

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

CRIMINAL WRIT PETITION NO. 760 OF 2006

Chandrashekhar alias Atul s/o Mansukhlal Jain,
Age : 34 years, Occupation : Nil,
R/o Tamaswadi, Tq.Parola,
District Jalgaon.

...PETITIONER

-VERSUS-

Kum.Shabnam Bano d/o Chandrashekhar,
Age : 6 years. Through Kum.Sabera d/o
Razak Bagwan (legal guardian).
R/o Tamaswadi, Indira Nagar, Tq.Parola,
District Jalgaon.

...RESPONDENT

...

None for the Petitioner.

Advocate for Respondent : Shri D.S.Pawar h/f Shri K C Sant.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 17th June, 2016

Oral Judgment :

1 None appeared for the Petitioner on 14.06.2016. The matter was adjourned to this date for dismissal. None appears for the Petitioner even today. Though I could have dismissed this petition in default, I am deciding the same on it's merits.

2 The Petitioner is aggrieved by the judgment and order dated

30.04.2004 passed by the learned Judicial Magistrate First Class, Parola by which the Petitioner is directed to pay Rs.500/- per month as maintenance allowance to the minor daughter Shabnam, who is born out of illicit relations between the Petitioner and her mother.

3 The Petitioner is also aggrieved by the judgment and order dated 05.10.2006 by which the learned Additional Sessions Judge has dismissed Criminal Revision Application No.84/2004.

4 The Petitioner contends that he is educated unemployed and physically handicapped person. He is a marginal land holder and he has no independent source of income.

5 The Petitioner denied the contentions in the application for maintenance that he had any relationship with the mother of the minor child. On account of instigation of evil persons a false story is put forth against the Petitioner. He is a Hindu and therefore, could not have kept illicit relationship with a Muslim lady and more so, since he was married and had one son from the said wedlock.

6 It is further submitted that though the Respondent examined six witnesses, out of which, one was the Medical Officer and one was the

Panch, their testimony deserves to be disbelieved. The grant of maintenance allowance of Rs.500/- per month to the Respondent/ child is unsustainable.

7 It is further contended that the Medical Officer has stated in his cross-examination that paternity could be ascertained only by DNA test. Such DNA test was not conducted because the mother of Respondent was not willing to be party to such a test. She did not appear before the Civil Surgeon and hence, the DNA test could not be conducted. It is, therefore, prayed that the impugned orders be quashed and set aside.

8 The learned Advocate for the Respondent has supported the impugned orders. He submits that on the basis of sequence of events and evidence on record, the paternity was established and only on account of the same, the learned Magistrate has granted maintenance allowance at the rate of Rs.500/- per month.

9 I have considered the contentions of the Petitioner set out in the petition and the submissions of the learned Advocate for the Respondent.

10 This Court while admitting this petition on 09.04.2007

concluded that the Petitioner has failed to make out any case for interim relief and the prayer for interim relief was, therefore, rejected.

11 The mother of the Respondent examined herself along with several other witnesses. It was established that she had left her home on 07.09.1997 after the Petitioner promised her of marriage. They stayed together at Ajmer and Jaipur and then rented a room in Karwal Nagar at New Delhi upto 21.03.1998. After she conceived in this period, the Petitioner and the said lady reached the house of her maternal brother at Surat. The said maternal brother deposed that the lady and the Petitioner resided in his house on 24.03.1998 and it was disclosed to him that she has conceived a child from the Petitioner.

12 Dr.Raghuwanshi, Medical Officer of Cottage Hospital, Parola deposed that he had examined the lady and the Non Applicant on 31.03.1998 and found that she was pregnant by about 22 to 24 weeks.

13 Two panch witnesses deposed that they visited the places of occurrence where the lady and the Petitioner had lived together and had drawn Panchanama as they were Panch witnesses. The lady had also produced the birth certificate on record mentioning the name of the Petitioner as the biological father.

14 The learned Magistrate, therefore, took into account the entire sequence of events and depositions of witnesses and concluded that the Petitioner and the lady had travelled together at difference places and on account of the relationship between them, the Respondent/ child was born. In this backdrop, the learned Magistrate considered the effect of Section 125(1)(b) of the Code of Criminal Procedure and concluded that even an illegitimate child was entitled for maintenance.

15 Considering the above, I do not find that the learned Magistrate had committed any error in passing the impugned order. The revisional jurisdiction of the Revisional Court being limited, therefore, led the Revisional Court to pass the impugned order and dismiss the revision petition.

16 In the light of the above, I do not find any merit in this petition. The same is, therefore, dismissed. Rule is discharged.

kps

(RAVINDRA V. GHUGE, J.)