

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR**

**CRIMINAL WRIT PETITION NO.122/2015**

Nilkanth S/o Kawduji Zalke,  
 aged about 40 Yrs., Occu. Agriculturist,  
 R/o Pimpalkhuti, Po. Zadgaon,  
 Tal. Ralegaon, Distt. Yavatmal.

..Petitioner.

..Vs..

1. Sau. Vaishali W/o Nilkanth Zalke,  
 aged 29 Yrs., Occu. Nil,  
 R/o C/o Vasant Landge, at Sarai,  
 Po. Chikhli, Tal. Ralegaon,  
 Distt. Yavatmal.
2. Ku. Sheetal D/o Nilkanth Zalke,  
 aged about 3 Yrs.,  
 through her mother Sau. Vaishali  
 W/o Nilkanth Zalke, aged 29 Yrs.,  
 Occu. Nil, R/o C/o Vasant Landge,  
 at Sarai, Po. Chikhli, Tal. Ralegaon,  
 Distt. Yavatmal.
3. The Police Station Officer,  
 Police Station, Ralegaon,  
 Tah. Ralegaon, Distt. Yavatmal.

..Respondents.

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 Shri M.P. Kariya, Advocate for the appellant.  
 Ms. S.V. Kolhe, A.P.P. for respondent No.3.  
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**CORAM : Z.A. HAQ, J.**

**DATE : 30.8.2018.**

1. Pursis dated 30<sup>th</sup> August, 2018 is placed on record alongwith copy of communication dated 25<sup>th</sup> August, 2018 sent by Shri Shantanu Khedkar, Advocate to his client Vaishali Nilkanth Zalke. It is stated that communication informing her that Shri Shantanu Khedkar Advocate will not be representing

her is served on her. Accepting the above statement, Shri Shantanu Khedkar Advocate is discharged from this petition and his vakalatnama filed on behalf of Vaishali Nilkanth Zalke stands cancelled.

### ORAL JUDGMENT

2. By this petition, the petitioner has challenged the order passed by the Sessions Court, partly allowing the revision application filed by the respondents under Section 397 of the Criminal Procedure Code, 1973 and directing the petitioner to pay an amount of Rs.1,500/- (Rs. One Thousand Five Hundred) per month to the respondent No.2 towards maintenance, the amount being payable from the date of filing of the application by the respondents before the trial Court.

3. The respondent No.1, claiming to be legally wedded wife of present petitioner had filed an application under Section 125 of the Criminal Procedure Code praying that the present petitioner be directed to pay maintenance to the present respondents. According to respondent No.1, the respondent No.2 is the daughter of the petitioner. The learned Magistrate conducted the trial and by the order dated 11<sup>th</sup> October, 2011 dismissed the application filed by the respondents.

The order passed by the learned Magistrate was challenged by the respondents in criminal revision before the Sessions Court which is partly allowed by the impugned order.

4. According to the petitioner, the respondent No.1 is not his wife and there had been no relationship at all between the petitioner and the respondent No.1. The learned Advocate for the petitioner has pointed out the observations of the learned Sessions Judge to the effect that the respondent No.1 has not placed on record any documentary evidence to show that marriage was solemnized between the respondent No.1 and the petitioner. It is submitted on behalf of the petitioner that the learned Sessions Judge has committed an error by upholding the claim of the respondent No.2 for maintenance recording that the respondent No.2 is daughter of petitioner. Learned Advocate for the petitioner has also relied on the contents of Criminal Application No.285/2017 filed before this Court praying that the respondent No.1 be directed to make herself available for conducting DNA test. It is submitted that the petitioner intends to have DNA test conducted on respondent No.2 also and that prayer could not be made in the application because of oversight.

5. In paragraph No.13 of the impugned order, the learned Sessions Judge has relied on the document (Exh. No.16) which is issued by the Village Development Officer of Grampanchayat, Ralegaon. This document shows that the respondent No.2 was born on 27<sup>th</sup> March, 2007 and in the records, the name of father of the respondent No.2 is recorded as “Nilkanth Kawduji Zalke” (present petitioner). The learned Sessions Judge has recorded that this

document is not countered by the present petitioner, except by making a general statement that the document is false. In paragraph No.10 and 12 of the impugned judgment, the learned Sessions Judge has discussed the proposition of law and has rightly recorded that while considering an application under Section 125 of the Criminal Procedure Code, the matter is required to be examined from the angle of social justice and the parameters of strict proof and technicalities cannot be foisted.

6. In the above facts, I am not inclined to exercise extraordinary jurisdiction to interfere with the impugned order. It is clarified that the substantive claim of the petitioner that the respondent No.2 - Ku. Sheetal is not his daughter is not examined and it would be open for the petitioner to agitate this issue in appropriate proceedings before appropriate Forum.

The writ petition is **dismissed**. In the circumstances, the parties to bear their own costs.

**CRIMINAL APPLICATION NO.285/2017**

In view of the above judgment, this application seeking directions for conducting the DNA test to determine the paternity of the respondent No.2 does not survive and is **disposed** accordingly.

JUDGE