

MISC CASE No. 526/2020

Present : Ms.Pratika Rai

JO Code – WB1481

Order dated : 26/07/2022

Today is fixed for filing of showcause by the OP and affidavit of assets, income and liabilities by the parties.

Both sides are present.

Petitioner files her declaration of assets.OP files showcause.

Ld.Advocate for the OP files a prayer for DNA test and prays for grant of such to ascertain the paternity of the child.

Ld.Advocate for the Petitioner strongly objects and submits that it is the intention of the OP to prolong the proceedings.

Heard both sides. Considered.

Perused the case record and the documents.

This is a matter under the provisions of section 125 CrPC, where the Petitioner being the wife of the OP has claimed maintenance for herself and her minor child and section 125 furnishes that any persons having sufficient means is to maintain (a) his wife, (b) his legitimate or illegitimate minor child, whether married or not and (c)his legitimate or illegitimate child (not being a minor child) who are unable to maintain themselves.

The issue of ascertaining the paternity of the child does not arise where the marriage has already been admitted and it is clearly stated that u/s 125 CrPC, maintenance can be claimed by both legitimate and illegitimate child who is a minor.

This Court deems it fit that such DNA test is not required rather an encroachment upon the right to privacy of the Petitioner as preserved under Article 21 of the Indian Constitution.

Hence,prayer is rejected.

OP is directed to submit the declaration of assets on the next date positively without further prolonging the matter.

Case is adjourned.

Fix, 20/09/2022 for filing of affidavit by OP and interim hearing.

D & C by me,

Judicial Magistrate, 5th Court,

Asansol, Paschim Bardhaman.

Judicial Magistrate, 5th Court,

Asansol, Paschim Bardhaman.