



IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION NO. 957 OF 2025

...

Priyanka D/o Mangesh Deshpande,
Aged about 21 years, Occ. Student,
R/o. Mahakali Colliery,
Opposite Canteen Near Check Post,
Chandrapur, Tahsil and District Chandrapur.

... **PETITIONER**

- - V E R S U S - -

- 1] Mangesh S/o Kishor Deshpande,
Aged about 54 years, Occ. Advocate,
R/o. Near Panchdeud or
Ramala Talav Shriram Ward,
Tahsil and District Chandrapur.
- 2] Sau. Kusum @Megha Deshpande,
Aged about 50 years, Occ. Nil.,
R/o. Mahakali Colliery,
Opposite Canteen Near Check Post,
Chandrapur, Tahsil and District Chandrapur.

... **RESPONDENTS**

Mr. Syed Owais Ahmed, Advocate for the Petitioner.

Mr. A.M. Chandekar, Advocate for the Respondents.

CORAM : M.M. NERLIKAR, J.

DATE : APRIL 02, 2026.

ORAL JUDGMENT:

Rule. Rule made returnable forthwith. Heard finally with the consent of learned counsel for both the parties.

2. The parties are referred by its original status in Section 125 proceedings, i.e., the parties will be referred as petitioner (Applicant No.2), respondent No.2 (Applicant No.1) and respondent No.1 (Non-applicant).

3. The case of the petitioner (applicant No.2) is that she claims to be the daughter of applicant No.1 and Non-applicant. The application under Section 125 of the Code of Criminal Procedure, 1973, was filed by the applicant No.1 before the Judicial Magistrate First Class at Chandrapur in the

3

year 2003. It appears that the applicant No.1 moved an application at Exh.23 dated 24/11/2004, praying therein that the DNA test be conducted of the applicants and the non-applicant. A Reply was given to Exh.23 by the non-applicant, wherein he has consented for DNA test, however, he refused to bear expenses of the test. By order dated 07/03/2006, the trial Court passed the following order below Exh.23:-

“ Heard both the sides. The applicant has moved an application for getting DNA test of NA at his expense. The NA though ready for the same but deny to bear the expenses. Under Such circumstance the applicant to state whether she is ready to bear expenses. The application be kept in abeyance & matter be proceeded further.”

4. It further appears from the record that, later on, on 16/10/2006, the trial Court has passed the following order:-

“ The applicant has filed this application for taking the blood of the applicants and the non-applicant and to send it for DNA test. Here, the Court had asked the applicant as to whether she is ready to bear the expenses. The applicant has vide Exh.32 stated that, she is not in a position to bear the expenses. Note to this effect is taken.”

4

Another application was filed by the applicant No.1 at Exh.64, praying to conduct Narco analysis, brain mapping, lie detector and DNA tests of the non-applicant. The said application was rejected by the Judicial Magistrate First Class, Chandrapur, on 09/07/2015. Thereafter, it appears from the record that again application at Exh.85 was moved by the applicant No.1, praying therein that the DNA test be conducted. Even application at Exh.88 was filed, requesting to decide the application filed below Exh.85 at the earliest. Vide common order, Exh.85 and Exh.88 were decided, and the application for conducting DNA test was rejected on the ground that it was not maintainable as already the applicant-wife has shown her unwillingness to deposit the amount, and therefore, for the same reason, another application would not be maintainable. Another application seems to have been filed by the applicant No.1 at Exh.143 for conducting DNA test, wherein again a detailed order was passed by the learned Magistrate on 15/09/2022, whereby the application was rejected by observing

5

that already vide Exh.64 and Exh.85, applications were rejected, hence, this application is not tenable. It appears that the applicant No.2, after attaining majority, has filed application at Exh.153 for conducting DNA test as well as with a further direction seeking that non-applicant to provide copies of his Aadhar card, college TC, and domicile certificate so as to enable her to furnish the same in her college, as required. However, the learned Judicial Magistrate First Class, Chandrapur, rejected the request of the petitioner herein. This order dated 16/06/2023 was challenged before this Court, and this Court, on 06/11/2023, has passed the following order:-

“ When the Court was not inclined to grant relief, learned counsel for the petitioner, on instructions, seeks permission to withdraw the petition with liberty to pay expenses in terms of order dated 7-3-2006 below Exhibit 23.

