

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

18 CRIMINAL WRIT PETITION NO.1080 OF 2021

**SYED ASHFAK SYED MOHAMMED
VERSUS
AKILABANO W/O. SYED ASHPAK AND OTHERS**

Mr. Shaikh Tarek Mobin H., Advocate for the petitioner

Mr. M.M. Khan, Advocate for the respondent Nos. 1 and 2

CORAM : N. R. BORKAR, J.

DATE : 13-12-2021

P. C.

. This petition takes an exception to the order dated 28-07-2021, passed by the learned Magistrate, Aurangabad below Exh.21 in PWDVA No.528 of 2017.

2. The respondent No.1-wife herein had filed an application under the provisions of Protection of Women From Domestic Violence Act for various reliefs against the present petitioner-husband.

3. The petitioner herein had filed an application at Exh.21 seeking DNA test of himself

and male child born to respondent No.1 on the ground that the respondent No.1 has been residing at her parent's house since 09-10-2018, and thereafter they never met. It is thus, alleged that the petitioner is not the biological father of the male child born to the respondent No.1 on 27-07-2019.

4. The respondent No.1 resisted the application by filing reply. The respondent No.1 in her reply refuted the allegations made by the petitioner. The respondent No.1 has, however, not denied the assertion made by the petitioner that since 09-10-2018 she is residing at her parental house and thereafter they never met. She has also not denied the fact that she gave birth to the male child on 27-07-2019. Considering these facts and in view of the judgment of the Hon'ble Supreme Court in the case of Dipanwita Roy Vs Ronobroto Roy in Criminal Appeal No. 9744 of 2014 decided on 15-10-2014 and the judgment of this court in the case of Uddhav Vs Shakuntala and others in Criminal Application No.2565 of 2016 decided on 06-12-2016, the order impugned cannot be sustained. In the result following order is passed.

ORDER

- i. The petition is allowed.
- ii. The impugned order is set aside.
- iii. The application at Exh.21 is allowed.
- iv. The learned Magistrate shall pass order in relation to deposit of fee for conducting the DNA test and other conditions.
- v. As per the undertaking recorded by this court in order dated 04-12-2019 the petitioner shall pay remaining maintenance amount to the respondent No.1 within one month from today.

[N. R. BORKAR, J.]