Amarjit Kaur vs Harbhajan Singh And Anr. on 23 October, 2002

Equivalent citations: 2003(1)AWC344(SC), (2003)2CALLT23(SC), I(2006)DMC27SC, JT2002(9)SC440, (2006)142PLR385, (2003)10SCC228, 2003(2)WLN671, AIRONLINE 2002 SC 352, (2006) 1 DMC 27, (2003) 2 CAL LT 23, (2006) 1 PUN LR 385, (2003) 1 ALL WC 344, (2002) 8 SCALE 260, (2006) 1 REC CIV R 658, 2003 (10) SCC 228, (2002) 9 JT 440, (2003) 1 WLC (SC)CIVIL 374, (2003) 2 ALL IND CAS 427 (SC), (2002) 9 JT 440 (SC), (2003) 2 ALLINDCAS 427

Bench: Doraiswamy Raju, H.K. Sema

ORDER

1. The above appeals have been filed against the order of a learned single judge of the High Court of Punjab and Haryana at Chandigarh dated 10.11.2000 in civil revision No. 5057/ 1998 and a subsequent order dated 7.12.2000 passed in a review application No. 112-C-II/2000.

2. Heard Mr. Raju Ramachandran, learned senior counsel for the appellant and Mr. K. Rajendra Choudhary, learned senior counsel for the respondent.

3. The appellant is the wife of the first respondent. The respondent - husband has filed a petition under Section 13 of the Hindu Marriage Act, 1955 before the court of learned district judge, Ludhiana seeking dissolution of the marriage by grant of a decree for divorce on the grounds of alleged adultery and cruelty. The said petition is still pending for trial and final disposal. Pending the said petition, the appellant herein filed an application under Section 24 of the Hindu Marriage Act, 1955 claiming maintenance for a sum of Rs. 3000/- per month for herself and Rs. 1000/- each for minor children residing with her. There is no dispute over the fact that out of the lawful wedlock, the appellant has given birth to three daughters and one son, of which, one daughter is said to be with the appellant. There is yet another son who is also living with the appellant-wife, who also is claimed to be a son borne out of the lawful wedlock, though the respondent-husband would raise doubts about the details of parentage of the said child. Having regard to the fact that a limited notice has been issued in this case, confined to the question with regard to the order passed by the High Court for conducting a DNA test of the child, it is unnecessary to deal with the details with reference to the claims made by the respective parties about the details of income of either of the parties.

Suffice it to state that the learned trial judge has chosen to reject the claim for interim maintenance and on a revision before the High Court, the learned single judge though was prepared to countenance the claim of the wife and as a matter of fact directed the respondent -husband to pay Rs. 2000/- by way of litigation expenses to the appellant and pay a further sum of Rs. 2000/- per month by way of maintenance from the date of her application, proceeded further and observed as follows :-

> "During the course of the submissions, it was suggested to the counsel for the petitioner and his client Smt. Amarjit Kaur whether they are willing to get DNA test of the male child namely Samarjit Singh.
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> Before concluding, directions are also given to the trial court to order for conducting the DNA test of the male child who is in the custody of the petitioner and if the test goes against the petitioner, she will not be entitled to get any maintenance pendente lite for herself but she will definitely get the maintenance for the girl child whose maintenance is fixed at Rs. 1000/- per month."

4. Aggrieved, the wife moved an application by way of review and sought to bring to the notice of the court the decision reported in Goutam Kundu v. State of West Bengal and Anr., The learned single judge, by a cryptic order, has chosen to reject the review application with costs, in a sum of Rs. 1000/- Hence, the above appeals.

5. The learned senior counsel for the appellant strenuously contended that the conduct of the parties which requires to be adjudicated in the main writ petition has no relevance, at the stage of granting interim or pendente lite maintenance and that the consideration in this regard has to be confined to the criteria specified in Section 24 of the Hindu Marriage Act, 1955. It was also pointed out that imposition of a condition which will operate as a disfeasance clause, to deprive the very maintenance order to be paid, particularly of the nature imposed in this case directing the conduct of DNA test of the male child in question is not warranted. Argued the learned counsel further that this Court in the decision in Goutam Kundu's case (supra), declared the legal position as to the circumstances under which and the limitations to be observed in compelling anyone to give a sample of blood against his/her will for DNA analysis, keeping in view, the serious consequences flowing from the same, i.e., the branding of a child as a bastard and the mother as an unchaste woman. It was made clear therein that no adverse inference can be drawn against the person for his refusal. According to the learned counsel for the appellant, such an order could not and ought not to have been made at this stage and in the manner it has been done, by the court on its own imposing the same as a conditional direction affecting even the right to get pendent lite maintenance, without even their being any formal application from the respondent - husband and justifying any such claim, in accordance with law.

