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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.1741 of 2015

Date of decision: March 11, 2015

Jasbir Singh @ Gogga

.....Petitioner

Versus

Parmod Kumar and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Anil Chawla, Advocate
for the petitioner.

SABINA, J

Petitioner has filed this petition challenging the order dated 05.02.2015, whereby application moved by the petitioner for conducting Deoxyribonucleic Acid (DNA) test of respondent No.1 with Ram Dulari, has been dismissed.

Learned counsel for the petitioner has submitted that in order to ascertain that respondent No.1 and Ram Dulari were brother and sister and were children of Sai Dass and Soma Devi, it was necessary to conduct DNA test. In support of his argument, learned counsel has placed reliance on ***Dipanwita Roy versus Ronobroto Roy***, 2015 (1) AIR Bom.R 231, wherein it was held as under:-

“10. It is borne from the decisions rendered by this Court in Bhabani Prasad Jena (supra), and Nandlal Wasudeo Badwaik (supra), that depending on the facts and circumstances of the case, it would be permissible for a Court to direct the holding of a DNA

examination, to determine the veracity of the allegation(s), which constitute one of the grounds, on which the concerned party would either succeed or lose. There can be no dispute, that if the direction to hold such a test can be avoided, it should be so avoided. The reason, as already recorded in various judgments by this Court, is that the legitimacy of a child should not be put to peril.

11. The question that has to be answered in this case, is in respect of the alleged infidelity of the appellant-wife. The respondent-husband has made clear and categorical assertions in the petition filed by him under Section 13 of the Hindu Marriage Act, alleging infidelity. He has gone to the extent of naming the person, who was the father of the male child born to the appellant-wife. It is in the process of substantiating his allegation of infidelity, that the respondent-husband had made an application before the Family Court for conducting a DNA test, which would establish whether or not, he had fathered the male child born to the appellant-wife. The respondent feels that it is only possible for him to substantiate the allegations levelled by him (of the appellant-wife's infidelity) through a DNA test. We agree with him. In our view, but for the DNA test, it would be impossible for the respondent-husband to establish and confirm the assertions made in the pleadings. We are therefore satisfied, that the direction issued by the High Court, as has been extracted hereinabove, was fully justified. DNA testing is the most legitimate and scientifically perfect means, which the husband could use, to establish his assertion of infidelity. This should simultaneously be taken as the most authentic, rightful and correct means also with the

wife, for her to rebut the assertions made by the respondent-husband, and to establish that she had not been unfaithful, adulterous or disloyal. If the appellant-wife is right, she shall be proved to be so.

12. We would, however, while upholding the order passed by the High Court, consider it just and appropriate to record a caveat, giving the appellant-wife liberty to comply with or disregard the order passed by the High Court, requiring the holding of the DNA test. In case, she accepts the direction issued by the High Court, the DNA test will determine conclusively the veracity of accusation levelled by the respondent-husband, against her. In case, she declines to comply with the direction issued by the High Court, the allegation would be determined by the concerned Court, by drawing a presumption of the nature contemplated in Section 114 of the Indian Evidence Act, especially, in terms of illustration (h) thereof. Section 114 as also illustration (h), referred to above, are being extracted hereunder:

“114. Court may presume existence of certain facts – The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustration (h) - That if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him.”

This course has been adopted to preserve the right of individual privacy to the extent possible. Of course, without sacrificing the cause of justice. By adopting

the above course, the issue of infidelity alone would be determined, without expressly disturbing the presumption contemplated under Section 112 of the Indian Evidence Act. Even though, as already stated above, undoubtedly the issue of legitimacy would also be incidentally involved.”

Learned counsel has also relied on **Sube singh versus Smt. Shanti Devi and others**, 2014(4) PLR 637, wherein it was held as under:-

*“These are cases mostly relating to the criminal law, paternity issues and grant of succession certificates. In criminal cases, there is normally a bar from self-incrimination in view of protections afforded by Article 21 of the Constitution where such tests could seriously impair defence and prosecution. S.112 of the Evidence Act is the pivotal point for consideration of such request in paternity cases which stand on an entirely different footing where declaration of the illegitimacy of a child is an engaging social and legal dilemma for the Court in the rubric of ostracization by society of a person by any such decree issued. The basic principle evolved by courts is that the DNA test is not to be directed as a matter of routine and should be resorted to only in deserving cases. This subject forensic territory has been further explored and explained in extremely grim facts recently in **Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik and another; 2014 STPL (Web) 6 SC**, delivered by the Supreme Court very recently in Criminal Appeal No.24 of 2014 arising out of Special Leave Petition (Crl.) No.8852 of 2008. The decision was handed down by the Supreme Court on 06th January, 2014. The appeal arose out of proceedings under S.125 of the Code of Criminal Procedure, 1973 in a claim for maintenance laid by wife and her daughter against the defendant, the alleged father. The petition was resisted by the husband on the ground that the child was not his. The Supreme Court observed on the veracity of the test as follows:*

