

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE DEVNARAYAN MISHRA

ON THE 23rd OF JULY, 2025

Criminal Revision No.4475 of 2022

MISS ISHANI

Vs.

VIJAYANT BHIMTE

.....
Appearance

Ms. Priyal Rahangdale – Advocate for the applicant.

Despite issuance of notice upon the respondent, nobody has appeared on his behalf.

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ORDER

The case was heard at motion stage.

2. This criminal revision has been preferred by the applicant under Section 397/401 of the Code of Criminal Procedure, 1973 being aggrieved with the order dated 28.10.2022 passed in MJC-R No.39/2021 by the Principal Judge, Family Court, Balaghat, whereby an application preferred by her under Section 125 of the CrPC has been rejected.

3. The facts of the case in short are that an application was filed by the applicant through her mother (PW/1) on the ground that though her mother was married to one Lokesh Bhimte, but she was having love affair with the respondent and due to her physical relation with the respondent, the applicant was born, but now the respondent is not taking care of her. Her mother filed a report at Police Station Kirnapur, where against the

respondent, a case under Section 376 of the Indian Penal Code was registered. Thereafter, the police conducted DNA examination and the charge-sheet was filed and ST No.205/2019 was registered before the trial Court. It was stated in the application that from the DNA report, it is clear that the applicant is the biological daughter of the respondent and hence, as per the provision of Section 125 of the CrPC, respondent is liable to maintain his legal/illegal child. It was further stated in the application that the applicant is studying at Sarthak Public School, Kirnapur, her tuition fee is Rs.2500/- per month and on other heads, she requires Rs.10,000/- maintenance per month. The respondent is having shops of photocopy, computer typing and grocery at Kirnapur from which he is earning Rs.60,000/- per month. It was also stated in the application that the respondent is having 11 acres of agricultural land and developing the said land, he is selling the plots. Cost of the said land was said to be of Rs.50 lac and hence, a maintenance to the tune of Rs.12,500/- per month be ordered in favour of the applicant which is to be paid by the respondent.

4. The respondent in the reply has denied the averments. In the reply, it is further stated that the grounds mentioned in the application are false. The mother of the applicant has filed an application before the Fourth Civil Judge (Junior Division) Balaghat for declaration of paternity that was registered as RCS-A-71/2021 and that, being without any cause of action, was dismissed by the Court. The sessions trial is pending before the Court and the FSL report has not been proved. The applicant is a legal daughter of Lokesh Bhimte. The mother of the applicant is living with her husband Lokesh Bhimte and she has delivered a baby child and in that circumstances, the respondent is not entitled for any maintenance and hence, the application be dismissed.

5. The Principal Judge, Family Court, Balaghat, after considering the

facts and circumstances of the case, by the impugned order dated 28.10.2022 has dismissed the application filed under Section 125 of the CrPC, hence, this revision petition.

6. Learned counsel for the applicant has submitted that the Family Court has not accepted the relation of the father and daughter (applicant). She has submitted that on the basis of DNA report conducted in criminal case, presumption under Section 112 of the Evidence Act is not applicable and in that circumstances, the paternity will be of the respondent, who is said to be a biological father of the applicant.

7. Learned counsel for the applicant has submitted that Hon'ble the Apex Court in **Criminal Appeal No.24 of 2014 [Nandlal Wasudeo Badwaik Vs. Lata Nandlal Badwaik and another]**, vide judgment dated 06.01.2014, dealing with the DNA test and presumption under Section 112 of the Evidence Act has held as under:-

‘We may remember that Section 112 of the Evidence Act was enacted at a time when the modern scientific advancement and DNA test were not even in contemplation of the Legislature. The result of DNA test is said to be scientifically accurate. Although Section 112 raises a presumption of conclusive proof on satisfaction of the conditions enumerated therein but the same is rebuttable. The presumption may afford legitimate means of arriving at an affirmative legal conclusion. While the truth or fact is known, in our opinion, there is no need or room for any presumption. Where there is evidence to the contrary, the presumption is rebuttable and must yield to proof. Interest of justice is best served by ascertaining the truth and the court should be furnished with the best available science and may not be left to bank upon presumptions, unless science has no answer to the facts in issue. In our opinion, when there is a conflict between a conclusive proof envisaged under law and a proof based on scientific advancement accepted by the world community to be correct, the latter must prevail over the former.

We must understand the distinction between a legal fiction and the presumption of a fact. Legal fiction assumes existence of a fact which may not really exist. However presumption of a fact depends on satisfaction of certain circumstances. Those circumstances

logically would lead to the fact sought to be presumed. Section 112 of the Evidence Act does not create a legal fiction but provides for presumption.'

