

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

CRIMINAL WRIT PETITION NO. 1385 OF 2015

Prakash s/o Haibatrao Paikrao,
Age: 40 years, Occu: Nil,
R/o. Railway Quarter, Near Railway Station,
Hingoli, Tq. & Dist. Hingoli ...Petitioner

versus

1. The State of Maharashtra,
Through Police Station, Hingoli,
Tq. & Dist. Hingoli
2. Nandabai w/o Prakashrao Paikrao,
Age; 40 years, occu: Household,
R/o. Digraswani, Tq. & Dist. Hingoli,
Police Station Hingoli (Rural),
Tq. & Dist. Hingoli ...Respondents

.....
Mr. S. S. Londhe, Advocate for petitioner
Mr. A. R. Kale, A.P.P. for respondent/State
Mr. V. A. Bagadiya, Advocate for respondent No. 2
.....

CORAM : N.W. SAMBRE, J.

DATE : 28th MARCH, 2016

ORAL ORDER :

The order passed by learned Magistrate on 22/07/2015 refusing the application Exhibit-36, moved by the present petitioner seeking D.N.A. test of the child Karan, born to Nandabai, respondent No. 2, is questioned in the present petition.

2. Respondent No. 2 filed Misc. Criminal Application No. 80 of 2011 praying therein the order pursuant to the provisions of Sections 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005 and sought maintenance of Rs.3500/- per month and compensation towards cruelty to the tune of Rs.60,000/-. In the said application, after reply Exhibit-10 was filed by the petitioner, application Exhibit-36 came to be moved seeking D.N.A. test of the son Karan, who was born to respondent No. 2. The cause cited for such D.N.A. test in the application is that the parties while arriving at settlement before Women Vigilance Committee, have agreed for D.N.A. test of the child.

3. The said application was resisted by respondent No.2 and as such, by reasoned order, learned Magistrate has rejected the same, which is impugned herein.

4. Learned Counsel for the petitioner, while trying to make out the case for ordering D.N.A. test of child Karan, would urge that the history of relationship of respondent No. 2 (while attacking the character of respondent No. 2) with the various persons would be brought on record, if D.N.A. test is conducted. According to him, said material is necessary so as to find out the truth in the matter and to determine the liability of the present

petitioner to pay the maintenance, as respondent No. 2 is living adulterous life. So as to substantiate his contention, he has relied upon the judgment of this Court in the matter of ***Abba s/o Sahebrao Bhise Vs. Jaya d/o Aaba Bhise and others*** delivered in the ***Writ Petition No. 10695 of 2015***. In addition to above, he has relied upon the judgment of the Apex Court in the matter of ***Dipanwita Roy Vs. Ronbroto Roy*** reported in **AIR 2015 SC 418**.

5. Learned Counsel for the respondent No. 2 would submit that, there is no claim for maintenance lodged against the petitioner seeking maintenance towards child Karan. He would then submit that, the claim for D.N.A. test, particularly having regard to the interest of minor child, is not called for in the interest of justice and the Magistrate was right in rejecting the claim and prayed for rejection of the petition.

6. Considering the rival submissions of the parties, it is noted from the record that, the claim for D.N.A. test is based on alleged initial relationship of present petitioner with respondent No. 2. The petitioner claims that, respondent No. 2 has entered into some settlement before Women Vigilance Committee and it was agreed that the child Karan will be subjected to D.N.A. test and same is found to be basis for seeking the order from Court below of

conducting the D.N.A. test of child Karan with that of petitioner. The basis for moving such application, if is co-related with that of claim as is put forth under Protection of Women from Domestic Violence Act, 2005, particularly under Sections 19, 20 and 22, it is required to be noted that at no point of time respondent No. 2 has claimed any maintenance for maintaining said Karan, minor child. The only basis is an agreement entered into between the parties before Women Vigilance Committee. In my opinion, the same cannot be a basis for praying or rather seeking order from the Court so as to refer child Karan to D.N.A. test.

7. In my opinion, the observations made in the matter of ***Rohit Shekhar Vs. Shri Narayan Dutt Tiwari & anr.*** delivered by Delhi High Court in ***IA No. 10394/2011 in CS(OS) No. 700/2008*** dated 23/09/2011, is worth referring to. In paragraph No. 216 while considering the circumstances in which the Court can order the D.N.A. test/medical test. In sub-clauses (xiv) and (xv), the Court has noted thus:

“ (xiv) The medical examination including the DNA profiling would be ordered by the court if relevant to the specific issue; necessary and relevant to ensure legitimacy of administration of justice; where scientific tests are necessary for discovery, doing justice to all parties; and

where the relevant evidence cannot be obtained by any non-intrusive methods.

(xv) The court has the jurisdiction to order DNA testing of blood relatives of a person alleged to be the parent, even though they are not parties to the litigation”

8. In the above referred background, if the case of the present petitioner is tested, particularly for grant of D.N.A. test, it is to be noted that there is hardly any relevance of D.N.A. test with that of maintenance claimed by respondent No. 2 for herself.

9. In view of above, no case for interference in extraordinary jurisdiction is made out. The petition, as such fails and stands dismissed.

[N.W. SAMBRE, J.]