

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-3457-2020

Date of Decision : January 27, 2020

Mainpal.....Petitioner

Versus

Smt. Sangeeta and another Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

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Present: Mr. Abhimanyu Singh, Advocate
for the petitioner.

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MANJARI NEHRU KAUL, J.

Prayer in this petition is for setting aside the impugned judgment dated 14.12.2019 passed in CRR No. 90/2019 by the Additional Sessions Judge, Palwal upholding the order dated 02.07.2019 whereby the application for directing the husband (petitioner herein) to pay the interim maintenance of Rs.7,000/- granted as per order dated 12.06.2015 was allowed and application of the petitioner for conducting DNA test of respondent No.2 herein, was dismissed.

At the outset, learned counsel submits that he would confine his submissions qua the dismissal of the application moved by the petitioner seeking DNA test of the minor daughter of the parties. It has been submitted that marriage of the petitioner was solemnized with respondent No.1-wife on 26.01.2011. However, soon after the marriage the behaviour of the wife towards the petitioner and his family was unbecoming of a spouse as she would often quarrel with them. Finally, the father of the respondent-wife

took her away from her matrimonial home on 31.11.2013. Thereafter, the

respondent-wife filed a petition under Section 125 Cr.P.C. It was submitted that when the petition under Section 125 Cr.P.C. was filed by the respondent-wife on 12.02.2015, the minor child of the parties i.e. respondent No.2 was not born and it was only subsequent to her birth on 18.06.2015 that the child of the parties was impleaded as a party on 03.02.2016. Thereafter, in the amended petition, maintenance had been sought on behalf of the respondent-wife and the child, wherein interim maintenance in the sum of Rs.7,000/- per month was already granted to the respondent-wife vide order dated 12.06.2015. Meanwhile, the petitioner filed an application for conducting a DNA test of respondent No.2 as he suspected her paternity on the ground that respondent No.1 had left her matrimonial house on 30.10.2014 and as per the respondent No.1 she was 3-1/2 months pregnant at that time. However, on the other hand, when she was examined as PW2 in "State v. Mainpal", a case registered at her instance under Section 498-A IPC, she had stated that when she left her matrimonial home, she was 2-1/2 months pregnant. It was urged that in view of the discrepancies appearing in the statement of respondent No.1 qua the stage of her pregnancy, it was evident that respondent No.2 was not born from the loins of the petitioner. Hence, it was in this background that he had filed an application for conducting the DNA test of the minor child-respondent No.2.

I have heard the learned counsel and gone through the impugned order.

I do not find any perversity or illegality in the impugned judgment dated 14.12.2019 whereby the court dismissed the application of the petitioner for getting the DNA test conducted on respondent No.2. It is

apparent that the discrepancy appearing qua the date when the respondent No.1 left her matrimonial home, could at best be said to be a typographical/inadvertent error. The fact remains that when she left the matrimonial home she was pregnant. It transpires that the father of respondent No.1 PW3 Bijender Singh due to a slip of tongue mentioned the date of his daughter-respondent No.1 leaving her matrimonial home on 30.11.2013 instead of 30.10.2014. This inadvertent error on account of father of respondent No.1 cannot be a ground to exercise the extraordinary power of this court to get the DNA test conducted on the child. Needless to say that the use of DNA test is an extremely delicate issue. The DNA testing can not be directed to be carried out in a routine manner by a court unless and until a *prima facie* case is strongly made out. Admittedly, in the case in hand the child was born within the stipulated period of 280 days from the date when respondent No.1 left her matrimonial home. In these circumstances, it would be very harsh to subject the minor child for DNA profiling as it could lead to traumatic scars on the child for the rest of her life. It is very evident that it is due to inadvertence or typographical error in another litigation which is pending between the estranged couple the discrepancy crept up qua the date on which the respondent No.1 left her matrimonial home. Due to this inadvertence, the respondent No.2 child cannot be subjected to DNA test.

Petition is dismissed.

27.01.2020

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(MANJARI NEHRU KAUL)
JUDGE

Note: Whether speaking/reasoned
Whether Reportable:

Yes / No
Yes / No