“Before we proceed to consider the rival submissions, we deem it necessary to understand what exactly DNA test is and ultimately its accuracy. All living beings are composed of cells which are the smallest and

basic unit of life. An average human body has trillion of cells of different sizes. DNA (Deoxyribonucleic Acid), which is found in the chromosomes of the cells of living beings, is the blueprint of an individual. Human cells contain 46 chromosomes and those 46 chromosomes contain a total of six billion base pair in 46 duplex threads of DNA. DNA consists of four nitrogenous bases – adenin, thymine, cytosine, guanine and phosphoric acid arranged in a regular structure. When two unrelated people possessing the same DNA pattern have been compared, the chances of complete similarity are 1 in 30 billion to 300 billion. Given that the Earth's population is about 5 billion, this test shall have accurate result. It has been recognized by this Court in the case of **Kamti Devi (supra) (Cit. Kamti Devi v. Posh Ram, 2001 (5) SCC 311 ed.)** that the result of a genuine DNA test is scientifically accurate. It is nobody's case that the result of the DNA test is not genuine and, therefore, we have to proceed on an assumption that the result of the DNA test is accurate.”

15. In **Bhabani Prasad Jena v. Orissa State Commission for Women; (2010) 8 SCC 633**, The Supreme Court held as follows:

“22. In our view, when there is apparent conflict between the right to privacy of a person not to submit himself forcibly to medical examination and duty of the court to reach the truth, the court must exercise its discretion only after balancing the interests of the parties and on due consideration whether for a just decision in the matter, DNA test is eminently needed. DNA test in a matter relating to paternity of a child should not be directed by the court as a matter of course or in a routine manner, whenever such a request is made.

The court has to consider diverse aspects including presumption under Section 112 of the Evidence Act; pros and cons of such order and the test of “*eminent need*” whether it is not possible for the court to reach the truth without use of such test.”

(underlined for emphasis)

16. The balance to be struck by court in the interest of the parties clearly lies in its duty to reach the truth and to “*follow truth wherever it may lead*” to use the

words in parenthesis spoken by Justice Bronson, Chief Justice, New York Supreme Court in Pierce v. Delamater 1 NY 3 (1847): A.M.Y. p.18.

17. This being the position with respect to the authenticity and efficacy of the DNA test in the modern world of science I would, therefore, apply its accurate and beneficial contemplated results to the case in hand, a mere property dispute, and would conclude that both the impugned orders passed by the trial Judge are legal and valid and not open to interference. In the diametrically opposite stands of the parties I cannot reasonably fathom as to how the dispute can be readily resolved by oral and documentary evidence alone, the parties being at loggerheads and limited by court evidence system and therefore the 'eminent need' test applied by the Supreme Court in Bhabani in venturing to arrive at the truth by the result of the genuine DNA profile test, should be followed here in this case which will erase any possible undue advantage either party may have without it."

In the present case, petitioner and respondent No.3 have filed suit for possession claiming themselves to be the only legal heir of deceased Fauja Singh. Case of the plaintiffs is that Fauja Singh had died issueless. Plaintiffs are the children of the brother of Fauja Singh. On the other hand, case of respondent No.1 Parmod Kumar is that he is the son of Fauja Singh and Joginder Kaur. In this regard, respondent No.1 has led documentary evidence to support his plea that he is son of Fauja Singh. Case is listed before the trial Court for rebuttal evidence of the plaintiffs. At this stage, an application was moved by the plaintiffs that DNA test be got conducted qua Parmod Kumar and his sister Ram Dulari to establish that Parmod Kumar was not the son of Fauja Singh. However, Ram Dulari is not a party to the litigation in her

own right. Infact, petitioner Jasbir Singh has filed the suit, through his mother Ram Dulari, being mentally retarded. Plaintiffs could have led evidence in their affirmative to establish that respondent No.1 was not the son of Fauja Singh. In the facts and circumstances of the present case, the judgments relied upon by the learned counsel for the petitioner fail to advance the case of the petitioner. Learned trial Court had rightly dismissed the application moved by the petitioner for conducting DNA test of respondent No.1 Parmod Kumar with Ram Dulari to establish that they were children of Sai Dass.

Dismissed.

**(SABINA)
JUDGE**

March 11, 2015
m.singh