8. Learned counsel for the applicant has further relied upon of the judgment of Kerala High Court passed on 26.11.2014 in **OP (FC) No.507 of 2014 (R) [Babu Vs. Vidya]**, in which, the Court in paragraph-11 has held as under:-

'11. Whereas, paternity is the state or fact of being father of a particular child. According to Section 125(1)(b) of the Cr.P.C., the legitimate or illegitimate minor child, whether married or not, unable to maintain itself is entitled to get maintenance allowance from his or her father, if the father having sufficient means neglects or refuses to maintain that child. There, the question is whether the child has been begotten in a sexual intercourse with the person from whom maintenance is claimed. An illegitimate child is also entitled to get maintenance from his father. So, legitimacy of birth is totally irrelevant and insignificant while considering the right of the child to get maintenance from his father. In short, legitimacy and paternity are different and distinct. In our view, in that enquiry to find out the true fatherhood of a child, the legal presumption as to the legitimacy under Section 112 of the Evidence Act would not bar a scientifically accurate and approved test, if the facts and circumstances of the case tend to make such an enquiry imminently needed. When the fatherhood of a child can be determined accurately without doubt by the DNA test, there is no need to ascribe the fatherhood on an innocent person on presumption. Since the legitimacy and paternity are distinct and different and working under different spheres in different perspective, in a maintenance claim under Section 125(b) of the Cr.P.C., the presumption under Section 112 of the Evidence Act cannot be extended or stretched so as to put as a legal bar in the way of enquiry to find out the true fatherhood of a child. We are of the further opinion that in every enquiry, the method to be adopted depends upon the 'fact in issue' to be determined.'

9. Learned counsel for the applicant has also relied upon a judgment dated 15.10.2014 passed **Civil Appeal No.9744 of 2014 [Dipanwita Roy Vs. Ronobroto Roy]**, in which, Hon'ble the Apex Court has held as under:-

‘....Admittedly, the child has been born during the continuance of a valid marriage. Therefore, the provisions of Section 112 of the Evidence Act conclusively prove that Respondent 2 is the daughter of the appellant. At the same time, the DNA test reports, based on scientific analysis, in no uncertain terms suggest that the appellant is not the biological father. In such circumstances, which would give way to the other is a complex question posed before us.

17. We may remember that Section 112 of the Evidence Act was enacted at a time when the modern scientific advancement and DNA test were not even in contemplation of the legislature. The result of DNA test is said to be scientifically accurate. Although Section 112 raises a presumption of conclusive proof on satisfaction of the conditions enumerated therein but the same is rebuttable. The presumption may afford legitimate means of arriving at an affirmative legal conclusion. While the truth or fact is known, in our opinion, there is no need or room for any presumption. Where there is evidence to the contrary, the presumption is rebuttable and must yield to proof. The interest of justice is best served by ascertaining the truth and the court should be furnished with the best available science and may not be left to bank upon presumptions, unless science has no answer to the facts in issue. In our opinion, when there is a conflict between a conclusive proof envisaged under law and a proof based on scientific advancement accepted by the world community to be correct, the latter must prevail over the former...’

10. Basing her arguments on this, learned counsel for the applicant has submitted that in the DNA report of FSL Sagar (Ex.A/1), it has been clearly opined that the applicant is biological daughter of her mother and respondent. In the applicant’s school record (Ex.A/2), name of the respondent has been mentioned as her father and in the birth certificate (Ex.A/3), the respondent’s name is marked as father of the applicant. She has also filed the documents (Articles A/1 to A/64) showing that the applicant’s mother was having relations with the respondent.

11. Heard learned counsel for the applicant and perused the record.

12. The applicant’s mother (PW/1) has stated that the applicant is her daughter and the respondent is the father of her daughter. She was married

with Lokesh Bhimte and was also having love affair with the respondent and during the said love affair, physical relation was developed between them and due to that physical relation, she got the pregnancy and delivered the applicant. When she got the pregnancy, the respondent was caring her but after delivery, he left her and on that, she has lodged the FIR before the Police Station Kirnapur and thereafter, the police registered the offence and conducted the DNA examination and as per the DNA report, the respondent is biological father of the daughter (applicant) and when she asked the respondent to maintain the applicant, then he denied and made quarrel.

13. This witness has further stated that the applicant is having photocopy and computer typing institutions at Kirnapur. He also owned a grocery shop. He has a *pucca* residential house, in which, he has rented out seven rooms and got Rs.60,000/- per month from the rent. The respondent has 11 acres of ancestral agricultural land. The applicant has developed the land into plots and selling them. The respondent has also sold his agricultural land to one Atul Choudhary on an amount of Rs.50 lac.

14. In the cross-examination, this witness has stated that she was married to Lokesh Bhimte in the year 2008 and no dissolution of the marriage has taken place and they are residing as a husband and wife and self stated that there was no physical relation with her husband. She has admitted that the applicant was born in the year 2016 and at that time, she was residing with Lokesh Bhimte and when she got the pregnancy before that and after that there was no physical relation with her husband. She has admitted that when she developed physical relation with the respondent, at that time, she was married and also stated that her husband Lokesh Bhimte was consuming alcohol and was involved in gambling, hence, the respondent was saying to her that get the marriage dissolved from Lokesh

Bhimte and then, he will keep her and also maintain her daughter.

