

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO.87 OF 2019**

Narayan Parsekar, Petitioner.

V/s.

Asthang Prakash Chari,
thr. Shital Prakash Chari
@ Sheetal V. Chari @ Prakash
A. Prakash Sutar anr. Respondents

Mr. Salil Saudagar, Advocate for the applicant.

Mr. S.G. Bhobe, Public Prosecutor for the Respondents.

Coram : M. S. SONAK, J.

Date : 17th February, 2021.

Oral Order:

Heard Mr. Salil Saudagar, the learned Counsel for the applicant and Mr. S.G. Bhobe, the learned Public Prosecutor for the State.

2. The respondent though served has not put in appearance.

3. The petitioner assails Order dated 01.11.2018 by which

the petitioner has been directed to undergo DNA analysis for paternity of the minor who has filed for maintenance under Section 125 of Cr.P.C.

4. Mr. Saudagar, submits that the interim maintenance was denied to the minor by which the learned J.M.F.C. holding that no prima facie case has been made out. Therefore, there was no question of requiring the petitioner to undergo DNA test at this stage. He submits that it is only after examination of some witnesses and holding out prima facie case that direction to undergo DNA analysis could have been given.

5. Mr. Saudagar, in the alternative submits that the direction in the impugned Order that the complainant to provide the details of the concerned hospital and the Doctor to undertake the said test is not at all appropriate. He submits that at the highest some Government Hospital or some agency to depute the expert who undertakes such test could have been called upon to undertake the same and thereafter furnish its report in sealed cover to the Court at the first instance.

6. According to me, there is no merit in the first contention raised by Mr. Saudagar. In this case, the minor has claimed maintenance from the petitioner and has also asserted that the

petitioner is his real father. Since the claim for maintenance has been filed through the minor's mother, the assertion is really made by the minor's mother.

7. The learned J.M.F.C. upon due consideration not only the petitioner's contentions but also on the case law on the subject has made the order and there is no jurisdictional error or any other error in making such order. The petitioner's contention cannot be accepted in the facts and circumstances of the case and in any case the acceptance of such contention will only entail delay in deciding the maintenance proceeding, which otherwise is to be disposed of expeditiously.

8. The fact that no interim maintenance was granted to the minor does not mean that the impugned Order could not have been made. The principles for grant of interim maintenance and the issue of directions to undertake DNA analysis are not quite the same. The impugned Order is quite consistent with the decision of the Delhi High Court referred to in paragraph 30 of the impugned Order. There is no case made out for interference with the direction that the petitioner undergoes DNA analysis for confirmation of paternity.

9. However, Mr. Saudagar is right, in so far as his

alternative submission is concerned. The choice of the Doctor or Hospital ought not to have been left to the respondent. To that extent therefore, the impugned Order is modified. Instead, the learned J.M.F.C. to ensure that the DNA analysis is carried out in a Government Hospital or any other reputed laboratory or establishment where such test are undertaken and the report is called for in sealed cover. Upon the Court examining the report, the further course of action is as permissible in law may be adopted. The impugned order is modified to the aforesaid extent only.

10. The learned J.M.F.C., should expedite the proceedings now that the interim maintenance is denied to the minor appellant. The petitioner to co-operate in the expeditious disposal of the proceeding, including compliance with the direction to undergo DNA analysis. If the learned J.M.F.C. finds there is any lack of co-operation then the learned J.M.F.C., to consider some interim maintenance needs to be granted to the minor applicant on the ground that the petitioner is resisting DNA analysis unreasonably. The respondent also to co-operate with the learned J.M.F.C., to dispose the maintenance proceeding expeditiously.

11. This petition is therefore partly allowed to the aforesaid extent. There shall be no order as to costs.

12. The petitioner to place the authenticated copy of this Order before the learned Judicial Magistrate before the next date of hearing.

M. S. SONAK, J.

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