

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8019 OF 2017

PRAVIN GOPICHAND EDKE
VERSUS
JYOTI PRAVIN EDKE

Advocate for Petitioner : Ms. R.B. Palve-Ghule.
Advocate for Respondent : Mr. N.C. Garud.

CORAM : RAVINDRA V. GHUGE, J.
DATED : 07th March, 2018

PER COURT :

1. Learned advocate for the petitioner has vehemently canvassed. I have heard the strenuous submissions of Shri Garud, learned advocate for the respondent wife. With their assistance I have gone through the petition paper book and the judgment dated 24/05/2017, delivered by the Court of the Learned Additional Sessions Judge, Kopargaon in Sessions Case No. 31/2015.

2. The petitioner/husband is aggrieved by the order dated 15/10/2016, passed by the Trial Court below application Exhibit 151 in H.M.P. No. 72/2014, by which, the prayer for granting exhibit number to the DNA test

report of the elder daughter Aaradhya, has been rejected.

3. The record reveals that the petitioner has alleged that the respondent/wife was having extra marital relations with one Mr. Ashok Nivrutti Kanade. After his marriage with the respondent, he had noticed that she was pregnant and then delivered a girl child, by name, Aaradhya. After passage of time, the second daughter Radhika was born.

4. The DNA test report from the criminal proceedings is placed on record and exhibit number was not granted to the said report, though it was filed. Consequentially, the petitioner/husband moved an application Exhibit 120 praying for allotting an exhibit number to the said report. One more application was filed Exhibit 151 for grant of exhibit number. The Trial Court has rejected application Exhibit 151, on the ground that the evidence of the husband is already concluded.

5. As the report of the DNA test was disputed, it was the duty of the husband to prove the said report and only then an exhibit number could be granted. It cannot

be ignored that when the Trial Court passed the impugned order on 15/10/2016 below Exhibit 151, it also passed an order on the same day, below application Exhibit 152 for adding the alleged adulterer Ashok Nivrutti Kanade as respondent No. 2. The said order was challenged by Ashok Nivrutti Kanade as well as the wife in Writ Petition Nos. 11082/2016 and Writ Petition Nos. 8018/2017. Both these petitions have been dismissed on 07/03/2018 and as such, the addition of Ashok Nivrutti Kanade as respondent No. 2 has been sustained.

6. As a consequence of adding Ashok Nivrutti Kanade, the Trial Court will have to allow him to file a written statement, if not already filed and also lead evidence, since he gets a right to lead evidence, upon being arrayed as defendant No. 2. The Hon'ble Apex Court, in catena of judgments, has held that multiplicity of litigation should be avoided and an appropriate order be passed at an appropriate time to avoid multiplicity.

7. It cannot be ignored that the DNA test was carried out by the Investigation Officer with reference to the

second daughter Radhika and the added respondent Ashok Nivrutti Kanade, in relation to the crime No. I-265/2014, registered against Ashok Nivrutti Kanade under Section 376 (1) and 506 of the Indian Penal Code at the Police Station in Kopargaon, in view of the complaint lodged by the respondent/wife herein. The said DNA test proves that Ashok is the father. It is a part of the Court record and was produced before the Trial Court in the present proceedings.

8. As such, a vital piece of evidence has been left out of the proceedings, apparently on account of improper guidance by the learned advocate representing the husband. If the said report, which is a part of the Sessions Case No. 31/2015, is not placed before the Trial Court for consideration, the petitioner herein, is likely to suffer an irreparable harm and serious prejudice. The rigors caused to the wife can be softened by imposing costs on the petitioner/husband. It would be appropriate to allow application Exhibit 151, rather than permitting the proceedings to proceed considering that these deficiencies have been left in the proceedings before the Trial Court.

9. As such, this petition is allowed. The impugned order dated 15/10/2016, below application Exhibit 151 is quashed and set aside. Application Exhibit 151 is allowed.

10. The petitioner would be at liberty to prove the said document by leading evidence before the Trial Court within a period of 30 days from today. By way of costs, the petitioner shall deposit an amount of Rs. 5,000/- before the Trial Court in H.M.P. No. 72/2014 within three weeks from today and the said costs would be withdrawn by the respondent/wife.

(RAVINDRA V. GHUGE, J.)

S.P.C.