

**FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO.348 OF 2016

Mrs.Maheshwari, W/o. Sunder Raj & Ors.

.. Applicants

vs.

Mr.Sunder Raj S/o. K. Sunder Das & Anr.

.. Respondents

Ms.Harjeet Kaur Bhagwant Singh for the applicant

Mr.P.G.Karande with Ms.Jyoti Jadhav for the respondent no.1

CORAM : K. K. TATED, J.

DATE : JULY 7, 2017

PC.:

1. Heard the learned counsel for the parties.
2. By this Revision Application, applicant wife challenges the order dated 3.5.2016 passed by Family Court No.3, Mumbai in Interim Application No.361 of 2014 below Exhibit-8 and 13 in Petition No.E 393 of 2014 directing respondent husband to pay interim maintenance @ Rs.2,000/- per month to the wife and @ Rs.1,500 per month to both the children. By the said order, the Family court also allowed the application below Exhibit-13 filed by the respondent husband for conducting DNA test regarding paternity of child Master Konar Venkatesh.

3. The grievance of the applicant is that Family Court without allowing the applicant to lead her evidence on respondent's application below Exhibit-13 passed impugned order. She submits that the respondent had access to the applicant till 2013 whereas the master Konar born on 23.1.2013. She further submits that even under section 112 of the Indian Evidence Act, 1972 there is a presumption which can be used in the said application.

4. After arguing for some time, both the counsel submit that impugned order passed by Family Court on Exhibit-13 i.e. (for DNA test) be set aside with remanding the matter to the Family Court to decide the said Application along with the main petition filed by the wife under section 125 of the Criminal Procedure code i.e. Petition No.E-393 of 2014 with liberty to both the parties to lead evidence, if any. Order below Exhibit-8 interim maintenance to continue till the hearing and final disposal of the main petition i.e. Petition E-393 of 2014.

5. Advocate for the applicant submits that though order was passed by the Family Court on 3.5.2016 directing respondent to pay interim maintenance, he failed and neglected to pay the same regularly. There are arrears of the same. During the course of argument, the learned Counsel for the respondent husband makes a statement that respondent will clear arrears of maintenance if any within 3 months from today. Hence, by consent of both the parties, following order is passed:

- a) Order dated 3.5.2016 passed by Family Court No.3, Mumbai below Exhibit-13 for DNA test in Petition No. E-393

of 2014 is set aside.

b) Application below Exhibit-13 filed by respondent husband for DNA test is remanded to the Family Court for hearing on its own merits along with main petition E-393 of 2014 by permitting both the parties to lead evidence if they so desire.

c) Respondent husband to clear the arrears of maintenance within 3 months from today and pay regular maintenance in time.

d) Considering the facts and circumstances of the present case, hearing of Main Petition No.E-393 of 2014 is expedited.

e) No order as to costs.

(K.K.TATED, J.)