

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.1927 OF 2014

Manchak s/o Babasaheb Sonnar
Age 36 years, Occu. Agri.,
R/o Wanisangam, Taluka Sonpeth,
District Parbhani

.. Applicant

Versus

1. Parubai w/o Manchak Sonnar,
Age 32 years, Occu. Agri.,
R/o Wanisangam, Taluka Sonpeth,
District Parbhani, at present
C/o Shriram S/o Sheshrao Khodve,
Yelda, Taluka Ambajogai,
District Beed
2. Maruti s/o Manchak Sonnar,
Age 12 years, since minor through
his mother respondent No.1
3. parimala d/o Manchak Sonnar,
Age 6 years, since minor through
her mother respondent No.1
4. The State of Maharashtra,
through its Ambejogai Police Station,
Ambajogai

..Respondents

Mr S.S. Thombre, Advocate for applicant - absent
Mr B.R. Sable, Advocate for respondents 1 to 3
Mrs M.A. Deshpande, A.P.P. for respondent No.4

CORAM : A.I.S CHEEMA, J.

DATE : 21st September 2015

PER COURT

1. This criminal application has been filed by applicant - original respondent in Misc. Criminal Application No.383 of 2008 whose Revision No.50 of 2013 came to be rejected.

2. This matter was earlier called out in the day, when Counsel Ms. Nakhate for Mr Thombre for the applicant was present, she had sought time stating that the Advocate is busy in another Court. She was told that the matter is being kept back and if she desires, she may call Advocate Thombre. When the matter was called out at 4.25 pm, Counsel for applicant Mr Thombre was still not present and even Advocate Nakhate did not turn up and remained absent. As the matter is of 2013 and interim stay has been granted in the matter, the matter is taken up. Counsel for respondents No.1 to 3 and learned A.P.P. for respondent No.4 have been heard and record has been gone through.

3. It appears from the record that the applicant - original respondent has filed application before the Judicial Magistrate, First Class, Ambajogai asking for D.N.A. test of respondent No.3 declining paternity. The Judicial Magistrate, First Class recorded reasons that there is presumption of paternity under Section 112 of the Evidence Act, 1872 and rejected the application on 21.10.2010 in Misc.Criminal Application No.383 of 2008. Against said order, the present applicant had filed Criminal Revision Application No.728 of 2011. Same came up before this Court on 3rd July 2012. At that time, leave was sought to withdraw the revision. Leave was granted and the revision application stood disposed of.

4. It appears thereafter an application was again filed for D.N.A. test and Judicial Magistrate, First Class, Ambajogai passed detailed

order on 5.7.2013 below Exh.59 in Misc. Criminal Application No.383 of 2008 recording reasons for rejection of the application. The Judicial Magistrate, First Class, Ambajogai considered that once previous application was rejected on the same point, second application cannot be maintained. The said reasoning is maintained by the Sessions Court in Criminal Revision No.50 of 2013.

5. When the earlier application was dismissed and the challenge to that order was made but withdrawn in this Court, it would not be permissible to raise the same dispute before the trial Court and come up in another round of litigation so as to invoke the inherent jurisdiction of this Court to interfere. On principles similar to Res Judicata, the relief sought deserves to be rejected. It does not appear that there is any substance in this application under Section 482 of the Cr.P.C. I decline to interfere in the above set of facts of the matter.

6. The application is rejected.

(A.I.S. CHEEMA, J.)

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