



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 256 of 2022

Reserved on :23.11.2022

Decided on: 08.12.2022

Kuldeep ...Petitioner,

Versus

Kartik ...Respondent.

Coram

The Hon'ble Mr. Justice Satyen Vaidya, Judge.

Whether approved for reporting?¹ Yes

For the petitioner : Mr. Vinod Chauhan, Advocate.

For the respondent : Mr. Surender Sharma, Advocate.

Satyen Vaidya, Judge (Oral)

By way of instant petition, petitioner has assailed order dated 07.03.2020, passed by learned Principal Judge Family Court, Chamba, District Chamba, H.P. in Petition No. 94 of 2019, whereby petitioner herein has been directed to pay maintenance @ Rs. 2,500/- per month to the respondent herein from the date of filing of the petition i.e. 31.03.2016.

2. Respondent sought maintenance from the petitioner claiming himself to be his son. It was alleged that respondent was born out of relationship that, once, existed between the petitioner and mother of the respondent.

¹ *Whether reporters of the local papers may be allowed to see the judgment?*

3. Petitioner denied the allegations. He denied himself to be the father of the respondent. He even denied his relationship with the mother of the respondent.

4. Learned Principal Judge, Family Court, Chamba framed following points for determination:-

1. Whether the respondent has not provided any maintenance to the petitioner being his minor child?

2. If Point No.1 is proved in affirmative, as to what amount of maintenance the petitioner is entitled to?

3. Final order.

5. After recording the evidence of the parties, respondent has been held entitled to maintenance from the petitioner.

6. I have heard learned counsel for the parties and also gone through the record.

7. Petitioner has assailed the impugned order on the ground that petitioner has been fastened with the liability to pay maintenance to the respondent without their being any evidence on record to prove such entitlement. Learned counsel for the petitioner contended that the petitioner was not proved to be father of the respondent and hence, the impugned order was unsustainable. As per petitioner, respondent was neither his legitimate nor illegitimate son.

8. The mother of the respondent entered into the witness box and made categorical allegations against the petitioner. She alleged that she had fallen in love with the petitioner, who had kept her as a mistress. She further stated on oath that petitioner had maintained physical relation with her, as a result of which she conceived and ultimately delivered a baby boy. i.e. the respondent. On the other hand, petitioner denied all such allegations. He, besides examining himself also examined his wife Smt. Manju Devi to support his contention.

9. Learned Principal Judge, Family Court, Chamba, after analyzing the evidence came to the conclusion that respondent had been able to establish his case. Version put forward by the mother of respondent was believed. Reliance was also placed on document Ext. PW2/A, which was a copy of immunization certificate of respondent.

10. During the course of proceedings before learned Principal Judge, Family Court, Chamba, an application was moved on behalf of the respondent for conducting the DNA test in order to establish his paternity. Petitioner opposed such prayer by filing a response. Learned Principal Judge, Family Court, Chamba, however, held that since there was

sufficient proof regarding paternity of the respondent on record, there was no need to conduct the DNA test of the respondent.

11. The statement of mother of the respondent regarding the paternity of respondent cannot be brushed aside easily. It is hard to believe that a female would name any unknown person to be the father of her son. Contest by petitioner to the prayer for DNA test strengthens the claim of the respondent. It would have been more appropriate for petitioner to agree for DNA test, as his fidelity towards his wife and sincerity towards his children was at stake. Keeping in view the dependability of DNA test, petitioner could have availed the opportunity to prove the allegation against him wrong. On the other hand, respondent and for that matter his mother had stepped forward with a prayer for conduct of DNA test. The circumstance noticed above, is sufficient to draw adverse inference against the petitioner.

12. Even otherwise, the findings recorded by learned Principle Judge, Family Court, Chamba, are borne from the available records. The view taken by learned Principal Judge, Family Court, Chamba, cannot be said to be perverse, rather, it is a possible view based on the material on record. The

quantum of maintenance also cannot be said to be excessive on the basis of material on record.

13. In light of above discussion, there is no merit in the petition and the same is dismissed.

8th December, 2022
(sushma)

(Satyen Vaidya)
Judge

High Court of H.P.