



CNR: KAHC010424572022

NC: 2026:KHC:44906
W.P. No.18607/2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 20TH DAY OF AUGUST, 2026
BEFORE
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
WRIT PETITION NO.18607/2022 (GM-CPC)

BETWEEN:

SRI. CHALAPATHY
AGED ABOUT 44 YEARS
R/AT NEAR CITIZEN SCHOOL
BEHIND BRINDAVAN LODGE
OPP ALL INDIA RADIO STATION
OLD MADRAS ROAD,
HOSAKOTE
BENGALURU RURAL DISTRICT-560067.

...PETITIONER

(BY SRI. KASHINATH J.D. ADV.,)

AND:

Digitally signed
by RUPA V
Location: HIGH
COURT OF
KARNATAKA

1. SRI. CHANDRAPPA
S/O SRI BODANNA
AGED ABOUT 74 YEARS
R/AT NO.94, NEXT TO NOOR MASJID
4TH CROSS ROAD
ROBERTSONPET,
K G F TALUK
KOLAR DISTRICT-563113.
2. SMT. LAKSHMI DEVI
W/O SRI CHANDRAPPA
AGED ABOUT 57 YEARS
EMPLOYED IN SECURITY DEPARTMENT
HINDUSTAN MACHINE TOOLS



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BATWADI,
TUMKUR-572101.

...RESPONDENTS

(BY SRI. G.V. CHANDRASHEKAR, SR. ADV., FOR
SRI. SUHAS S, &
SMT. APEKSHA D, ADVS., FOR R1
R2 V/C/O DTD:04.09.2024, WRIT PETITION
STAND DISMISSED)

THIS W.P. IS FILED UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR THE RECORDS PERTAINS TO IMPUGNED ORDER DATED 02.09.2022 PASSED ON IA NO.1 FILED IN OS.NO.132/2012 ON THE FILE OF THE I ADDL. CIVIL JUDGE AND JMFC AT KGF. QUASH THE IMPUGNED ORDER DATED 02.09.2022 PASSED ON IA NO.1 FILED IN OS.NO.132/2012 FILED BY THE PETITIONER PENDING ON THE FILE OF THE I ADDL. CIVIL JUDGE AND JMFC AT KGF AS PER ANNEXURE-A CONSEQUENTLY ALLOW IA NO.1 BY APPOINTMENT OF COMMISSIONER PREFERABLY A REGISTERED MEDICAL PRACTITIONER TO CONDUCT PROCESS TO DRAW REQUISITE BLOOD SAMPLE FOR DNA TEST AND OTHER RELEVANT TEST OR INVESTIGATION TO MEET THE INTEREST OF JUSTICE & ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED ON 14.08.2026, COMING ON FOR PRONOUNCEMENT OF ORDER, THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL



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CAV ORDER

This writ petition is filed challenging the order dated 02.09.2022 passed on I.A.No.I filed in O.S. No. 132/2012 by the I Additional Civil Judge and JMFC at KGF (for short, 'the Trial Court').

2. Sri.Kashinath.J.D, learned counsel appearing for the petitioner submits that the petitioner-plaintiff filed a suit in O.S.No.132/2012 seeking the relief of declaration that he is the son of the respondents-defendants. It is submitted that he was born to the respondents, but grew up with his grandparents namely Narayanappa and Beeramma and that the respondent No.2 is the daughter of the said Narayanappa and Beeramma. It is further submitted that the petitioner filed an application in I.A.No.I under Order XXVI Rule 10-A read with Section 151 of the Code of Civil Procedure, 1908 (for short 'the CPC'), to appoint a Court Commissioner to conduct DNA test to ascertain the paternity of the respondent No.1 with



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regard to the petitioner and that the said application has been erroneously dismissed by the Trial Court. It is also submitted that, when the paternity is in dispute, to reach a proper conclusion, the Trial Court ought to have applied its judicious mind in examining the case and consider the request made for the DNA test as there is distinction between the legitimacy and paternity of the child. The presumption under Section 112 of the Indian Evidence Act, 1872 (for short 'the Act'), is intended to safeguard the interest of the child by securing his legitimacy and not the father's paternity. In support of his contentions, he has relied on the following decisions of the Hon'ble Supreme Court:

- (i) BHABANI PRASAD JENA Vs. CONVENOR SECRETARY, ORISSA STATE COMMISSION FOR WOMEN AND ANOTHER¹**
- (ii) NARAYAN DUTT TIWARI Vs. ROHITH SHEKHAR AND ANOTHER²**
- (iii) APARNA AJINKYA FIRODIA Vs. AJINKYA ARUN FIRODIA³**

