

IN THE COURT OF SUB-DIVISIONAL MAGISTRATE, RAMPACHODAVARAM

M.C.No. 6 of 1988

IN THE COURT OF THE II ADDITIONAL SESSIONS JUDGE, EAST GODAVARI  
RAJAHMUNDRY

CRL.REV. PETITION NO. 97 of 1989

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

CRL.P.NO. 549 OF 1993

Between:

1. Pakalapati Lakshmi w/o  
Suryanarayana Raju  
Maredumilli, East Godavari Dist.

2. Pakalapati Jogi Raju  
S/o. Suryanarayana Raju  
Maredumilli East Godavari District  
being a minor rep.by his mother  
1st petitioner.

...Petitioners

And

1. Pakalapati Suryanarayana Raju  
S/o. Jayaraju, Contractor,  
Maredumilli, East Godavari Dist.

2. The State of Andhra Pradesh rep.by  
Public Prosecutor High Court of A.P.  
Hyderabad.

...Respondents.

The address for service of all notices and summons  
on the above named petitioners is that of their counsel,  
Sri A. Ramalingeswara Rao, Advocate, 3-6-550/5, 2nd Floor,  
7th Street, Himayatnagar, Hyderabad.

The above named petitioners submit as follows:

1. It is submitted that the petitioners are poor tribes  
people living in the Maredumilli agency area of East Godavari  
District. The 1st respondent is not tribal contractor belong-  
ing to Kshatriya caste living the same area taking up works on  
contract basis.

2. It is further submitted that the 1st respondent seduced  
the 1st petitioner taking advantage of her backwardness, innocence  
and other circumstances in 1981 and promised her to marry. He  
led marital life with her and out of such union, the 2nd petitioner  
was born on 23-1-1983 and he was named as Jogi Raju taking the

married one Nagamani deserting the petitioners without providing any thing towards their maintenance. The 1st petitioner with the active assistances are voluntary social organisation, SAKTI of Rampachodavaram filed M.C.No.6 of 1988 before the Sub-Divisional Magistrate, Rampachodavaram claiming maintenance of Rs.300/- for her and Rs.200/- to her son. The 1st respondent after having knowledge about the case again cohabited with 1st petitioner for nearly six months again and left her again when he came to know that she became pregnant. The second son was born on 12-5-1987. He was named as Almantha Raju. The case was originally dismissed for default in October, 1987 and it was restored in 1988 on her application. The said case was ultimately dismissed on 31-7-1989 on the ground that the 1st petitioner was not a legally wedded wife of the 1st respondent and the components mentioned in Sec.488 of Cr.P.C. are not found.

4. The petitioners preferred a revision to the II Additional Sessions Judge, East Godavari, Rajahmundry in Crl.Rev. Petition No.97 of 1989 against the order in M.C.No.6/1988 dated 31-7-1989. The said revision was also dismissed on 25-7-1990 holding that the 1st respondent has not cohabited with the 1st petitioner treating her as his wife and there is no evidence establishing the birth of the 2nd petitioner through the 1st petitioner. It is submitted that the order in there vision was made known to the activists of SAKTI Organisation and to the petitioners only in August 1992 and hence the petitioners could not immediately challenge the said order. However there is no period of limitation presented for this petition.

5. It is submitted that the tribes people do not profess Hindu religious and religion is not a bar for specifying a person as member of a Scheduled Tribe. Hence Hindu Marriage Act and Hindu Adoption and maintenance Act do not apply to the petitioners. Sec.2(2) of the Hindu Marriage Act 1955 and Sec.2(2) of the Hindu Adoption and maintenance Act 1956 made the respective acts non applicable to the scheduled Tribes. So the only alternative left to the deserted scheduled Tribe

of Code of Cr.P.C.1898). By virtue of notification issued in G.O.Ms.No.485, Home Courts-B) Department dated 19th March 1974 under Sub paragraph (1) of paragraph 5 of the Fifth Schedule to the Constitution of India, the Code of Criminal Procedure 1973 is not made applicable with effect from 1-4-1974 to the Scheduled areas in the State of Andhra Pradesh. The code of Criminal Procedure 1898 continues to operate.

6. It is further submitted that there is no codified law of marriage to the Tribes people. They are governed by customary law. Marriage by negotiations, marriage by arresting the bride and forcing, her marriage by service, marriage by love and elopement are some of the prevalent and accerted forms of marriage among tribes people. In the instant case also the 1st petitioner was seduced by the 1st respondent taking advantage of her innocence and gullibility and accordingly she lived with him as his wife. It is pertinent to point out that wife was no where defined and it is not specified that she must be a wife through a legal marriage. Sec.488 of code of Criminal procedure 1898 is a beneficial provision enacted for the purpose of benefitting the neglected and deserted persons. The persons mentioned in Sec.488 belong to the weaker sections of the society and underprivileged. So a beneficial and liberal interpretation of the word "Wife" in the case of deserted scheduled Tribe women would go a long way in fulfilling the objects of the Section rather than the obscurantist and pedantic interpretation. Any other interpretation would be violative of the spirit of the enactment and violative of Act 21 of the Constitution of India.

7. It is further submitted that two sons were born out of the cohabitation of the 1st petitioner and 1st respondent. The 1st petitioner is neither living in adulterng nor living separately by mutual consent. But the petitioners are unable to maintain themselves and the 1st respondent is a man of means doing contracts. It is therefore just

and necessary to order to provide maintenance to the petitioners by the 1st respondent.

