

THE HON'BLE SRI JUSTICE K.C.BHANU

CIVIL REVISION PETITION NO.3730 OF 2014

ORDER:

This petition is filed against the order and decree, dated 05-09-2014 in I.A.No.358 of 2013 in HMOP No.94 of 2012 on the file of the IV Additional Senior Civil Judge, Guntur.

2. The above application was filed by the petitioner herein-husband under Section 45 of the Indian Evidence Act, 1872 (for short 'the Act') to direct the respondent herein and her child to give blood samples for comparison with petitioner's blood sample for DNA test in C.C.M.B. Labs, Hyderabad for comparison and to verify the paternity of the child stating that the respondent gave birth to the child 7 months after their marriage and it gives suspicion about her chastity and hence, he was constrained to send the samples of himself and child for DNI Labs who gave its report dated 11-05-2012 stating that the alleged father is excluded from being the biological father of the child and it reveals that the child was not born to him. Hence, the petition.

3. The respondent-wife filed counter denying the averments made in the petition stating that the alleged report, dated 11-05-2012 is a concocted one and that no reasons were assigned for seeking to send the blood samples for DNA test and that the petition is filed only to drag on the proceedings and thereby to cause hardship to her and in the absence of cogent reasons for the alleged suspicion, the respondent could not be directed to undergo DNA test against her will and hence, she prays to dismiss the petition.

4. The trial Court after considering the material on record, dismissed the petition. Hence, this revision by the husband.

5. Learned counsel appearing for the petitioner herein-husband contended that the burden is on the petitioner to establish that the petitioner herein is not the biological father of the child and hence, necessarily the blood samples of the respondent and her child have to be sent to expert for comparison.

6. On the other hand, learned counsel appearing for the respondent herein-wife contended that directing the respondent and the child to give blood samples cannot be ordered as it will have the effect of branding the child as bastard, that the trial Court rightly dismissed the petition and there are no grounds to interfere with the same.

7. There cannot be any dispute that under Article 20 (3) of the Constitution of India, no person shall be compelled to be a witness against himself, but the compulsion to be a witness against himself would come into operation when by virtue of that compulsion if anything or act would directly relates to the issue involved in the Hindu Marriage Original petition. The immunity given by clause (3) of Article 20 of the Constitution of India extends to immunity against being compelled to furnish any kind of evidence which is reasonably likely to support the case of respondent against her. But direction to give blood samples would be justifiable as it does not amount to evidence. Giving blood samples will not have any relevance on the issue involved in the HMOP, which was filed for divorce by the petitioner herein against his wife on the grounds of cruelty and adultery. Even if the blood samples were given by the respondent herein and her child, it would not amount to cruelty or adultery as contended by the learned counsel for the petitioner and therefore, it does not amount to violation of Article 20 (3) of the Constitution of India.

8. Learned counsel for the petitioner relied on a decision reported in **NANDLAL WASUDEO BADWAIK V LATA NANDLAL BADWAIK AND ANOTHER** ^[1], wherein it was held thus (para 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. 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”

9. There is a presumption under Section 112 of the Act with regard to proof of satisfaction of the conditions enumerated in the Section, which reads thus:

“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 not access to each other at any time when he could have been begotten.”

Therefore, necessarily, the petitioner has to rebut such presumption. In view of improvements in the technology, it can be rebutted by taking blood samples so as to send the same to the expert for report so that the truth would come out.

10. On the other hand, learned counsel for the respondent relied on a decision reported in **GOUTAM KUNDU V STATE OF WEST BENGAL AND ANOTHER** ^[2], wherein it was held thus (para 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.”

Similarly giving blood samples is nothing to do with the proof of case of adultery. Such is not the case here. It does not amount to testimonial compulsion. Therefore, the impugned order is liable to be set aside.

11. Accordingly, the Civil Revision Petition is allowed setting aside the impugned order and consequently, the petition filed by the petitioner herein-husband is allowed. The petitioner herein is directed to deposit Rs.20,000/- (Rupees twenty thousand only) before the trial Court enabling the Court to pay the same towards Expert fee. On such deposit, the trial Court shall give a direction to the respondent herein-wife and her child to be present before concerned officials of C.C.M.B. Labs, Hyderabad for giving blood samples. If the expert claims that his fee is less than the amount deposited by the petitioner, it is needless to observe that the petitioner is entitled to withdraw the remaining amount. Miscellaneous petitions, if any pending in this revision shall stand closed.

K.C.BHANU, J

DATED: 27-02-2015

Hsd

[\[1\]](#) (2014) 2 SCC 576

[\[2\]](#) (1993) 3 SCC 418