

Court no.237
31.08.2023
Item no.57
(Suvendu)

CRR 575 of 2018

In the matter of: - **Ramkrishna Mudi @ Modi**

Mr. Prasenjit Mukherjee
Mr. Saptarshi Chakraborty
Ms. Poulami Dutta
Ms. Tiya Ghosh

.....for the petitioner

Mr. Rudradipta Nandy
Mr. Iqbal Kabir

.....for the State

The revisional application has been filed challenging the order dated 17th November, 2017 whereby learned Judicial Magistrate, 3rd Court, Murshidabad rejected an application for DNA test in a proceeding under Section 125 of the Cr.P.C.

Mr. Mukherjee, learned counsel appearing for the petitioner submits that there was no relationship between the parties as husband and wife and the child was not born out of their wedlock.

Mr. Nandy, learned counsel appearing for the State submits that at this initial stage prayer for DNA test cannot be allowed in view of the principles laid down by the Hon'ble Apex Court in catena of decisions.

From the records it appears that the private opposite party no. 2 filed an application under Section 125 Cr.P.C.

against the petitioner before the learned Magistrate claiming maintenance on the grounds that she was married with the petitioner and a child was born out of their wedlock.

The petitioner entered appearance in the said Misc. Case being M.R. 107 of 2013 filed under Section 125 Cr.P.C. before the learned Magistrate and filed a Written Objection contending, inter alia, that the private opposite party no.2 was not his wife and no child was born out of their wedlock.

Admittedly, the case is at initial stage and one application was filed at the instance of the petitioner with a prayer for DNA test of the child.

Learned Magistrate in his order impugned has relied upon certain documents filed on behalf of the private opposite party no.2 and rejected the prayer for DNA test.

Considering all the submissions made on behalf of the parties as well as documents relied upon, I find that the application for DNA test has been filed at a very initial stage and hence the same is a premature step. Without taking evidence in terms of the documents relied upon on behalf of the private opposite party no. 2, the prayer for DNA test cannot be considered at this stage. In that view of the matter, I am not inclined to interfere with the order impugned.

However, liberty is given to the petitioner to take the issue of DNA test after adducing necessary evidence by the parties subject to the satisfaction of learned Magistrate and learned Magistrate will consider such prayer keeping in mind

the evidence adduced, documents relied upon and the decisions of the Hon'ble Supreme Court in this regard.

With the above observations, the revisional application stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

All parties to act on the server copy of this order downloaded from the official website of this Hon'ble Court.

(Bibhas Ranjan De, J.)