I do not feel it necessary to grant such liberty for the simple reason that if the applicant intends to comply the order passed by the trial Court, which if otherwise has been not modified, such liberty is not required.

With the above observations, the petition is dismissed as withdrawn.”

6

5. Thereafter, again the applicant No.2 has filed application before the learned Magistrate for grant of permission to pay / deposit the charges of DNA test of the applicant No.2 and non-applicant for determination of paternity in view of the order passed below Exh.23 on 07/03/2006 and 16/10/2006. The said application was rejected by the trial Court by its impugned order dated 30/06/2025, which is under challenge before this Court.

6. The learned counsel for the applicant No.2 submits that the respondent (non-applicant) herein has already given consent, long back in the year 2006, when the first order was passed for conducting DNA test, however, the only issue remained was about the deposit of amount. At the relevant time, the applicant No.2 was minor, and applicant No.1 was not in a position to deposit the amount. He further submits that, accordingly, it was informed to the trial Court vide Exh.32 that she is not in a position to bear the expenses. Therefore, he

7

submits that after attaining majority, the applicant No.2 moved an application before the trial Court vide Exh.153, however, the said application was rejected. Against this, the petitioner has approached this Court, and when this Court showed disinclination to grant relief, the Writ petition was withdrawn, liberty was prayed to pay expenses in terms of order dated 07/03/2006 below Exh.23, however, this Court has observed that it is not necessary to grant such liberty for the simple reason that if the applicant No.2 intends to comply the order passed by the trial Court, which if otherwise has been not modified, such liberty is not required, and therefore, according to the petitioner, now she is ready to pay the requisite charges for DNA test, and accordingly, the application was filed before the trial Court at Exh.162 for deposit of the amount. However, that application was rejected by the Judicial Magistrate First Class, Chandrapur, by its impugned order dated 30/06/2025. He submits that the Court has failed to take into consideration the earlier order passed below Exh.23. The Court has also failed

8

to take into consideration that, due to poverty, the mother of the petitioner was not able to deposit the amount. He further submits that the non-applicant had also given consent at the relevant time, and therefore, now he cannot take U-turn. He further submits that no prejudice would be caused, on the contrary, it would be helpful in deciding the case filed under Section 125 of the Cr.P.C.

7. On the other hand, the learned counsel appearing for the respondent No.1 (non-applicant) vehemently opposes the petition and submits that the applicant No.2 does not have any locus to file the application before the trial Court. Already the issue has been closed by the trial Court by passing various orders right from the beginning, i.e., from 2006. Even this Court has decided the issue as order dated 16/06/2023 was challenged before this Court and even this Court was not inclined to grant the relief. Therefore, the issue has attained finality. He submits that the original order which was passed at

9

Exh.23 has already been merged in other orders, wherein in detail, the application of the mother of the petitioner has been dealt with by the trial Court and under such circumstance it is not open for the petitioner to file application at Exh.162 seeking permission to deposit money for conducting DNA test. Therefore, according to the counsel for the non-applicant, this is nothing but harassment at the hands of the applicant No.2. He further invited my attention to the statement recorded by the Police Agency wherein, applicant No.1 has specifically stated that she is not ready to give blood samples of herself and her daughter for DNA test. Therefore, he submits that the impugned order is rightly passed by the Magistrate and there is no merit in the petition, and the same deserves to be rejected.

