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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on: 11th February, 2016

+ CRL.M.C. 399/2013

YOGENDER KUMAR

..... Petitioner

Represented by: Mr. Amreek Singh and
Mr. R.K. Aggarwal, Advs.

versus

MAMTA & ORS.

..... Respondents

Represented by: Mr. Vaibhav Manu
Srivastava, Advs. for R1.
Mr. Arun Kr. Sharma, APP for State.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

Crl. M.A.2032/2015 (for Restoration)

1. Vide the instant application, applicant seeks recalling of order dated 20.01.2015, whereby the petition was dismissed for non-prosecution.
2. Keeping in view the averments made in the instant application, same is allowed.
3. Consequently, the petition is restored to its original number.

+ **CRL.M.C. 399/2013**

1. With the consent of the parties, the present petition is taken up for final disposal.
2. Vide the present petition, petitioner seeks directions thereby setting aside the orders dated 31.07.2012 passed by Id. MM (Mahila

Court), North-East in Complaint Case No. 477/2006 filed under Section 125 Cr.P.C. and dated 21.12.2012 passed in Revision Petition no. 47/12.

3. Respondent no.1 has filed a Petition under Section 125 Cr.P.C. for her maintenance and the maintenance of her minor daughter. In her complaint, respondent no.1 stated that she got married to the petitioner in peculiar circumstances, which took place on 05.07.2000. The marriage of the first husband of the respondent no.1 namely Dharmender, the elder brother of the petitioner was fixed with some other girl on 22.04.2000. However, the Baarat was returned by the girl's family for the reason that Dharmender suffered fits at the time of marriage. Since, the elder sister of the respondent no.1 namely Nirmala was already married to another elder brother of the petitioner namely Dinesh, thus under these circumstances, the family of the petitioner requested the father of respondent no.1 to solemnize her marriage with the Dharmender in order to save disgrace and loss of reputation. At the time of marriage, it was agreed between the parties that in case Dharmender continued to suffer from fits/insane intervals, respondent no.1 would be married to petitioner Yogender. Accordingly, marriage of respondent no.1 was solemnized with Dharmender on 23.04.2000 itself. However, since the condition of Dharmender did not improve, as agreed between both the sides in the presence of their relatives, the second marriage of the respondent no.1 was solemnized with the petitioner on 05.07.2000. They lived together as husband and wife. The marriage was consummated and respondent

no.1 conceived respondent no. 2 baby Priyadarshini, who was born on 14.10.2004. During this period, petitioner also solemnized his second marriage with one Sadhna on 19.04.2004 when the respondent no. 1 was about 2-3 months pregnant.

4. Petitioner filed his reply to the aforesaid petition thereby disputing the paternity of the child.

5. It is pertinent to mention here that on 02.02.2010, statement of the petitioner was recorded and in cross-examination, he denied to the suggestion that respondent no.2 baby Priyadarshini belongs to him and he is ready to conduct DNA Test. The evidence of both the sides was concluded by recording the statement of the petitioner. Thereafter, respondent no.1 moved an application before the Trial Court for conducting a DNA Test on the same issue. Accordingly, vide order dated 31.07.2012, the said application was allowed and pursuant to the directions passed by the Id. Trial Court DNA has been conducted vide report dated 14.05.2013, whereby respondent no. 2 was found to be the biological daughter of the petitioner and respondent no.1.

6. Being aggrieved from the order dated 31.07.2012, petitioner filed a Revision Petition being no. 47/12, which was dismissed vide order dated 21.12.2012. Being aggrieved again, petitioner filed the present petition.

7. Ld. Counsel appearing on behalf of the petitioner submits that vide order dated 01.03.2013, execution of the impugned orders dated

31.07.2012 and 21.12.2012 were stayed by this Court. Despite, DNA proceedings were carried out by the concerned Authority, which amounts to contempt of Court. Moreover, the evidence in the complaint filed under Section 125 Cr.P.C. has been concluded and the matter was listed for final argument. Thus, at that stage, *Id.* Trial Court had no power to direct for conducting DNA Test without taking reply of the application from the petitioner.

8. He further submits that respondent no.1 had not taken any permission from the Court prior to filing the application for conducting the DNA Test. Thus, the application was not maintainable. *Ld.* counsel has informed that evidence regarding the genuineness of the DNA report, which is to be proved by the DNA Authority, is going on.

9. It is not in dispute that vide order dated 01.03.2013 this Court stayed the execution of the impugned orders till the next date of hearing and the said order was continued up to 08.05.2013. Order sheets reveal that thereafter no stay was granted by this Court.

10. Be that as it may, after recording the statement of the petitioner as noted above, when he disputed the paternity of respondent no.2, and he himself came forward to undergo a DNA test. Thereafter only, respondent no. 1 filed an application for conducting DNA of her, her daughter namely Priyadarshini and the petitioner. Accordingly, the Trial Court allowed the application of the respondent no. 1.

11. The issue raised by the petitioner before the trial court was that he is not related to respondent no.2. Therefore, the petition under Section 125 Cr.P.C. was not maintainable.

12. As per the DNA report which is on record, it is established that respondent no.2 is the biological daughter of the petitioner and thus on the submissions made by the counsel for the respondents to this effect on 20.01.2015 this Court recorded that the present petition has become infructuous.

13. Keeping in view the facts recorded above and that after proving DNA report being genuine and hearing arguments on the petition under Section 125 Cr. P. C., the Trial Court has to pass a final order. Therefore, I do not find any merit in the present petition.

14. The petition is accordingly dismissed with no order as to costs.

Crl. M.A. 1289/2013

Dismissed as infructuous.

SURESH KAIT, J

FEBRUARY 11, 2016

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