



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 5120 OF 2019

(Mohan Haribhau Lanjewar vs. Sanjay Hirkanya Moharkar and others)

*Office Notes, Office Memorandum of Coram,
appearances, Court's orders of direction,
and the Registrar's orders.*

Court's or Judge's order

Mr. A.A.Dhawas, Advocate for the Petitioner.

Mr. A.G.Dhatrak, Advocate h/f Mr.M.I.Dhatrak, Advocate for the
respondent No.3.

CORAM : ABHAY J. MANTRI J.

DATE : NOVEMBER 13, 2024

1) Heard Mr.A.A.Dhawas, learned Counsel for the petitioner and Mr.A.G.Dhatrak, learned Counsel for respondent No.3. None present for respondents Nos.1 and 2.

2) By this petition, the petitioner is challenging order dated 02/02/2019 passed by the Joint Civil Judge Junior Division, Pauni, (for short- 'CJJD') below Exh.20 in Regular Civil Suit No.60/2016, whereby application filed by the respondent Nos.1 and 2, i.e. original plaintiffs permitting them to conduct DNA test of plaintiff No.1 and defendant No.1, i.e. Petitioner.

3) Plaintiffs have filed the suit for declaration that defendant No.1 is the father of plaintiff No.1 and for a mandatory injunction directing defendant No.2 to register defendant No. 1's name as the father of plaintiff No.1. Defendant No.1 denied the paternity of plaintiff No.1. Therefore, the plaintiffs moved the application to conduct the DNA test to ascertain the paternity of respondent No. 1 and the same was allowed. Being aggrieved by the same, the petitioner/defendant No.1 has preferred this petition.

4) The learned Counsel for the petitioner argued that the plaintiffs had filed the application at a premature stage and, therefore, passing of the order to conduct the DNA test is illegal. He further canvassed that in the case where the paternity of the child is an issue, the DNA tests should not be ordered as a matter of course or in a routine manner, as it would bastardise the innocent. DNA test violates the fundamental rights of the petitioner. Also, the suit is barred by limitation. There is no material to warrant the order of a DNA test. Therefore, he submitted that passing of the impugned order is illegal and liable to be set aside. Consequently, he urged for allowing the petition.

5) It is pertinent to note that plaintiff No.1 is the son of plaintiff No.2. They both filed the suit for declaration claiming that defendant No.1 is the father of plaintiff No.1. The plaintiffs have categorically averred that defendant No.1 is a distant relative of plaintiff No.2. The defendant No.1 assured the plaintiff No.2 that he will marry with her and on the assurance he established physical relationship with Plaintiff No.2. Consequently, plaintiff No. 2 became pregnant and gave birth to Plaintiff No.1. As such, they have filed the suit. Defendant No.1 has categorically denied his physical relationship with her. Therefore, the plaintiffs have moved the application to permit them to conduct the DNA test of plaintiff No.1 and defendant No.1 to ascertain the paternity of Plaintiff No.1.

6) Learned Judge relying on the dictum laid down in the case of **Madharpu – Prabhu Ram vs. Shaikh Janibee (2012) 4 Crimes 537 (A.P.)** allowed the said application. He was permitted plaintiff No.1 and defendant No.1 to conduct a DNA test to detect the paternity of Plaintiff No.1. The learned Counsel for the petitioner failed to point out any illegality and perversity

in the impugned order to invoke the writ Jurisdiction. On the contrary, it appears that the order passed by the learned Judge is based on the dictum laid down in the case of '**Madharpu**' (supra). Therefore, I do not find substance in the contention of the learned Counsel for the petitioner that the impugned order is illegal.

7) *Moreover*, to determine the fact in issue, it would be proper to conduct a DNA test. If the DNA test of plaintiff No.1 and defendant No.1 is conducted, no prejudice would be caused to the petitioner; per contra, certainly, it would help to determine the real question of controversy between the parties and resolve the issue involved in the present case.

8) Having considered the aforesaid discussion, I do not find substance in the contentions of the learned Counsel for the petitioner that the impugned order is illegal. As such, the petition is bereft of any merit and stands dismissed. No order as to costs.

Inform the learned trial Court accordingly.

(ABHAY J. MANTRI, J.)