

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 776 of 2016**

- Viswanath Nag S/o Lachindher Nag, (Assistant Teacher Panchayat), Aged About 47 Years, R/o Nadi Sagar (Schoolpara), At Present R/o Primary School, Khotlapal, Chowki Ghotiya, Vikashkhand & Tehsil Bastar, Civil & Revenue District Bastar (C.G.)

---- Petitioner**Versus**

1. Smt. Tambowati, Aged About 30 Years, W/o Viswanath Nag,
2. Parmeshwar, Aged About 14 Years (At Present 16 Years), S/o Viswanath Nag (Being Minor Through His Nature Guardian Mother Smt. Tambowati,

Both R/o Village Bhaigaon, Chowki Ghotiya, Vikashkhand & Tehsil Bastar, Civil & Revenue District Bastar, Chhattisgarh.

---- Respondents

For Petitioner : Shri Punit Ruparel, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****22/08/2016**

1. The instant revision has been preferred challenging the order dated 04.04.2016 passed by the Family Court, Bastar, in Criminal MJC No.297/2013 whereby the Family Court in a proceeding under Section 127 Cr.P.C. has rejected the application filed on behalf of the petitioner Husband seeking for conducting DNA test of respondent No.2.
2. Facts in brief is that the petitioner-Husband was married to the

respondent No.1 in the year 1999, however, thereafter some dispute arose between the parties and relations got strained on account of which the respondent-Wife started living separately. Subsequently, the respondents had initiated a proceeding under Section 125 Cr.P.C. against the petitioner seeking for maintenance. The Family Court, Bastar, vide order dated 20.12.2004 allowed the said application and ordered for payment of maintenance amount of Rs.700/- and Rs.500/- per month respectively to the respondents herein i.e. the wife and the son of the petitioner.

3. Subsequently, after a lapse of substantial period of time, the respondents filed an application under Section 127 Cr.P.C. seeking for enhancement of the maintenance amount already granted. The same was registered as criminal MJC No.297/2013. Opposing the said application, the petitioner also moved an application seeking for a direction for conducting DNA test of respondent No.2 so as to decide the paternity of petitioner who disputes the same. The court below vide impugned order dated 04.04.2016 has rejected the same leading to filing of this criminal revision.
4. Counsel for the petitioner submits that it is a case where the petitioner has been all along disputing the paternity of the respondent No.2 and in case if the DNA test is conducted, then the said issue shall be resolved once and for all and it would also be relevant determinative factor for deciding the application under Section 127 Cr.P.C.
5. Having heard the counsel for the petitioner and having perused the record, what is reflected is that, the petitioner, who was the Husband

has not challenged the order passed under Section 125 Cr.P.C. on 20.12.2004. Another factor which has to be born in mind is that whatever maintenance amount that was awarded in the proceeding under Section 125 Cr.P.C. is being complied with and honoured by the petitioner all along. The said finding of the court below in the proceeding under Section 125 Cr.P.C. by efflux of time has attained finality.

6. On specific query being put to the counsel for the petitioner, he has admitted the fact that the petitioner has not challenged the order passed in application under Section 125 Cr.P.C. inspite of fact that he had questioned the paternity of the respondent No.2. Another aspect which is reflected is that the present is a proceeding under Section 127 Cr.P.C. where the only seminal issue which has to be adjudicated upon is whether the amount of maintenance earlier granted by the court below in a proceeding under Section 125 Cr.P.C. needs enhancement or not. This, in another word means the issue of entitling of maintenance amount would not be an issue to be decided in such a proceeding and the only issue requiring consideration is whether the amount awarded in a proceeding under Section 125 Cr.P.C. the claimants could sustain themselves. If not, to what extent it has to be enhanced.
7. This being the limited scope in a proceeding under Section 127 Cr.P.C., the application of the petitioner-Husband seeking for DNA test of the respondent No.2 to decide the paternity could not have been

filed in the facts of the present case. Thus, in the opinion of this court, the trial court has rightly refused to entertain the said application and no interference is required by this court.

8. Accordingly, the petition being devoid of merit is liable to be and is hereby dismissed.

Sd/-
(P.Sam Koshy)
Judge

inder