¹ (2010) 8 SCC 633

² (2012) 12 SCC 554



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3. *Per contra*, Sri.G.V.Chandrashekhar, learned Senior counsel appearing for the respondents supports the impugned order of the Trial Court and submits that the Trial Court has rightly dismissed the application filed by the petitioner. It is submitted that the petitioner has failed to make out a *prima facie* case to prove that he is the son of the respondents. It is further submitted that the petitioner has not adduced any evidence to establish the relationship of the respondents as well as the relationship of the respondent No.2 with Narayanappa and Beeramma. In the absence of any *prima facie* evidence before the Trial Court, the petitioner cannot seek for DNA test. It is also submitted that Section 112 of the Act, creates a presumption that the petitioner is the son of Narayanappa and Beeramma and there is no evidence on record to rebut the same and seek for DNA test. It is contended that the written statement of the respondent No.1 clearly indicates that the suit is filed with malicious

³ (2024) 7 SCC 773



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intention at the instance of Narayanappa. Considering the aforesaid aspect, the Trial Court has rightly rejected the application. Hence, he seeks to dismiss the petition. In support of his contentions, he placed reliance on the following decisions:

- (i) ***IVAN RATHINAM Vs. MILAN JOSEPH⁴***
- (ii) ***R.RAJENDRAN Vs. KAMAR NISHA AND OTHERS⁵***

4. I have heard the arguments of the learned counsel for the petitioner, the learned Senior counsel for the respondent No.1 and meticulously perused the material available on record. I have given my anxious consideration to the submissions advanced on both sides.

5. The petitioner filed a suit in O.S.No.132/2012 seeking the relief of declaration that the petitioner is the son of the respondents and to hold that the petitioner is entitled to all rights under law as their son and for other consequential reliefs. In the said suit, the respondents

⁴ 2025 SCC OnLine SC 175

⁵ 2025 SCC OnLine SC 2372



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filed a detailed written statement denying all the plaintiff averments. Consequently, the issues were framed by the Trial Court and the parties adduced the evidence. Subsequently, the petitioner filed an application in I.A No.I under Order XXVI Rule 10-A read with Section 151 of the CPC, seeking to issue Commission to the District Surgeon, General Hospital, Robertsonpet, K.G.F, or such other competent registered medical practitioner to conduct the DNA test and other incidental tests to ascertain the paternity of the plaintiff as born to the respondents. The respondent No.1 opposed the said application. The Trial Court rejected the application by recording the reasons that there are no documents produced to show the relationship between the parties as the respondent No.1 has completely denied the marriage between him and the respondent No.2. The Trial Court has also held that there are no documents produced by the petitioner to make out a *prima facie* case for the Trial Court to consider the application and appoint a Court Commissioner.



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6. It would be useful to refer to the following decisions of the Hon'ble Supreme Court to consider the dispute between the parties.

(a) In the case of **IVAN RATHINAM** referred *supra* the Hon'ble Supreme Court has held in paragraphs 25 to 38 as below:

"D.1.1.4 Position in India

25. *The above analysis makes it clear that courts around the globe have recognized the theoretical difference in 'paternity' and 'legitimacy' to the extent that in the Venn diagram of paternity and legitimacy, legitimacy is not an independent circle, but is entombed within paternity. After advertent to the position of 'paternity' and 'legitimacy' in various foreign jurisdictions, it is imperative to evaluate the position in India in light of the unique factual matrix of the instant appeal.*

26. *The advent of scientific testing has made it much easier to prove that a child is not a particular person's offspring. To this end, Indian courts have sanctioned the use of DNA testing, but sparingly.*



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27. *Before delving into the analysis, it is pertinent to elucidate Section 112 of the Indian Evidence Act, 1872:*

"112. Birth during marriage, conclusive proof of legitimacy. The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten."

28. *The language of the provision makes it abundantly clear that there exists a strong presumption that the husband is the father of the child borne by his wife during the subsistence of their marriage. This section provides that conclusive proof of legitimacy is equivalent to paternity.²⁹ The object of this principle is to prevent any unwarranted enquiry into the parentage of a child. Since the presumption is in favour of legitimacy, the burden is cast upon the person who asserts 'illegitimacy' to prove it only through 'non-access.'*



