

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.1038 of 2014

Arising Out of PS. Case No.- Year- Thana- District- Jehanabad

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SHREYA KUMARI D/o Sri Vijay Kumar through her mother, Lalita Kumari,
D/o Late Narain Sharma Resident of village & Post - Mali, P.S. Karpi, District
- Arwal

... .. Petitioner/s

Versus

1. The State of Bihar
2. Vijay Kumar Son of Late Madan Mohan Sharma Resident of village & Post -
Mali, P.S. Karpi, District - Arwal

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ravindra kumar
For the Respondent/s : Mr. SANJAY KUMAR SINGH(APP)

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL ORDER

7 04-10-2017 The petitioner is aggrieved by an order, dated 19.08.2014,

passed by the learned Principal Judge, Family Court, Jehanabad

in Maintenance Case No. 16 of 2013, whereby the learned Court

below has held, while dismissing a petition under Section 125

of the Code of Criminal Procedure, 1973 that the petitioner is

not entitled for any maintenance from the Opposite party No.2.

I have perused the impugned order, dated 19.08.2014. The
petitioner claims to be daughter of Opposite party No.2. At the
time of filing of application for maintenance before the Court
below her age was three years and 15 days.

From the impugned order, I find that since Opposite party
No.2 completely denied that the petitioner was his daughter, on



the ground that no test of parentage had been made nor any prayer in this regard was ever made, learned Principal Judge, Family Court rejected the application under Section 125 of the Code of Criminal Procedure holding that the petitioner was not entitled for any maintenance.

This is to be noted that by an order, dated 09.12.2013, passed by this Court in Cr. Misc. No. 20055 of 2013 (Vijay Kumar vs. State of Bihar and others), with the consent of the parties, it was directed that let the petitioner of that case, namely, Vijay Kumar (Opposite party No.2 herein), mother of the petitioner and the petitioner were asked to appear before the Court below on 20.12.2013 and the Court below was asked to pass an order for D.N.A Test of the Respondent No.2, the informant and the child (the present petitioner). The said Vijay Kumar, Opposite party No.2 was granted provisional bail subject to the condition that it shall be confirmed by the learned court below if the DNA report suggested that the child was not of the petitioner or the petitioner failed to appear or cooperate in the proceeding.

This is also to be noted that said order has been passed on an application for anticipatory bail arising out of Arwal Mahila P.S. Case No. 25 of 2012 registered for the offences punishable



under Sections 341,323,504,494,498A of the Indian Penal Code. When the present case was taken up by this Court on 06.03.2017, the Court wanted to know about the report of the Forensic Science Laboratory. The Court was subsequently informed that though samples were taken on 20.02.2014, in compliance of the order dated 09.12.2013 for purpose of DNA Test but result of the DNA Test has not been submitted. It is virtually, when the Court forced the Director, Forensic Science Laboratory, Patna to submit a report that a report has been submitted in the present case with the specific finding that Opposite party No.2 is the biological father of the petitioner.

Though vakalatnama has been filed on behalf of Opposite party No.2, on call there is no representation on behalf of Opposite party No.2. The reason is apparent. The Opposite party No.2 for the sole purpose of defeating the statutory right of the petitioner, who is a minor child of Opposite party No.2 is playing tactics including before this Court.

In view of the finding recorded in the FSL report, it is held that the petitioner is daughter of Opposite party No.2. The only basis for rejection of petitioner's application for maintenance by the impugned order, dated 19.08.2014 is that it could not be established whether she is daughter of Opposite party No.2.



Accordingly, the impugned order, dated 19.08.2014 is set aside. The matter is remanded back to the Court of learned Principal Judge, Family Court, Jehanabad to pass an order afresh on the application filed on behalf of the petitioner under Section 125 of the Code of Criminal Procedure, 1973. The Court below is directed to pass appropriate orders accordingly within a period of two months from the date of the communication of the present order.

This application is, accordingly, allowed.

Considering the conduct of the Opposite party No.2 a cost of Rs. 50,000/- is imposed on him to be paid by him to the petitioner within the aforesaid period of two months.

(Chakradhari Sharan Singh, J)

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