

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

(111)

**CR No.4944 of 2015 (O&M)
Decided on: August 06, 2015.**

Bijender

.... Petitioner

Versus

Manjeet and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. Ajay Vijarania, Advocate,
for the petitioner.

M.M.S. BEDI, J (ORAL)

Vide impugned order, an application filed by the petitioner-husband for a direction to the respondent-wife for DNA test alleging that she has given birth to a male child from the loins of respondent No.2, stands dismissed by the trial Court.

On asking of the Court, learned counsel for the petitioner informs that the case is at the stage of framing of issues. He has placed reliance on *Nandlal Wasudeo Badwaik Vs. Lata Nandlal Badwaik and another, 2014 (2) SCC 576* and *Dipanwita Roy Vs. Ronobroto Roy, A.I.R. 2015 (SC) 418.*

In *Dipanwita Roy's case (supra)*, an order passed by the High Court for a direction for DNA sampling had been upheld by the Apex Court, however, a discretion was given to the wife to comply with or disregard the order of the High Court requiring the holding of DNA test subject to the provisions of Section 114 of the Indian Evidence Act. In the said case also, the issue of illegitimacy of the child was involved.

I have heard learned counsel for the petitioner and gone through the judgments cited.

The judgments cited by learned counsel for the petitioner indicate that the directions of the Supreme Court in **Goutam Kundu Vs. State of West Bengal, 1993 (2) R.C.R. (Criminal) 497** have not been overruled in the said judgment. In **Goutam Kundu's case (supra)** it has been laid down that the Courts in India cannot order blood test as a matter of course and such prayers cannot be granted to have roving inquiry; there must be a strong prima facie case and the Court must carefully examine as to what would be the consequence of ordering the blood test.

It was also held in **Sharda Vs. Dharampal, 2003 (2) RCR (Civil) 795**, that a matrimonial Court has power to order a person to undergo a medical test, but it was reiterated that the Court should exercise such a power if the applicant has a strong prima facie case and there is sufficient material before the Court.

In the present case, when the trial is at initial stage, holding of a roving inquiry which could cause embarrassment to the child and his mother, has been taken into consideration by the trial Court. The trial Court seems to have not violated the basic principles laid down by the Apex Court in **Goutam Kundu's case (supra)** and **Sharda's case (supra)** as the case is at initial stage, a roving inquiry by directing the respondent wife to undergo DNA test would be in violation of the parameters laid down in **Goutam Kundu's case (supra)**.

No ground is made out for interference in the impugned order.

This petition is dismissed without prejudice to the right of the petitioner to move a similar application at a later stage depending upon the

other evidence produced before the Court by satisfying the Court that parameters in *Goutam Kundu's case (supra)* and *Sharda's case (supra)* are fulfilled.

Learned counsel for the petitioner at this stage submits that there can not be any other evidence available. The submission runs contrary to the principle of Section 50 of the Indian Evidence Act which requires that to establish relationship the evidence of conduct would be relevant. It will be open to the petitioner to produce evidence in that context and thereafter file a fresh application for DNA test in the situation as stated above.

(M.M.S. BEDI)
JUDGE

August 06, 2015
harsha