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29. *It is well-established that access and non-access under Section 112 do not require a party to prove beyond reasonable doubt that they had or did not have sexual intercourse at the time the child could have been begotten. 'Access' merely refers to the possibility of an opportunity for marital relations.³⁰ To put it more simply, in such a scenario, while parties may be on non-speaking terms, engaging in extra-marital affairs, or residing in different houses in the same village, it does not necessarily preclude the possibility of the spouses having an opportunity to engage in marital relations.³¹ Non-access means the impossibility, not merely inability, of the spouses to have marital relations with each other.³² For a person to rebut the presumption of legitimacy, they must first assert non-access which, in turn, must be substantiated by evidence.*

30. *It is only when such an assertion is made, that the court can consider the question of ordering a DNA test to establish paternity. In Goutam Kundu v. State of W.B. (supra), this Court laid down the following parameters to decide whether a court can order a DNA test for the purposes of Section 112:*



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"(1) that courts in India cannot order blood test as a matter of course;

(2) wherever applications are made for such prayers in order to have roving inquiry, the prayer for blood test cannot be entertained.

(3) There must be a strong prima facie case in that the husband must establish non-access in order to dispel the presumption arising under Section 112 of the Evidence Act.

(4) The court must carefully examine as to what would be the consequence of ordering the blood test; whether it will have the effect of branding a child as a bastard and the mother as an unchaste woman.

(5) No one can be compelled to give sample of blood for analysis."

31. *These parameters have been subsequently followed by this Court in Sharda v. Dharmpal (supra) and Bhabani Prasad Jena v. Orissa State Commission for Women (supra). In these cases, it was held that DNA tests may be ordered, only if a strong prima facie case of non-access is made out, with sufficient material placed before the court to arrive at a decision.*



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32. *In the case at hand, it is an admitted fact that when the Respondent was begotten in 2001, his mother and Mr. Raju Kurian were married. In fact, they had been married since 1989 and neither had ever questioned the validity of the marriage. They were, admittedly, living under the same roof from 1989 till 2003, when they decided to separate. It is, but obvious, that the Respondent's mother and Mr. Raju Kurian had access to each other throughout their marriage. This conclusion has been arrived at through concurrent findings of all the courts involved, at multiple stages of litigation. Even if it is assumed that the Respondent's mother had relations with the Appellant during her marriage and especially when the Respondent was begotten, such a fact per se, would not be sufficient to displace the presumption of legitimacy. The only thing that such an allegation sheds light on is the fact that there seems to have been simultaneous access with the Respondent's mother, by the Appellant and Mr. Raju Kurian. What, however, needs to be clarified is that an 'additional' access or 'multiple' access does not automatically negate the access between the spouses and prove non-access thereof. Consequently, there is a statutory mandate that*



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the Respondent must be presumed to be the son of Mr. Raju Kurian.

33. *In our considered opinion, the challenge raised before the High Court that 'paternity' and 'legitimacy' are distinct or independent concepts is a misdirected notion and is liable to be rejected. The High Court's view that 'paternity' can be determined independent of the concurrent findings regarding the legitimacy of the child thus, cannot be sustained.*

D.1.2 Balancing of interests and the 'eminent need' for a DNA test

34. *The Respondent argued that it was in his best interests that the Appellant undergo a DNA test, as he has the right to know his true parentage and accrue rights emanating therefrom, such as maintenance. The High Court upheld this view and noted that though it is not in the interest of society to brand a child as 'illegitimate,' the interest of the child to know his biological father and claim maintenance from him is overwhelming in comparison.*

35. *In the peculiar circumstances of this case, this Court must undertake an exercise to 'balance the interests' of the parties involved and decide*



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whether there is an 'eminent need' for a DNA test.³³ This pertains not simply to the interests of the child, i.e. the Respondent, but also to the interests of the Appellant.

36. *On one hand, courts must protect the parties' rights to privacy and dignity by evaluating whether the social stigma from one of them being declared 'illegitimate' would cause them disproportionate harm. On the other hand, courts must assess the child's legitimate interest in knowing his biological father and whether there is an eminent need for a DNA test.*

D.1.2.1 Right to privacy and right to dignity

37. *Having recognized the diverging pathways in the present analysis, it is pertinent to first address the aspect of the right to privacy. At the outset, a cursory reference to the decision in K.S. Puttaswamy (Privacy-9J.) v. Union of India,³⁴ reveals that privacy is concomitant to the right of the individual to exercise control over his or her personality. Privacy includes, at its core, the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home, and sexual orientation. Privacy also connotes a right to be left alone, as a corollary to the safeguarding of individual autonomy and the ability of an individual*



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to control vital aspects of his life. Elaborating further, this Court held that:

"325. Like other rights which form part of the fundamental freedoms protected by Part III, including the right to life and personal liberty under Article 21, privacy is not an absolute right. A law which encroaches upon privacy will have to withstand the touchstone of permissible restrictions on fundamental rights. In the context of Article 21 an invasion of privacy must be justified on the basis of a law which stipulates a procedure which is fair, just and reasonable. The law must also be valid with reference to the encroachment on life and personal liberty under Article 21. An invasion of life or personal liberty must meet the threefold requirement of (i) legality, which postulates the existence of law; (ii) need, defined in terms of a legitimate State aim; and (iii) proportionality which ensures a rational nexus between the objects and the means adopted to achieve them."

