

226.

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

Civil Revision No.4411 of 2014 (O&M)

Date of decision:07.01.2016

Smt. Ranjit Kaur

... Petitioner

versus

Sewa Singh and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Anupam Bhardwaj, Advocate,
for the petitioner.

Mr. Vaibhav Narang, Advocate,
for respondent No.2.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

1. The revision petition is against an order directing a testimonial compulsion of the submission of blood sample for a DNA comparison. This was brought about in a matrimonial proceeding initiated by the husband for dissolution of marriage against the wife. The trial of evidence is reported to be over and at the time of arguments, the husband moved an application for directing the wife to submit the blood sample. The court has allowed the same.

2. The order is erroneous. The court will not allow for a

compulsorily submission of the blood sample if the wife declines to give the sample. The court's power will be exercised only in extreme cases where there is a positive proof of non-access during the time when the conception could have taken place. There is not even an averment for non-access in the application moved for giving the blood sample. The husband was literally attempting to bring about a situation which will run counter to Section 112 of Indian Evidence Act. This issue has been dealt with by the Supreme Court in **Goutam Kundu Versus State of West Bengal and another-(1993) 3 SCC 418**. The court orders when there have been testimonial compulsions are in situations to protect the child when the child herself or the mother moved an application to secure proof of paternity. It cannot be done for the reverse situation by an attempt to bastardize the child.

3. The counsel for the respondent states that the wife's refusal to give the blood sample must be taken as an adverse inference against her. That plea cannot be entertained before this court and it will be open for the husband to adopt such arguments as he believes to bring strength to his case.

4. The order is erroneous and it is set aside. The revision petition is allowed with costs of ₹3,500/- against the respondents.

(K.KANNAN)
JUDGE

07.01.2016
sanjeev