8. I have considered the rival submissions, and upon perusal of the impugned order dated 30/06/2025, it appears that the applicant No.1 has filed application under Section 125 of the Cr.P.C. for grant of maintenance for herself and applicant

10

No.2. It is painful to observe that parties are fighting this litigation since 2003, that too for maintenance under Section 125 of Cr.P.C. Almost 23 years are over, however, there is no end to the present litigation. For the purpose of deciding the issue, following events have to be considered:-

(i) An application at Exh.23 was filed by the applicant No.1 for conducting DNA test of the applicants and the non-applicant, which was kept in abeyance by the trial Court vide order dated 07/03/2006, as the non-applicant refused to bear the expenses of the DNA test. A say was called of applicant No.1 as to whether she will bear the expenses of conducting DNA test;

(ii) The applicant No.1 has given say vide Exh.32, in compliance of the aforesaid order, stating that she is not in a position to bear the expenses, of which a note was taken by the trial Court by order dated 16/10/2006;

(iii) Thereafter, an Application at Exh.64 was filed by the applicant No.1 for direction to conduct narco

11

analysis, brain mapping, lie detector and DNA tests of the non-applicant, which was rejected by the trial Court on 09/07/2015;

(iv) Again, applications at Exh.85 and Exh.143 were filed by applicant No.1 for conducting DNA test, however, the said applications were also rejected by the trial Court on 09/07/2015 and 15/09/2022 respectively;

(v) On attaining majority, the applicant No.2 filed an application at Exh.153 for issuance of directions to non-applicant for conducting DNA test and further directions to the non-applicant to provide copies of his Aadhar card, college TC, and domicile certificate, which application was rejected by the trial Court on 16/06/2023;

(vi) The aforesaid order dated 16/06/2023 was challenged before this Court, and on 06/11/2023, this Court showed disinclination to grant any relief;

(vii) Therefore, the applicant No.2 made an

12

application at Exh.162 for grant of permission to deposit the charges of DNA test of the applicant No.2 and the non-applicant for determination of paternity, which was rejected vide impugned order dated 30/06/2025, which is challenged before this Court.

9. The order dated 16/06/2023, passed below Exh.153 rejecting the DNA test which application was filed by applicant No.2 has already attained finality as this Court by its order dated 06/11/2023 had shown disinclination to grant relief.

10. It is further to be noted that no order was passed at any point of time permitting DNA test. It appears from the order dated 07/03/2006 that the Court had only observed that the non-applicant is ready for DNA test, however, if the applicant is ready to bear the expenses same be communicated and the application was kept in abeyance. Thereafter, again by order dated 16/10/2006, passed below Exh.23, the learned

13

Magistrate observed that, vide Exh.32, the mother has stated that she is not in a position to bear the expenses. It further appears from other orders also that applications of the applicant No.1 for conducting DNA test were rejected by the trial Court, either on merits or by observing that those applications are not maintainable or tenable. Those orders were never challenged.

At a later point of time, when the petitioner became a major, an application was filed stating she is ready to bear the expenses of DNA test, which was rejected by the trial Court. It appears to me that, in absence of any order for conducting DNA test, the application at Exh.162 filed by the petitioner itself is not maintainable. Merely showing readiness for conducting DNA test by the non-applicant at the relevant time is itself not sufficient, there should be specific order directing to undergo DNA test. Filing an application at Exh.162 on the basis of the order dated 07/03/2006, i.e., almost after 19 years, is nothing but an abuse of process of law. Further, even order dated

14

07/03/2006 cannot be said to be in existence, as after this order, several applications filed by applicant No.1 as well as applicant No.2, requesting to conduct DNA test, were rejected by the trial Court. Needless to mention that this Court has also passed the order showing its disinclination to interfere in the order passed below Exh.153, which application was filed by applicant No.2, i.e., present petitioner, under such circumstances, it would not be proper on my part to re-open the entire issue. Therefore, I do not find any perversity in the impugned order dated 30/06/2025, passed below Exh.162 in Miscellaneous Criminal Application No.402/2003. Hence, the Criminal Writ Petition is **dismissed**. Rule stands discharged.

[**M. M. NERLIKAR, J**]