8. It is further submitted that the 1st respondent is not only denying the marriage with the 1st petitioner but also denying the paternity of the sons. Now due to the advances made in biotechnology, the paternity can be proved beyond reasonable doubt, by the process of blood test. It is therefore just and necessary to direct the 1st respondent to cooperate for the DNA test to be conducted by the Centre for Cellular and Molecular Biology, Hyderabad to determine the parentage of the 2nd petitioner.

For all the aforesaid reasons, it is therefore prayed that this Hon'ble court may be pleased to call for the records in M.C.No.6 of 1988 on the file of Sub-divisional Magistrate, Rampachodavaram as confirmed by the order in Criminal Revision Petition No.97 of 1989 on the left of II Additional Sessions Judge, East Godavari District Rajahmundry and quash the same and grant maintenance to the petitioners 1 & 2 @ Rs.300/- and Rs.200/- per month respectively with effect from the date of application ad costs.

and pending disposal of the above petition, direct the 1st respondent to submit himself before the authorities in Centre for Cellular and Molecular Biology, Hyderabad for DNA test to determine the parentage of the 2nd petitioner and pass such other further orders as this Hon'ble court may deem fit in the circumstances of the case.

Hyderabad

Counser For Petitioners.

Dated 3-3-1993

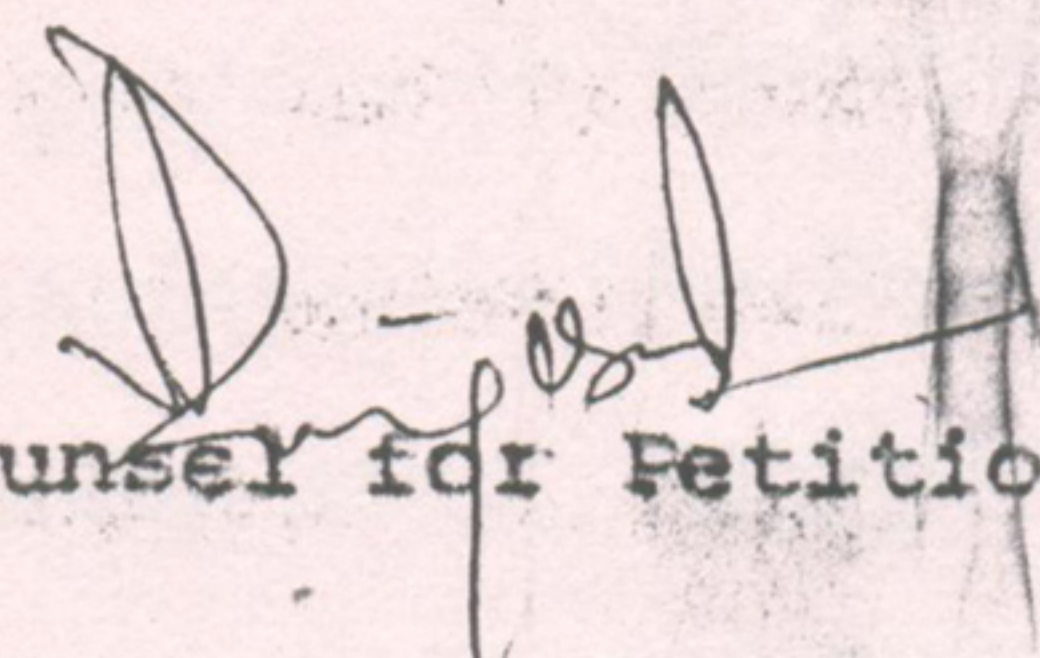
1st respondent to cooperate for the DNA test to be conducted by the Centre for Cellular and Molecular Biology, Hyderabad to determine the parentage of the 2nd petitioner.

For all the aforesaid reasons, it is therefore prayed that this Hon'ble court may be pleased to call for the records in M.C.No.6 of 1988 on the file of Sub-Divisional Magistrate, Rampachodavaram as confirmed by the order in Criminal Revision Petition No.97 of 1989 on the left *file* of II Additional Sessions Judge, East Godavari District Rajahmundry and quash the same and grant maintenance to the petitioners 1 & 2 @ Rs300/- and Rs.200/- per month respectively with effect from the date of application and costs.

and pending disposal of the above petition, direct the 1st respondent to submit himself before the authorities in Centre for Cellular and Molecular Biology, Hyderabad for DNA test to determine the parentage of the 2nd petitioner and pass such other further orders as this Hon'ble court may deem fit in the circumstances of the case.

Hyderabad

Dated 3-3-1993

  
Counselor for Petitioners

7/81-  
23.1.1983 . 2nd petitioner's birth  
12.5.1987 . Jogi Raju  
2nd son  
Alumantla Raju  
m.c - 6/88  
31.7.1989 . Dismissed.  
(6/88)  
25.7.1990 . Revim- 97/99  
Dismissal of  
Crl. R.C.

8/3/93

EAST GODAVARI DISTRICT

HIGH COURT OF ANDHRA PRADESH

AT HYDERABAD

CRL.P.NC. 549 OF 1993  
ag.

Crl.Rev.Petition 97 of 1989  
on the file II Addl. Sessions  
Judge, East Godavari Dist.

4-93

7-93

Memorandum of Grounds.

....

Amst  
188  
4/3/93