caste certificate asigi matengna thabak phangduna Additional Assistant Engineer oina V.T.P.S. Electricity Generation Corporation da thabak touri. Appellant asigi ashengba mamingdi ‘Immadabathini Veeranjanyulu s/o Venkata Kotaiah’ ni. Appellant asina mahakki ming asi ‘Kathi David s/o Yedulcondalu’ haina onkhre. Makha-tana wakatlaklibadi appellant gi macha anisu ‘Yanadi’ caste ki shajinba caste certificate piri haibaduni. FIR gi matung inna, appellant asi tang 11.01.2016 da phakhi aduga wayel-loishana gi jail (judicial remand) da amuk hanna thakhi. Tang 13.01.2016 ta Additional Junior Civil Judge, Bapatla da darkhash ama tharaduna Court na appellant gi mamma, appellant gi machil-mano ani amadi appellant bu DNA test tounabagi yathang pibiyu haina haijarakkhi. Station House Officer (SHO), Bapatla Town Police Station gi

haijarakpa matung inna, Additional Junior Civil Judge, Bapatla na tang 22.01.2016 ta warepladuna DNA test adu tounaba yathang pikhi.

5. Tang 22.01.2016 Additional Junior Civil Judge na pikhiba yathang adubu yaningdaduna appellant na High Court ta Cr.P.C. gi Section 482 gi makhada tang 22.01.2016 ki yathang adubu kakpiyu haina tharakhiba darkhash adubu High Court na ayaba pikhide.

6. Appellant gi U-kil (learned counsel) na wakatlakliba waphamdi learned Magistrate na DNA test tounabagi yathang piba adu ashoiba lei amadi yathang pirakliba adugi maram adu matik chade haina phongdorakli. Investigation Authorities na chatthariba thijin-humjinba adusu marileinadaba maramchadaba wahang-paohang chatthaduna leiba maramna thijinba adu mapung phaba ngamdri, aduga appellant da DNA test touba haibadu ayaba piba yaroi haina wakatlakli. Makhatana wakatlaklibadi, Respondent asi shajinba shangsthan gi maru-oiba pham paiba mee amani aduga mahak asina appellant bu yengthiba mityeng (wakhanlon) leibana appellant gi mayokta caste certificate aduga mari-leinana FIR asi pallakpani. Makhatana wakatlakliba waphamdi, The Andhra Pradesh (SC, ST, and BCs) Regulation of Issue of Community Certificates Act, 1993 gi matung inna kanglup amagi aranba certificate kakthatnaba, madugi dandi piba amadi marileinaba niyom sing lei. Respondent No. 2 na FIR pallakliba asi appellant bu yengthiba wakhanlon leiba amadi ot-neige haibagi tourakpani.

7. Respondent gi learned counsel na thamlakliba waphamdi police adhikari na Court ta DNA test toubagi ayaba pibiyu haibadu maram chai haibaduni, maramdi FIR da hairaklibana appellant asi 'Venkat Kotaiah' ki machanupani adubu mahakna hairibana mahak asi 'Yendulconalu' gi machanupani haibagini. Makha tana thamlakliba waphamdi Cr.P.C. gi Section 53 na police officer na DNA test touge haina hangba yabagi shakti piri haibaduni.

8. Eikhoina parties (kangbu animakki) ki u-kil (learned counsel) na thamlakpa wapham sing adu lumna loubaga loinana cheksinna pare.

9. Mathakta thamkhraba waphamgum, FIR adu tang 06.01.2016 ta pallakkhi aduga thangatlakliba waphamna aranba/shajinba caste certificate pai aduga mahak asi tasengbadi 'Telanga' caste ki manung chanbani haibaduni. Appellant asi tang 11.01.2016 ta phakhi aduga tang 13.01.2016 SHO na Additional Junior Civil Judge gi Court ta DNA test touba yabagi ayaba pibiyu haina darkhash thakhi, maduda Court aduna chayetnariba yatang adu pikhibani. Hairiba chayetnariba yathang aduda thamkhiba wapham singdi:

“Learned APP na thamlakliba waphamdi thijin-humjinba adu loisindri amadi maru-oiba khudam-chngdam (evidence) su lougadaba watli aduga thijin-humjinba adu mapung phanaba police ki phadokta thamba darkar oiri haibaduni. Makha tana thamlakliba waphamdi accused No.1 amadi accused No. 1 gi mamma ga loinana i-mung manung singgi marakta DNA test touba darkar oiriba asi maru-oina accused No.1 amadi accused No. 1 gi mamma gi

marakta leinariba i-gi mari adu utnabani. Maram aduna, learned APP na respondent/accused pu DNA test toujage haibagi petition asi Court asida tharakpani.

10. Police adhikari singna na chunnaba case ta Court tagi DNA test touge haibagi ayaba loubagi hak lei haibasi yetni-ngei leite. Houjikki case asida oiribasina, FIR da thanggatlakliba asi appellant na mahakki ming amsung mamma-mapa onthoktuna shajinba caste certificate pai haibaduni. Warep adumaktasu thijin-humjinba adu loisindri aduga khudam-changdam su khomjinba loidri haibadu utli. Police adhikari singa khomjinba khudam-changdam natraga maru-oiba thijin-humjinbada pendabadagi DNA test toujage haikhibani, adubu hairiba khongthang asidi mi-oi amabu amasung mahakki mamma, machil-manao singbu mari-leinadaba wahang-paohang touge haibani. Hairiba wapham asi yamna luba waphamni, asigumba khongthang asi laina loukhatloidabani, asigumba test asidi darkar yamna oire haibadu uttribaphao loukhatloidaba khongthangni.

11. Respondent gi u-kil (learned counsel) na thamliba waphamdi Cr.P.C. gi Section 53 na piribasi police adhikari singna doctor gi sinpham pairiba amabu me-oi amagi phibambu yengbiyu haina hangba yahanbagi shakti piri. Police adhikari singda aa-in na piriba asigumba shakti asi yetni-ngei leitraba waphamni. Aduga hairiba case asidadi police adhikari singna maru-oiba thijin-humjinbagi thabak aadu toudana, DNA test toubagi darkar leire haina lepli. Maru-oiba thijin-humjinbagi thabak aadu toudana, DNA test touge haina hanglakpa adu hathumalli. Aduga Additional Junior Judge nasu hairiba waphammasida mityeng changba wat-houba lei madudi, Court aduna appellant amadi mahakki mamma amasung machil-manao anigi DNA Test darkar oire haibadu lepnaba Thijin-humjilliba Adhikari (Investigating Authority) na makhoigi thijin-humjinba aduda utpa leite.

12. Maram aduna, Court asina, Additional Junior Civil Judge na tang 22.01.2016 ta pikhiba yathang adu chatnaba yadre haina leple. High Court nasu makhoida Cr.P.C. gi Section 482 na piriba shakti piriba adu sijinnaduna hairiba yathang adubu chatnaba yaro haina kaklamdaba adu High Court ki ashoibani.

13. Maram aduna appeal asi yare, aduga High Court ki chayetnariba warep amadi yathang amsung Additional Junior Civil Judge gi tang aadu chatnararoi. Adubu, DNA test toujage haibagi wapham asi yamna darkar oire haibadu Court aduda utlaba matungda warep louba yakhigani.

14. Appeal adu hairiba wapham aduphaoba yare.

Kalpana K. Tripathy

Appeal yare.