

(1)

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

**CRIMINAL WRIT PETITION NO.807 OF 2010
WITH
CRIMINAL APPLICATION NO.3701 OF 2015**

Bhanudas s/o Narayan Nirmal,
Age: 54 years, Occ: Pensioner,
R/o. Khundras, Tq. & Dist. Beed. ..PETITIONER

VERSUS

1. Mahananda w/o Bhanudas Nirmal,
Age: 46 years, Occ: Household,
2. Kum. Swati d/o Bhanudas Nirmal,
Age: 18 years, Occ: Household,
3. Vishal s/o Bhanudas Nirmal,
Age: 14 years, Minor,
4. Ashwini d/o Bhanudas Nirmal,
Age: 13 years, Minor,

Nos. 3 & 4 are minors U/g of
their mother respondent No.1
Mahananda w/o Bhanudas Nirmal,
All R/o. Amla Wahegaon,
Tq. Georai, Dist. Beed. ..RESPONDENTS

Mr F.R. Tandale, Advocate for petitioner;
Mr Mohit Deshmukh, Advocate h/f Mr S.G.
Chapalgaonkar, Advocate for respondent No.1

CORAM : N.W. SAMBRE, J.

DATE : 20th SEPTEMBER, 2016

(2)

ORDER :

Present petition is by the husband. Learned Magistrate, pursuant to the claim put forth by the respondent vide Criminal Misc. Application No. 72 of 2008, has awarded maintenance of Rs.700/- per month each to respondent Nos. 2, 3 and 4 and has refused to award maintenance to respondent No.1 Mahananda, who claimed to be wife, which was further confirmed in revision being Revision No.39 of 2009 preferred by the petitioner before Additional Sessions Judge-1, Beed.

2. Facts as are necessary for deciding the present petition are as under :-

The petitioner claimed to be working as Gramsevak since 1990 and it is alleged that respondent No.1 Mahananda was married to the petitioner on 1st May, 1990. It is claimed that out of said wedlock, respondent Nos. 2, 3 and 4 are born. Since the petitioner refused to maintain the respondents, Criminal Misc. Application No. 72 of

(3)

2008 came to be filed in the Court of Judicial Magistrate, First Class, Beed, claiming maintenance, which was resisted by the petitioner by denying paternity or any relation with respondent No.1, more particularly relationship of husband and wife.

3. The trial Court passed an order on 18th March, 2009 rejecting the claim of respondent No.1 for maintenance, however, granted maintenance of Rs.700/- per month each to respondent Nos. 2 to 4, which was subject matter of challenge in Criminal Revision No. 39 of 2009 before Additional Sessions Judge-1, Beed. On 21st July, 2010, said revision came to be dismissed.

4. The important developments during the pendency of present petition as are required to be taken note of ; this Court on 3rd September, 2010 stayed the order of award of maintenance to the extent of 50% of the amount. On 16th November, 2010 the petitioner expressed his desire to move the

(4)

application for D.N.A. test and also undertakes to deposit amount of Rs.30,000/- towards the said test.

5. On 18th January, 2013 so as to determine biological paternity of the petitioner vis-a-vis respondent No.1-wife, this Court passed an order and directed respondent Nos. 2 to 4 to make themselves available for blood extraction in the office of Government Medical College, Aurangabad. The amount of Rs.30,000/- which was deposited, was permitted to withdraw on 18th January, 2013, subject to condition that the petitioner shall reimburse the amount in the event of adverse decision in this petition.

6. On 23rd June, 2014, respondent No. 2 agreed before this Court to give blood sample after 15 days qua carrying out D.N.A. test

7. The cumulative effect of the above referred orders is, D.N.A. test was performed on

(5)

respondent Nos. 3 and 4 and same has not performed on respondent No. 2 as she has not given blood sample.

8. In the above referred back ground, the report of the Chemical Analyzer, which was received by this Court in sealed envelope was perused by this Court and result thereof is made known to respective Counsel. The report was thereafter again resealed.

9. In the above referred back ground, Mr. Tandale, learned Counsel for the petitioner would make following submissions :-

According to him, both the Courts below have committed an error of law apparent on the face of record by ordering payment of maintenance in the back ground of denial of relationship as husband and wife between the petitioner and respondent No.1. It is then claimed that the evidence as is brought on record and the effect of such evidence

(6)

is not properly analyzed. According to him, since the respondent has not sought D.N.A. test in view of the stand taken by the petitioner i.e., denial of relationship, the Courts should have drawn adverse inference. He would then submit that apart from financial inability to pay the amount of maintenance, other evidentiary material is available on record such as voters list so as to infer that relationship between the petitioner and respondent No.1 was not that of husband and wife.

10. While countering the above referred submissions, Mr. Mohit Deshmukh, learned Counsel for the respondent would urge that once D.N.A. test report is received and which disclosed that the petitioner is biological father of respondent Nos. 3 and 4, respondent Nos. 3 and 4 are no doubt entitled for the maintenance. According to him, respondent No. 2 is married daughter and since she had just underwent delivery of child, she had not given blood sample so as to avoid further complications in her married life. He would then

(7)

submit that the Court must draw appropriate presumption pursuant to the provisions of Section 112 of the Evidence Act, particularly having regard to the D.N.A. test report of respondent Nos. 3 and 4. He would then urge that the petition needs to be rejected.

11. Having bestowed my thoughts to the submissions made, it is required to be noted that in extraordinary jurisdiction, the scope of interference in the order of grant of maintenance is very restricted. Unless the case of material illegality is demonstrated before the Court, the Court will not interfere in the matter. What is required to be noticed in the present case is the petitioner is biological father of respondent Nos. 3 and 4. Once the said fact is established based on the D.N.A. test report, and said report is not disputed by the petitioner, in my opinion, the orders passed by both the Courts below awarding maintenance do not call for any interference. Learned Magistrate, so also learned Sessions Judge

(8)

have considered the alleged relationship between the parties, source of income of the petitioner from his employment, and income from the dairy and poultry business and have proceeded to award maintenance of Rs.700/- per month each to respondent Nos. 2, 3 and 4. What could be gathered from very conduct of the petitioner, particularly in the light of D.N.A. test report is the petitioner has tried to deny the claim of the respondents, particularly respondent Nos. 3 and 4 by denying paternity. This speaks of intention of the petitioner to get rid of liability to pay maintenance to his own children.

12. Apart from above, it is required to be noted that pursuant to the provisions of Section 112 of the Evidence Act and D.N.A. test report there is conclusive proof of legitimacy of birth during marriage. Once D.N.A. test report speaks of petitioner being biological father of respondent Nos. 3 and 4, material on record takes this Court to conclude that in view of D.N.A. test report and

(9)

Section 112 of the Evidence Act, respondent No. 2 is also entitled for maintenance from the petitioner. Learned Counsel for the petitioner though has placed reliance upon the judgment of the Apex Court in the matter of **Goutam Kundu vs. State of W.B. and another** reported in **AIR 1993 SC 2295**, so as to dispute paternity, however, in view of D.N.A. test report, said judgment will be of hardly any assistance to the petitioner.

13. In this view of the matter, in my opinion, no case for interference is made out in extraordinary jurisdiction. The petition fails and stands dismissed.

14. Respondent No. 2, in my opinion, since is married in April 2013, will be entitled for maintenance only till her date of marriage from the date of application.

15. With the above observations, writ petition stands dismissed.

16. In the light of dismissal of the writ petition, Criminal Application No. 3701 of 2015 stands disposed of.

(N.W. SAMBRE, J.)

Tupe