

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

CR No. 4344 of 2014 (O&M)

Date of decision: August 12, 2015

Jahir

...Petitioner

Versus

Rajan alias Rujjan and others

...Respondents

**CORAM:- HON'BLE MR. JUSTICE K. KANNAN**

1. **Whether Reporters of local papers may be allowed to see the judgment ? Yes**
2. **To be referred to the Reporters or not ? Yes**
3. **Whether the judgment should be reported in the Digest? Yes**

Present: None for the petitioner.

Mr. Amit Jain, Advocate,  
for the respondents.

**K. KANNAN, J. (Oral)**

1. There is a written prayer for adjournment on behalf of the learned counsel for the petitioner, but the learned counsel for the respondents has objection that if it is to be adjourned, it be adjourned for a short date. I do not think it requires to be adjourned and I have called upon the counsel to argue the case to assess the merit involved and to deliver a judgment.

2. In a suit filed by the plaintiff seeking for a declaration that the release deed executed by the 1<sup>st</sup> defendant who he claims to be his father in favour of defendants No. 2 to 5 is not valid, the 1<sup>st</sup> defendant's contention was that the plaintiff was not his son and he also sought through an application that the plaintiff must submit himself to offer blood sample for carrying out a DNA test to ascertain the boy's paternity. The Court allowed

the application and the petition is at the instance of the plaintiff/petitioner. The plaintiff's contention was that he is the son of defendant No.1 through a woman Amina, who was the 1<sup>st</sup> defendant's wife. The 1<sup>st</sup> defendant's contention was that his wife was one Chahati and the children who are defendants No.2 to 5 are born to him through Chahati. The matter that could be relevant in this case for the plaintiff to establish is that he was born during the marital relationship of 1<sup>st</sup> defendant Rajan to Amina and his own right will, therefore, depend on the proof which he will be able to adduce at the trial of whether Amina was wedded to the defendant or he had any live-in relationship prior to marriage with the 1<sup>st</sup> defendant. If the defendant's contention were to be that he never had any sexual access to Amina and that, therefore, the plaintiff could not be his son, the matter will obtain appropriate result that would be necessary for adjudication in the suit. The application by the defendant to carry out the DNA must be therefore, understood and the relevance assessed in such a factual context.

3. It has become too fashionable and easy in these days to apply the Court for DNA examination by making a wrong inference that this test which is most scientific for determining paternity issue could be resorted to at the drop of a hat. The issue of a testimonial compulsion and the scope for applying for DNA was considered at length by the Supreme Court in Goutam Kundu V. State of W.B. (1993) 3 SCC 418. The Court was considering the effect of Section 112 of the Evidence Act, which is a rule of evidence giving a conclusive proof of legitimacy of a child born through a valid marriage between the mother and any man within a period of 280 days. The Court was cautioning that the conclusive presumption available under Section 112 of the Evidence Act cannot be easily thwarted by resort

to application for DNA and exposing a child to the social stigma of bastardization. This judgment came to be considered again at reasonable length in Sharda Versus Dharmpal (2003) 4 SCC 493, where the Court while even was allowing for a DNA test to be made, was setting out the boundaries within which the Court will operate and ensure that the test is made only to assure a legitimacy for a child and when there is a strong proof that there was no sexual access to the mother of the child whose DNA was sought to be appraised.

4. There is no change in law to the exposition of the law made by the Supreme Court in the above said two judgments and all the subsequent rulings have come to affirm and re-interpret the very same law. Reliance on the judgment of the Supreme Court in Dipanwita Roy Versus Ronobroto Roy (2015) 1 Supreme Court Cases 365 ought not to be understood merely from the fact that the Supreme Court was allowing for a DNA test to be given in that case; nor could this be taken to be laying down a law that the DNA test which is a scientific one ought to be resorted to in all cases. That it is a scientific test and the result is bound to be close to 100% admits of no doubt at all but when Courts make intervention, it ought to be convinced that there is a very strong prima facie case for an application before it orders DNA test. The prima facie case, in this case, for the 1<sup>st</sup> defendant to apply for DNA must be on an assessment that the 1<sup>st</sup> defendant had no sexual accesses at all to the plaintiff's mother Amina. It is too premature for such an inference to be made and it has to await till the plaintiff offers his full evidence. If only the Court is convinced that there was no proof of such accesses, the Court would have allowed for DNA. In the order passed, which is impugned in the revision, there is no reference to any assessment

by the Court that the 1<sup>st</sup> defendant could not have had access to the plaintiff's mother. Then it means that the Court order was made without appropriate legal basis. It has referred to a decision of the Division Bench of the Delhi High Court in Rohit Shekhar Versus Narayan Dutt Tiwari and another 2012 (3) SCC 554. The facts will be completely different for, where a person was seeking to prove his legitimacy, the Court will lean in favour of a person's legitimate status. In the above case against Narayan Dutt Tiwari, a person who bore a slur of being a 'bastard' wanted to legitimize his birth by having a DNA test to be carried out of a person who he claimed to be the father. The boy's mother affirmed that she was in a relationship with the person who the plaintiff claimed to be his father. It was to affirm the legitimacy that the Court made intervention. It would make all the difference of what the attempt is sought to be. If the attempt is to bastardize, the Court will throw a ring of extraordinary circumspection and ensure that proof of non-access was clearly available before order was passed. Consequently, if there was a proof of access and if the person was seeking for a DNA test to be carried out, the Court will allow for such a test because it would come to help a person to clear a slur which he carries on his shoulder. In this case, on the other hand, there is not even a pleading that the 1<sup>st</sup> defendant never had sexual access to the plaintiff's mother Amina to justify a DNA test. He has only stated in an evasive fashion that the plaintiff is not his son.

5. The impugned order is untenable. It is set aside and the revision is allowed.

**August 12, 2015**  
prem

**(K.KANNAN)**  
**JUDGE**