6. Per contra, the learned senior counsel appearing for the respondent, relying on the decision reported in Dwarika Prasad Satpathy v. Bidyut Prava Dixit and Anr., JT 1999 (8) SC 329 contended that in the matter of grant of maintenance, there is no impediment for the court to impose a condition of the nature and in case of refusal to cooperate to conduct the DNA test, make the defaulting party suffer consequences thereof. It was also urged that no exception could be taken to the course adopted by the learned single judge in the light of the serious dispute raised with reference to the parentage of one male child living with the wife. The learned counsel also contended that the discretion exercised by the learned single judge of the High Court on the peculiar facts and circumstances of the case, is not at all a matter which needs or calls for any interference in an appeal under Article 136 of the Constitution of India.

7. We have carefully considered the submissions of learned counsel appearing on either side.

8. Section 24 of the Hindu Marriage Act, 1955 empowers the court in any proceeding under the Act, if it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of any one of them order the other party to pay to the petitioner the expenses of the proceeding and monthly maintenance as may seem to be reasonable during the proceeding, having regard to also the income of both the petitioner and the respondent. Once the High Court, in this case, has come to the conclusion that the wife - appellant herein has to be provided with the litigation expenses and monthly maintenance, it is beyond comprehension as to how, de hors the criteria laid down in the statutory provision itself, the court could have thought of imposing an extraneous condition, with a default clause which is likely to defeat the very claim which has been sustained by the court itself. Consideration as to the ultimate outcome of the main proceeding after regular trial would be wholly alien to assess the need or necessity for awarding interim maintenance, as long as the marriage, the dissolution of which has been sought, cannot be disputed, and the marital relationship of husband and wife subsisted. As noticed earlier, the relevant statutory consideration being only that either of the party, who was the petitioner in the application under Section 24 of the Act, has no independent income sufficient for her or his support, for the grant of interim maintenance, the same has to be granted and the discretion thereafter left with the court, in our view, is only with reference to reasonableness of the amount that could be awarded and not to impose any condition, which has self-defeating consequence. Therefore, we are unable to approve of the course adopted by the learned single judge, in this case.

9. Coming now to the nature of the condition imposed, though, it has been seriously contended for the appellant that no such condition could have been imposed to compel the undergoing of a DNA test of the male child, we do not propose to express any opinion on the legality or propriety of the court undertaking consideration at the appropriate stage, by the court competent, in the main petition of any application moved in an appropriate manner according to law, but we would confine our consideration to the limited aspect as to whether the High Court could have imposed such a condition at the stage of awarding interim maintenance pendente lite and that too without an application for the purpose from the other party, at the instance of the court by way of a suggestion put to the appellant in the course of consideration of the application for interim maintenance.

The law in the matter governing the consideration and passing of any order in respect of a claim for DNA test has sufficiently been laid down by this Court and if a party to a proceeding cannot be compelled against his/her wish to undergo any such test, we fail to see how the court on its own could have imposed a condition without any consideration whatsoever of any of the criteria laid down by this Court, by adopting a novel device of imposing it as a condition for the grant of the interim maintenance, with a default clause, which as rightly contended for the appellant, will have the inevitable consequences of predetermining the claim about the parentage with serious consequences even at the preliminary stage. The procedure, thus, adopted by the High Court does not appear to be neither just nor reasonable or in conformity with the principles of law laid down by this Court and consequently the order is liable to be set aside. The decision in Dwarika Prasad Satpathy v. Bidyut Prava Dixit and Anr. (supra) relied for the respondent, in our view, has no

relevance or application to the case on hand. That was a case wherein, in dealing with a claim for maintenance invoking the summary proceedings under Section 125 of the Cr.P.C., the husband attempted to defeat the claim made by the wife by asserting non performance of essential rites at the time of marriage, the factum of which as well as the parentage of the child could not be questioned. In the process of ascertaining the genuineness of the said stand, when the suggestion made to the husband to undergo DNA test was refused by him, and the court dealing with the application by summary proceedings chose to observe that the husband was disentitled to challenge the paternity of the child in the proceedings under Section 125 Cr.P.C., this Court declined to interfere with the order of the trial court on the question of prima facie satisfaction recorded as to the proof of marriage. We see absolutely no general principle of law laid down in this case which could be said to lend any support to the plea on behalf of the respondent. We are unable to persuade ourselves to agree with the plea urged for the respondent that the case does not warrant our interference in these appeals, since, we find that a serious and flagrant violation of law has been committed by the High Court, in the matter disposing of the revision and review petition, and the same ought not to be allowed to get sanctified, with our approval, too.

10. The order passed rejecting the review application summarily despite the fact that a judgment of this Court relevant for the purpose has been brought to the notice of the court, without even expressing any view on the matter, by itself, is sufficient to set aside the order made on the review petition. It is really surprising that the court should have thought of awarding cost in a sum of Rs. 1000/- against the wife, who was before the court seeking for maintenance pendente lite.

11. The appeals are allowed. The order in so far as it relates to the offending condition relating to the DNA test is set aside. In other respects, the order in so far as it awards the litigation expenses and monthly maintenance is sustained. We make it clear that we are not expressing any opinion about the rights of the parties to seek for the relief for the DNA test or the evidentiary value of the same and the trial court shall be at liberty to consider the matter relating to such claims on their own merits, in accordance with law. No costs.