38. *In this context, while permitting an enquiry into a person's paternity vide a DNA test, we must be mindful of the collateral infringement of privacy. For this, the court must satisfy itself that the threshold for the abovementioned three conditions is satisfied. If even one of these conditions fails, it is considered an unwarranted invasion of privacy and consequently, of life and personal liberty as embodied in Article 21 of the Constitution."*



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(b) In the case of **R.RAJENDRAN** referred *supra*, the Hon'ble Supreme Court has held in paragraphs 22 to 29 as below:

"ANALYSIS

I. THE STATUTORY FRAMEWORK: SECTION 112 OF THE EVIDENCE ACT

22. *This dispute arises from a complaint registered under Sections 417 and 420 of the IPC and Section 4(1) of the Tamil Nadu Women Harassment Act. Respondent No. 1 seeks to establish the charges of cheating and harassment by demonstrating that the appellant is the biological father of her child. Consequently, before examining whether a direction for DNA profiling is legally sustainable, it is necessary to evaluate the statutory framework governing the presumption of legitimacy of a child born during the continuance of valid marriage, as enshrined under Section 112 of the Evidence Act. For ease of reference, Section 112 is reproduced below:*

*"112. Birth during marriage, conclusive proof of legitimacy.— The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, **shall be conclusive***



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***proof** that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten."*

(emphasis supplied)

***23.** It is evident from the statutory language of the provision, that it establishes a conclusive presumption in favour of legitimacy of a child born during the subsistence of a valid marriage. Embedded in this presumption is the legal recognition that the husband is deemed to be the father of the child born to his wife. This presumption also operates as a safeguard against unwarranted intrusion into the legally protected status of legitimacy, thereby ensuring stability in familial relationships and the protection of child's legal and social identity.*

***24.** The presumption under Section 112 of the Evidence Act operates as "Conclusive Proof" of the legitimacy of a child born during the subsistence of a valid marriage, by presuming that the parents had access to each other at the relevant time. Section 4 of the Evidence Act defines "conclusive proof" as follows:*

***"Conclusive proof".**—When one fact is declared by this Act to be conclusive proof of another, the*



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Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it."

This presumption endures unless it is affirmatively established, by strong and unambiguous evidence, that the parties to the marriage had no access to each other at any time when the child could have been begotten, or following the dissolution of the marriage while the mother remains unmarried. Since the law favours legitimacy and frowns upon the illegitimacy, the burden is cast upon the person who asserts "illegitimacy" to displace the presumption.

25. *"Access" or "non-access" under Section 112 of the Evidence Act must be understood in a very narrow and specific sense, referring to possibility of sexual relations between the spouses. Non-access denotes the impossibility, not merely the absence or lack of such opportunity. Even where cohabitation exists, non-access may arise due to impotency, serious illness, physical incapacity or absence during the relevant period. Conversely, the lack of cohabitation alone does not establish non-access, nor does the existence of extramarital relations, separate residences, or non-communication.*



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26. Allegations of multiple or simultaneous access by third parties do not negate the access between the spouses or establish non-access. Likewise, infidelity on the wife's part does not, by itself, displace the presumption of legitimacy if the husband had access. The focus remains on the child's birth, while the time of conception is relevant only to determine whether access between the spouses existed.

II. PRINCIPLES GOVERNING DNA PROFILING

27. The next aspect of the matter that requires consideration is whether the appellant can be subjected to DNA profiling to determine whether he is the biological father of the child born to respondent No. 1. It becomes imperative for this Court to examine the legal framework governing the DNA testing and its permissible scope, particularly in light of presumption in favour of legitimacy enshrined under Section 112 of the Evidence Act.

28. This Court has consistently held that DNA testing cannot be ordered as a matter of course and must be subject to stringent safeguards to protect the dignity of individuals and the legitimacy



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of children born during the wedlock. The power to direct such tests must be exercised with utmost circumspection and only when the interests of justice imperatively demand such an intrusive procedure. Courts must remain vigilant against fishing inquiries masquerading as legitimate requests for scientific evidence, ensuring the sanctity of family relationships is not compromised by speculative or exploratory investigations.

