

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRIMINAL REVISION NO. 51 of 2017**

Ravikant Dubey S/o Late Ayodhya Prasad Dubey, Aged About 45 Years Ex Serviceman, R/o Kushalpur Pahari Chowk, Thana Purani Basti, Raipur, Chhattisgarh.

---- Petitioner**VERSUS**

1. Ranjana Dubey D/o Hariom Dixit, Aged About 35 Years W/o Ravikant Dubey, R/o Tilda, Thana Simga, District Raipur, Chhattisgarh.
2. Khileshwar Dubey Alias Anant Dubey Aged About 6 Years Minor Through Next Friend Smt. Ranjana Dubey R/o Tilda, Thana Simga, District Raipur, Chhattisgarh.

---- Respondents

For Petitioner

Shri Santosh Kumar Chaturvedi, Advocate.

Hon'ble Shri Justice P.Sam Koshy**Order On Board****16/01/2017**

1. By way of this petition, the petitioner is assailing the order dated 14.12.2016 passed by the 1st Additional Principal Judge, Family Court, Raipur, in Misc. Criminal Case No.230/2012. Vide the said order, the court below in a proceeding under Section 125 CrPC has allowed the same and have ordered for maintenance of Rs. 3000/- per month to be paid to the respondent No.1-wife and Rs. 2000/- per month to be paid to respondent No.2 by the petitioner-Husband.
2. Counsel for the petitioner assailing the said order submitted that the court below has wrongly directed the petitioner to bear the expenses of DNA test which was sought at the instance of the respondent-wife.

According to petitioner, the petitioner herein is an ex-serviceman and does not have sufficient source of income except for the pension that he receives from the government. Therefore, he is unable to meet the finance required for conducting the DNA test. Thus, finding of the court below ordering for maintenance payable to the respondents by the petitioner is bad in law. According to him, it was the bounden duty of the court below to ensure that proper test should have been conducted to reach to the conclusion that the petitioner was infact the biological father of the respondent No.2 before allowing the application under Section 125 CrPC for grant of maintenance. He further submits that the court below has committed an error in not appreciating the fact that it was the respondent who had moved the application for conducting DNA test, therefore, the burden to bear the expenses for such test lies upon her and not the petitioner.

3. Having heard the counsel appearing for the petitioner what is reflected from the order of court below is that, during the course of proceeding under Section 125 CrPC, an application was filed by the respondent No.1 on 30.07.2015 for conducting the DNA test to ascertain whether the petitioner was the biological father of the respondent No.2. The said application was allowed vide order dated 28.08.2015. The said order dated 28.08.2015 was not subjected to challenge any further. What is also to be seen is the fact that later on another application was filed by the petitioner seeking a direction from the court for directing the DNA test to be conducted at government

expenses which too stood rejected vide order dated 12.05.2016. The order dated 12.05.2016 was put to challenge in Writ Petition (227) No. 377 of 2016. The said writ petition was also rejected by this court on 23.07.2016. Thus, the order of rejection of DNA test to be conducted at government expenses has already been rejected and the order of High Court dated 23.07.2016 was not challenged before any higher forum.

4. Once when the order of conducting DNA test has already attained its finality, there is no reason why the petitioner has not subjected himself for the test as ordered by the Family Court. In the absence of any such test being conducted, the only inference which the court could have drawn was an adverse inference and which it has done.
5. Counsel for the petitioner also submits that on merits also the evidence which have come on record particularly the fact that the present petitioner was already married man and also having children along with him has not been taken into consideration by the court below. It is a case where there was infact no marriage whatsoever between the petitioner and the respondent No.1 and that the respondent No.1 had come to the house of the petitioner as a worker and she is trying to take the place of wife by playing fraud and has moved the application under Section 125 CrPC with malafide intention.
6. This contention of the petitioner have already been taken into consideration by the court below and have also taken note of the fact

that there was an order for holding DNA test so that it could be decided whether the petitioner was the biological father of the respondent No.1 or not. It is the petitioner who has not cooperated in the said DNA test.

7. The said averment cannot be considered by this court as this High Court in WP(227) No.377 of 2016 has already considered this issue and has dismissed the petition of the petitioner. In spite of dismissal of said writ petition, the petitioner neither has subjected himself for DNA test nor have challenged the order of High Court before any higher forum and in the absence of which this court does not find any illegality or infirmity on the part of the court below in drawing an adverse inference and in reaching to the conclusion that the petitioner is liable to pay the maintenance amount to both the respondents.
8. For the aforesaid reasons, the revision being devoid of merit is liable to be and is hereby dismissed.

**Sd/-
(P.Sam Koshy)
JUDGE**