15. In the cross-examination, this witness has further stated that, she was not having the knowledge that a Hindu woman, without getting the divorce from her husband, cannot marry to any other person and denied the suggestion that at the time when she was in love affair with the respondent, he was already married. She has also admitted that her husband Lokesh Bhimte has never raised any doubt regarding the paternity of her daughter. She has also admitted that DNA report was filed in the criminal case and that criminal case is still pending and judgment has yet not been passed.

16. In paragraph-9 of the cross-examination, this witness has further admitted that she was running a boutique in the rented shop of respondent's father. She has denied the suggestion that the respondent's father has filed any civil suit for recovery of arrears of rent and when the judgment was passed against her, she has lodged a false case and further stated that she has got a decree in her favour on appeal. She has admitted that she has filed a suit before the Court i.e. C.S. No.71-A/2021 and as per the order dated 14.08.2021, the case was not allowed and thereafter, in the appeal, vide order dated 04.01.2022, the appeal is allowed and the case is remanded for rehearing. It is admitted that in the birth certificate issued on 18.08.2021, the name of Lokesh Bhimte is written as the father of the child. However, she has not filed any application or suit before any Court for changing the name of father in the birth certificate (Ex.A/3), which was issued after six months of birth of child. She has also not filed any certificate regarding photographs (Articles A/1 to A/64). She has also admitted that while she got her daughter admitted in the school, in the column of father's name, she has written the name of Lokesh Bhimte as the father of the daughter. She has denied the suggestion that in Ex.A/2,

she has falsely incorporated the name of respondent.

17. The respondent has denied any relation with the applicant and has stated that in the year 2014, a room was given to the applicant's mother on rent and after two years, she has stopped paying the rent and when his father went to room for demanding rent, she has not given any rent. Thereafter, his father has filed a civil suit for recovery of arrears of rent and in that, a decree was passed in his favour and was ordered to make recovery of rent from the mother of the applicant and thereafter, a false case was registered.

18. In the cross-examination, this witness has submitted that since 2014, he is well acquainted with the mother of the applicant. He has not filed any copy of the suit which was filed by his father against the mother of the applicant and denied that he was having any love affair with the mother of the applicant or any physical relation with her, but admitted that the applicant's mother has lodged an FIR in Police Station Kirnapur. He has also denied that his blood sample was taken and expressed his ignorance that as per the DNA report, he was found biological father of the applicant. He has also denied the suggestion that on 27.07.2022, he along with applicant and her mother visited Gondiya and stayed a night there and also denied the suggestion that he is having a grocery shop or a property.

19. Looking to these facts and the principle laid down as cited above, it is clear that when a woman is married and a child is born from the physical relation with other person, no doubt the paternity of a person may be determined by the DNA test and presumption under Section 112 of the Evidence Act creates no bar as held above and on that basis, the child may get the maintenance from his/her biological father. But to grant the relief under Section 125 of the CrPC, the other conditions stated in Section 125 of the CrPC should be fulfilled.

20. The applicant's mother (PW/1), in paragraph-8 of her statement has clearly admitted that her husband Lokesh Bhimte has never raised any question regarding the paternity of the applicant/daughter.

21. In the identification form which was submitted to the police officer at the time of investigation, name of Lokesh Bhimte was mentioned as father of the applicant, but not of respondent (Vijayant Bhimte). Furthermore, as stated above, Lokesh Bhimte has never raised any objection regarding paternity of the child/applicant and nowhere the applicant's mother has ever stated that her husband is not taking care of her daughter or not maintaining her properly. Contrary to it, in paragraph-12 of her statement, it has been admitted by the applicant's mother that at the time of delivery, name of Lokesh Bhimte was recorded as father of the child.

22. Thus, it has not been proved by the applicant's mother (PW/1) that the applicant is not being maintained by her legal father, which is the first condition of getting maintenance from any person and it is also not the case of the applicant's mother that after birth of the applicant, her husband has left her and not maintaining her daughter. She has also not stated that she is unable to maintain her daughter.

23. Thus, only on the ground that the applicant is biological daughter of the respondent, without fulfilling the other ingredient of Section 125 of the CrPC, the applicant is not entitled to get maintenance from her biological father especially when she is being maintained by her legal father. Only on the ground that the applicant's biological father is different and legal father is different, she cannot claim maintenance when she is being maintained by her legal father and it cannot be made a via media as tool to receive the money from the person with whom the applicant's mother was having willful cohabitation.

24. In view of the discussion made hereinabove, I am of the opinion that the Family Court has rightly rejected the application preferred by the applicant under Section 125 of the CrPC as no case of maintenance is made out her favour and under such circumstances, no case of interference in the impugned order is made out.

25. Thus, the revision petition being *sans* merit, is hereby **dismissed**.

(DEVNARAYAN MISHRA)
JUDGE