29. *The foundational parameters governing such directions were established in Goutam Kundu (supra) wherein this Court laid down the following parameters:*

- "26.** *From the above discussion it emerges—*
(1) that courts in India cannot order blood test as a matter of course;
(2) wherever applications are made for such prayers in order to have roving inquiry, the prayer for blood test cannot be entertained.
(3) There must be a strong prima facie case in that the husband must establish non-access in order to dispel the presumption arising under Section 112 of the Evidence Act.
(4) The court must carefully examine as to what would be the consequence of ordering the blood test; whether it will have the effect of branding a child as a bastard and the mother as an unchaste woman.
(5) No one can be compelled to give sample of blood for analysis."

(Emphasis supplied)



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7. In view of the law laid down by the Hon'ble Supreme Court, it is to be noticed that the petitioner has failed to place even the foundational material necessary for the DNA test. The petitioner asserts that the respondents are his alleged parents and to prove the same, he has resorted to the DNA test. However, the petitioner has not adduced any evidence whatsoever to establish the alleged marriage between the respondents. The evidence which has already come on record before the Trial Court indicates that the petitioner is the son of Narayanappa and Beeramma. Thus, the material on record does not support the petitioner's assertion that he is the son of the respondents. In the absence of proof of the very foundational fact of marriage, the petitioner cannot seek to invoke the procedure of DNA testing merely on the basis of an assertion.

8. It is further to be noticed that the petitioner himself has relied upon the fact that he was brought up by



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his grandparents, namely, Narayanappa and Beeramma. Even after such an assertion, the fact that these persons had knowledge of the circumstances surrounding his birth which would undoubtedly make them material witnesses to establish the factual foundation of his claim, the petitioner has not chosen to examine either Narayanappa or Beeramma before the Trial Court. Such material evidence is vital to be proven by the petitioner when he seeks to displace an existing presumption of legitimacy by resorting directly to a DNA test. It is necessary to bear in mind that on the facts and material available on record, DNA test cannot be allowed to be conducted as the petitioner has failed to establish the basic factual foundation of his claim.

9. An equally important consideration is whether, there exists an "eminent need" for directing a DNA examination? The Hon'ble Supreme Court has held that while considering such a prayer, the Court is required to



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balance the interests of the person asserting a right to know his biological parentage against the privacy, dignity and familial interests of the persons who would be subjected to the test. The expression 'eminent need' cannot be understood to mean that a DNA test would merely be useful or convenient for determining the biological relationship. The requirement is of a necessity of such degree that the controversy cannot fairly and effectively be adjudicated on the basis of the evidence otherwise available. As held by the Hon'ble Supreme Court in **IVAN RATHINAM** referred *supra*, the Court must first examine the existing evidence and the statutory presumption of legitimacy and only upon finding such evidence insufficient, proceed to examine whether the balance of interests requires the procedure of DNA testing. In the present case, the petitioner has neither established the foundational facts of his claim nor has rebutted the presumption under Section 112 of the Act and has also failed to prove why paternity cannot be adjudicated upon



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the evidence available before the Trial Court. The existence of an eminent need is therefore an essential consideration and not a mere formality. Therefore, no 'eminent need' for directing a DNA test is made out in the case on hand. Hence, if the application is allowed on the material available on record, it would effectively convert the DNA test into an instrument of investigation or a fishing enquiry rather than a measure necessitated in the interests of justice.

10. Taking note of the aforesaid enunciation of law laid down by the Hon'ble Supreme Court, it is well settled that a direction for conducting a DNA test cannot be issued as a matter of course. Such a direction, having regard to its intrusive nature and its consequences upon the dignity, privacy and legitimacy of the parties concerned, can be ordered only upon the party seeking such an order laying a *prima facie* case for the same. The Hon'ble Supreme Court has reiterated that an application for DNA testing



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cannot be permitted to become a means of conducting a roving or fishing enquiry. A strong *prima facie* case along with an 'eminent need' must first be established before the Court can consider directing such a test.

11. In view of the aforesaid circumstances and the law laid down by the Hon'ble Supreme Court governing the ordering of DNA tests, this Court is of the considered opinion that the Trial Court was justified in dismissing the application filed by the petitioner. No ground is made out for interference in the impugned order and the decisions relied upon by the petitioner is not applicable to the facts and circumstances of the case at hand.

12. For the aforementioned reasons, I proceed to pass the following:



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ORDER

The writ petition is devoid of merits and the same is
hereby ***dismissed***.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

RV
List No.: 1 Sl No.: 2