

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Misc. Petition No.710 of 2016

Prakash Kathale, S/o Shri Prem Lal Kathale, aged about 53 years, R/o C/o Shri Shakun Salve, Fulvali Bai, Bajrang Nagar, Handipara, Shivanagar, Raipur, District Raipur (C.G.)

(Non-applicant)
---- Petitioner

Versus

1. Shushila Bai, W/o Prakash Kathale, aged about 43 years,
2. Yamuna Bai, D/o Prakash Kathale, aged about 17 years,
3. Naresh, S/o Prakash Kathale, aged about 12 years,
4. Kushal, S/o Prakash Kathale, aged about 8 years,

No.2 to 4 are minors through natural guardian mother Shushila Bai, W/o Prakash Kathale (Respondent No.1),

All are R/o Ward No.20, Behind By Kandrapara School, Dongargarh, Tahsil and PS Dongargarh, District Rajnandgaon (C.G.)

(Applicants)
---- Respondents

For Petitioner:	Mr. Jitendra Gupta, Advocate.
For Respondents:	Mr. Keshav Dewangan, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

03/02/2017

1. By the impugned order, the petitioner's application for directing DNA test has been rejected by the Judicial Magistrate First Class, Dongargarh.
2. Learned counsel for the petitioner submits that the order passed by the learned Judicial Magistrate is totally unjustified in rejecting the application for directing DNA test.
3. Learned counsel for the respondents submits that the petitioner's

similar application filed on 11-12-2012 was rejected by the Court by order dated 7-12-2013 by imposing a cost of Rs.500/- and again, the petitioner has filed identical application which is hit by the principle of finality of the order or decision.

4. I have heard learned counsel for the parties.
5. Admittedly and undisputedly, the petitioner's earlier application for DNA test was rejected by the trial Court on 7-12-2013 and cost was also imposed against the petitioner and it has not been shown that, that order was even challenged successfully before the higher forum by the petitioner and that has not become final. Whereas, the order dated 7-12-2013 rejecting the application for DNA test has attained finality. Since that order has become final and on the ground of finality of the order in a proceeding, the petitioner cannot be allowed to maintain the second application for conducting DNA test and as such, the learned Judicial Magistrate is absolutely justified in rejecting the application for DNA test at the instance of the petitioner. I do not find any infirmity or illegality in the said order. The petition deserves to be and is accordingly dismissed leaving the parties to bear their own costs.

Sd/-
(Sanjay K. Agrawal)
Judge