

Vidya Amin.

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

CRIMINAL WRIT PETITION No. 3539 OF 2015

Sachin Dilip Shahane & Ors. ... Petitioners
VS.
Mrs. Vaibhavi @ Pratisha Sachin Shahane
& Anr. ... Respondents

Mr. Abhaykumar Apte, Advocate for the petitioners.
Mr. Pranjal Khatavkar i/b. Mr. Shriram S. Kulkarni, Advocate for
respondent no. 1.
Mr. Vinod Chate, APP for the respondent/State

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: 3rd April, 2019**

P.C. :

Rule. Rule made returnable forthwith. By consent, the Writ
Petition is heard finally and decided at the stage of admission.

2. In this Writ Petition, the petitioner has challenged the order
dated 23rd July, 2015 below Exhibit 25 in M.A. No. 1553 of 2012
passed by the learned Judicial Magistrate First Class, 2nd Court,
Nashik wherein his prayer for conducting DNA test to ascertain the
paternity was rejected.

3. For the sake of continuity, it is necessary to reproduce some
paragraphs from the earlier order dated 14th March, 2019 -

“2. The husband has moved an Application for DNA

test of child Swamy, who is born on 19th May, 2013 out of the wedlock taken place on 3rd June, 2011. The petitioner/husband has denied consummation of marriage and has specifically stated that respondent no. 1 is neither a woman nor a man . He said that his wife has left him in the month of September, 2012, hence had no access to each other. No sexual intercourse took place between the parties and therefore, she can neither remain pregnant nor can become a mother. The said Application was rejected. Hence, this Writ Petition.

3. The presumption under section 112 of the Evidence Act about the paternity of the child is informed to both the lawyers, however, the learned counsel, on instructions of both the parties, have submitted that they are ready for DNA test and the mother informs the Court that the paternity of the child is to be fixed. Both the husband and wife were called in the Chamber and in the presence of Sheristedar and Private Secretary, both of them, especially the husband, were made aware of the gravity of the allegations. However, the wife is ready to go for any physical test to prove that she is a mother of the child and the child belongs to her and the petitioner/husband.”

4. In most of the cases, maternity is confirmed and paternity is

questioned, however, in the present case, maternity of the respondent/wife and paternity both are disputed. Under such circumstances, though generally the Courts are very slow in passing the order for DNA test of the child in view of Section 112 of the Evidence Act, however, the mother herself is interested in fixing the paternity of the child and clearing the so-called blot and also wanted assurance in future for the child. Therefore, the parties, i.e., mother, father and child, were referred to DNA test.

5. Today when the parties appeared. It is informed by the learned counsel that the petitioner/husband has paid the entire expenditure of DNA test, which is Rs.39,500/-. Pursuant to the order dated 14.03.2019 passed by this Court, the registry has placed on record the sealed envelope of the DNA report of the child Swami Sachin Shahane, which is received from the Deputy Director, Forensic Science Laboratory, Home Department, Government of Maharashtra, Mumbai. The sealed envelope is opened

6. The DNA test of the child Swami Sachin Shahane was carried out after taking blood samples of Sachin Dilip Shahane and Mrs. Vaibhavi @ Pratiksha Sachin Shahane to find out paternity of

the child. The said test was carried out after taking 15 different analysis with the PCR and it was interpreted that Sachin Dilip Shahane matched the obligate paternal alleles present in Swami Sachin Shahane at all loci. Similarly, Mrs. Vaibhavi @ Pratiksha Sachin Shahane matched the obligate maternal alleles present in Swami Sachin Shahane at all loci.

7. The Assistant Chemical Analyser to Govt. Forensic Science Laboratory, Mumbai has given following opinion:

*“Sachin Dilip Shahane and Mrs.Vaibhavi @ Pratiksha Sachin Shahane are **concluded** to be the biological parents of Swami Sachin Shahane”.*

8. The test and analysis started on 16.03.2019 and it was completed on 20.03.2019. The DNA report is taken on record and marked as **Exhibit-1**. The correspondence of the forensic department with the Registrar (Judicial-II) is taken on record and marked as **Exhibit-2**.

9. Copy of the DNA report is supplied to the parties i.e., father and mother.

10. The parties were called in the chamber at 2.00 p.m. Petitioner No.1-husband said that he is ready to stay separately with his wife and son. He admitted his mistake that he lied before the Court. Both the parties are directed to have sometime together and come at 5.00 p.m. in Chamber.

At 5 p.m.

11. The parties came alongwith their respective advocate in the chamber. The respondent/wife refused to stay with the petitioner/husband. Hence, there is no need to pass any further order in this Petition. Let the parties take their own time and recourse to settle the issues. Writ Petition is disposed of.

12. Parties to appear before the learned Judicial Magistrate First Class, Nashik in Criminal Miscellaneous Application No. 1553 of 2012 on 15th April, 2019. The learned Judicial Magistrate First Class to proceed with the matter and expedite the same, as the matter is pending since 2012.

(MRIDULA BHATKAR, J.)