

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

**CRM-M-46827-2017
Date of decision: 08.02.2018**

Amit

...Petitioner

Versus

Bindu

...Respondent

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Rajesh Gupta, Advocate
for the petitioner.

Mr. Rohit Seth, Advocate
for the respondent.

JAISHREE THAKUR, J. (Oral)

The instant petition has been filed under Section 482 Cr.P.C. for setting aside the impugned judgment dated 25.10.2017 (Annexure P-8) passed by the Additional Sessions Judge, Rewari whereby the application filed by the petitioner for conducting the DNA test of the minor child Aditya has been dismissed.

In brief, the facts are that the respondent herein preferred an application for grant of maintenance under Section 125 Cr.P.C. which is Annexure P-1 on the record. Since the said application had been filed only qua respondent herein, another application came to be preferred seeking to implead the minor child born out of this wedlock as a party to the said pleadings, which was objected to by the petitioner herein. The petitioner preferred an application for conducting the DNA test of Aditya, to which a reply was filed. The Court below dismissed the said application by an order dated 07.04.2017 after considering several judgments. In the said order, it

was held that any child, born during the subsistence of the marriage, would be presumed to be the legitimate child born during the continuation of a valid marriage. Aggrieved against the said order, a revision petition was filed which too came to be rejected. Hence, the present petition.

Learned counsel for the petitioner argues that the petitioner had no access to his wife during the time she conceived and, therefore, he doubts the parentage of Aditya and does not accept him to be a child born to him.

Appearance has been caused by the respondent along with her counsel who submits that she has no objection in case the DNA test is conducted, being confident that the said child is born to both of them during the subsistence of the marriage.

I have heard learned counsel for the parties and to put an end to the question regarding parentage of the minor child, as agreed upon by the respondent, let a DNA test be conducted. All the expenses towards the DNA test would be borne by the petitioner himself.

At this stage, it is brought to the notice of this Court that though an application has been filed for grant of maintenance and interim maintenance as far back as 19.03.2016, however, no maintenance has been awarded to the respondent as on date and in these circumstances, it is very difficult for her to survive.

An objection has been raised by the counsel for the petitioner that the matter regarding grant of interim maintenance is pending before the Court below and, therefore, this Court would have no jurisdiction to entertain such a request.

I have heard learned counsel for the parties on the issue of grant of interim maintenance as well.

This petition has been filed under Section 482 Cr.P.C. for setting aside the impugned judgment. In normal circumstances, this Court would not have interfered in the question of grant of interim maintenance since the Court below is seized of the matter. However, in the peculiar circumstances of the case when an application has already been filed for grant of interim maintenance as far back as 19.03.2016 which is still pending, this Court is not hesitant in allowing the interim maintenance to the respondent herein in the circumstances when the marriage between the parties is not disputed. The only question which has been raised is on the parentage of Aditya and liability to pay maintenance towards him. Section 125 Cr.P.C. has been incorporated to ensure that the neglected or deserted wife/parents/minor children are not left destitute. An application for grant of interim maintenance ought to be decided at the very first instance so that the applicant is in a position to sustain herself.

The petitioner is stated to be working in the Indian Air Force. In the instant case, even though the salary slip of the petitioner is not on the record, however, it is admitted by the counsel for the petitioner that the petitioner is working as Electro Fitter and, therefore, it can safely be presumed by the Court that he is earning more than Rs. 35,000/- per month.

In view of the above circumstances, interim maintenance to be awarded to the respondent herein is assessed to be Rs. 10,000/- per month and the same is ordered to be paid to her from the date of filing of the application. 50% of the interim maintenance, as calculated, is to be handed

over to the respondent herein at the time of getting sample for the DNA test. However, in case, it is found that the salary of the petitioner herein is less than Rs. 35,000/- per month, the Court below is at full liberty to reduce the interim maintenance as per its assessment. Needless to say, interim maintenance for the minor child is yet to be assessed on conclusion of the DNA test.

Before parting with this judgment, it is expressed that this order would be subject to the final disposal of the application under Section 125 Cr.P.C. and the Court below will not be influenced by any observation made herein while deciding the said application.

With above observations, this petition stands disposed of.

08.02.2018

Waseem Ansari

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No