

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

CRM-M-25653-2019
Decided on : 03.06.2019

Vikas Garg

..... Petitioner

Versus

Beenu Garg and others

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Karan Sachdeva, Advocate
for the petitioner.

Manjari Nehru Kaul, J.

Prayer in the instant petition filed under Section 482 Cr.PC is for setting aside the order dated 20.04.2015 passed by the learned Principal Judge (Family Court), Ambala vide which the application for conducting DNA (Deoxyribonucleic acid) test on respondent No.3 has been dismissed.

Learned counsel for the petitioner contends that the petitioner has no legal liability to pay a sum of ₹ 2,000/- towards interim maintenance of respondent No.3 as has been directed by Principal Judge (Family Court), Ambala in the petition filed under Section 125 Cr.PC, as she is not his biological daughter. As per the learned counsel, the petitioner had moved an application under Section 127 Cr.PC as well for alteration of maintenance allowances as respondent No.1 was living in adultery. He further contended that during the pendency of a civil suit for declaration at Sangrur, the petitioner herein, moved an application for conducting the

DNA test on respondent No.3 and respondent No.1 as guardian of respondent No.3 had herself consented to get the test conducted. However, the suit was subsequently dismissed for non-prosecution. Learned counsel further submitted that the respondents failed to abide by the direction of Addl. Civil Judge (Sr. Divn.) Sangrur and did not present themselves before Forensic Science Laboratory, Chandigarh for the test.

Heard learned counsel for the petitioner and perused the impugned order as well as other material available on file.

It is a matter of record that respondent No.1 along with her children i.e. respondents No.2 and 3 had been turned out of her matrimonial home, and it was in this background that an application under Section 125 Cr.PC had been filed by respondent No.1 claiming maintenance from the petitioner herein. In the above application, respondent No.1 herein, had pleaded that she is the legally wedded wife of the petitioner, and that respondents No.2 and 3 were born out of the said wedlock. A perusal of the above order dated 20.04.2015 reveals that the allegations of adultery of respondent No.1 were not believed by the Court.

No doubt, an appeal was filed before this Court by the petitioner impugning the order dated 20.04.2015 but the same was dismissed in default. Nothing has been placed on record to suggest that the petitioner ever filed an application before this Court for setting aside the order of dismissal of the above appeal for want of prosecution. In the circumstances, the petitioner has clearly accepted the order dated 20.04.2015 and therefore also, his liability to pay maintenance to respondent No.3, and he cannot be now heard doubting her paternity.

Once the petitioner failed to establish adultery and also accepted the order dated 20.04.2015, inter alia ordering maintenance to respondent No.3, he cannot now turn around and call in question her paternity. Such a course of action is not only misconceived but also perverse in law. It would be a traversery of justice, if this Court were to allow the prayer of the petitioner, who it seems, is desperately finding ways to avoid his just liability. Carrying out a DNA test on respondent No.3 would leave deep psychological scars on her, and this Court would be loathe to allow that to happen. Courts lean heavily in favour of legitimacy of a child.

For the reasons recorded above, I am in agreement with the order passed by learned Principal Judge (Family Court), Ambala. Respondent No.3 cannot be allowed to undergo the pain and trauma of a process, which is sought to be dignified through an order of this Court.

Accordingly, the present petition stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

03.06.2019

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Whether speaking/reasoned:

Yes/No

Whether reportable :

Yes/No