

IN THE HIGH COURT OF DELHI AT NEW DELHI

12.05.2008

Present : Mr.K.P. Mavi for the petitioners

Mr. Pawan Sharma/ Ms. Fizani Hussain, APP for the State.

Mr. Kapil Jain for the respondent

Coram: VIPIN SANGHI, J

CrI.M.C.No.1815/2007

This petition under Article 227 of the Constitution of India challenges the order dated 4.5.2007 passed by the learned M.M. on the application of the petitioner praying for the conduct of DNA test in respect of respondent No.3 Master Ansh who according to the petitioner, is not his biological son. Respondent No.1 is the wife of the petitioner. Respondent No.2, admittedly, is the son of respondent No.1, from an earlier marriage. Respondent No.1 had preferred an application for seeking maintenance under Section 125 Cr.P.C. In those proceedings the petitioner who is the husband of respondent No.1, preferred the aforesaid application seeking the conduct of DNA test in respect of respondent No.3 to determine his parentage since, according to him, respondent No.3 is not his biological child. That application has been rejected by the learned Metropolitan Magistrate by the impugned order dated 4.5.2007. The learned Magistrate has rejected the application by holding that the DNA test will not have any effect on the merits of the present petition as the present petition is under Section 125 Cr.P.C. and the provisions of Section 125 Cr.P.C. do not make any difference between legitimate and illegitimate children in order to maintenance.

The submission of the petitioner is that the learned Magistrate has not appreciated the fact that respondent No.3 is not alleged to be the legitimate child of the petitioner husband. The claim of the husband is that respondent No.3 is not his biological child and that he was conceived by respondent No.1 in adultery. He also refers to the order-dated 13.2.2007 wherein, at one stage, counsel for the respondent had recorded his no objection to the prayer made in the application of the petitioner. Even the subsequent statement made by learned counsel for respondent No.1 herein, only pertains to the DNA test that the petitioner had sought in respect of claimant No.2, who admittedly, is not the biological child of the petitioner.

Counsel for the petitioner also relies on a decision of this Court in Kanchan Bedi and Anr. vs. Gurpreet Singh Bedi 2003(67) DRJ 297. In that decision this Court had considered various earlier decisions on the point and in paragraph 8 thus concluded there is no impediment or violation of rights in directing persons to submit themselves for DNA test, especially where the parentage of a child is in controversy for the grant of maintenance. Submission of learned counsel for the respondent is that a perusal of the memo of parties as filed by the petitioner shows that he claims himself to be the father of respondent No.3 Master Ansh. He further submits that in various other proceedings the petitioner has not disowned his parentage qua respondent No.3.

In my view these submissions are of no avail. So far as the memo of parties is concerned the petitioner has simply adopted the description of the parties as is contained in the application filed by respondent Under Section 125 Cr.P.C. The same is not determinative of the fact whether the petitioner is the biological father of respondent No.3 or not. The parentage of respondent No.3 can only be determined by the conduct of DNA test. The liability to pay maintenance under Section 125 Cr.P.C. can be avoided qua respondent No.3 only if it is established that he is not the biological son of the petitioner. Considering the aforesaid, I am of the view that the learned Magistrate wrongly rejected the application filed by the petitioner praying for the conduct of DNA test of respondent No.3 Master Ansh.

Accordingly, I set aside the impugned order dated 4.5.2007 passed by the learned Magistrate and further direct that DNA test of respondent No.3 be conducted at All India Institute of Medical Science, New Delhi. For the drawing of samples for the test, the respondents are directed to ensure the presence of respondent No.3 before the Medical Superintendent, AIIMS on 22.05.2008 at 11 a.m.

Petition stands disposed of.

Dasti.

May 12, 2008 VIPIN SANGHI, J