

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5689 of 2015

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Anusha Kumari, W/o- Rohan, D/o- Arvind Kumar, resident of village- Rajwara,
P.O.-Musahari, P.S. - Musahari, District- Muzaffarpur. Petitioner/s
Versus

Rohan, S/o-Mohan Prasad Sinha, resident of Dharhara House, Kalambag Chowk,
P.S.- Kazi Mohammadpur, District- Muzaffarpur. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Parasmani, Adv.
For the Respondent/s : Mr. Jitendra Singh, Sr. Adv.
M/s H. Singh, Kamal Kishore Singh,
Ravi Shankar Choudhary and Yash Singh, Advs.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 05-12-2017

The petitioner is wife of respondent. The husband (respondent) has filed a divorce case bearing Matrimonial Case No. 55 of 2014 before the court of learned Principal Judge, Family Court, Muzaffarpur for a decree of divorce against the petitioner. The respondent in order to prove his case of adultery has filed a petition praying therein to get the D.N.A. test of both the parties and their male child. The learned Principal Judge allowed the said petition as per impugned order.

2. Heard learned counsel for the petitioner as well as the respondent.

3. On going through the writ application and counter affidavit I find that the respondent has filed a divorce case against the petitioner. His case is that the marriage between the parties was



solemnized on 19th February 2012 as per Hindu rites and custom. After solemnization of marriage, both the parties lived together till 03.03.2012 i.e. for 14 days. Thereafter, the husband-respondent went to Chandigarh where he was in job. The wife along with her father had visited at the place of respondent on 14.08.2012 and from there she came back on 14.10.2012. The petitioner gave birth to a male child on 17.01.2013. The case of the respondent is that there was no physical relationship between the parties after 03.03.2012 on which he left the petitioner and proceeded to Chandigarh. The petitioner delivered a male child on 17.01.2013 which covers a period of 10 ½ months from the last meeting of the parties. This is sufficient to establish the case of adultery. The petitioner defendant on the other hand filed rejoinder and stated that there is no allegation of adultery in the divorce application as the husband has not named the person with whom his wife had allegedly cohabited and so the case itself is not maintainable.

4. From perusal of petition dated 10.12.2014 filed before the learned Court below it appears that the respondent has stated that a male child born on 17.01.2013 without any physical relationship with the petitioner during the prescribed medical time i.e. 03.03.2012 to 14.08.2012. The respondent in order to determine the paternity of the said child, wanted to resolve the matter outside the



Court, but the opposite party and his father did not agree and so a prayer was made for paternity test i.e. D.N.A. test of the respondent, petitioner and her son. The petitioner filed rejoinder on 19th January 2015 and denied the assertion of the respondent-husband. She has stated that her marriage was solemnized on 19.02.2012 and after solemnization of marriage, they lived together till March 2012. She however does not deny the birth of male child on 17.01.2013.

5. From the pleadings of both the parties it is apparent that the child was born after 10 ½ months from the date of their last meeting i.e. 03.03.2012.

6. The learned counsel for the respondent cited a Ruling reported in 2015 (1) PLJR SC 89 (Dipanwita Roy vs. Ronobroto Roy) wherein the Hon'ble Apex Court in similar circumstance upheld the order of High Court wherein the High Court had directed for holding D.N.A. test. The Hon'ble Apex Court at para 4 and 12 of the judgment has observed as follows:-

“Para 4 - In order to substantiate his claim, in respect of the infidelity of the petitioner-wife, and to establish that the son born to her was not his, the respondent-husband moved an application on 24.7.2011 seeking a DNA test of himself (the respondent-husband) and the male child born to the petitioner-wife. The purpose seems to be, that if the DNA examination reflected, that the male child born to the petitioner-wife, was not the child of the



respondent-husband, the allegations made by the respondent-husband in paragraphs 23 to 25 of the petition, would stand substantiated. The petitioner-wife filed written objections thereto, categorically asserting, that the factual position depicted in the application filed by the respondent-husband was false, frivolous, vexatious and motivated. It was asserted that the allegations were designed in a sinister manner, to cast a slur on the reputation of the petitioner-wife. The petitioner-wife strongly denied and disputed the statement made at the behest of the respondent-husband to the effect, that she was leading a fast life in extra marital relationship with Mr. Deven Shah, and had given birth to a child as a result of her cohabitation with the said Mr. Deven Shah. She also asserted, that she had a continuous matrimonial relationship with the respondent-husband, and that, the respondent-husband had factually performed all the matrimonial obligations with her, and had factually cohabited with her. The petitioner-wife accordingly sought the dismissal of the application filed by the respondent-husband, for a DNA test of himself and the male child born to the petitioner-wife. The respondent-husband filed a reply affidavit reiterating the factual position contained in the application, and thereby also repudiating the assertions made by the petitioner-wife in her written objections.

Para 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.”

7. The Division Bench of this Court in the case of Smt. Rakhi Kumari vs. Brij Nandan Ram, 2016 (3) PLJR 706 at para 6, has also observed as follows:-

Appellant-wife having objected to subject herself and the child for D.N.A. examination, we, placing reliance on the judgment of the Supreme Court in the case of Dipanwita Roy vs. Ronobroto Roy, (2015) 1 SCC 365 [:2015 (1) PLJR (SC) 89] invoke Section 114 (g) of the Evidence Act, proceed to draw an adverse inference against her, accordingly, affirm the finding recorded by the court below in connection with Issue Nos. 3, 4.”

8. In the above case a direction was given to the parties to appear before the Director, Forensic Science Laboratory for D.N.A. test of wife, husband and child born out of their wedlock. The wife however did not agree to subject herself and child to D.N.A. examination. Thus adverse inference was drawn against her. The Division Bench of this Court affirmed the finding of trial Court wherein the direction was given for their D.N.A. test. The scientific evidence by way of DNA test would certainly clinch the issue of adultery.

9. The contention of the learned counsel for the petitioner is that there is no pleading in the divorce application as regards adultery. The respondent has neither mentioned the name of



person nor made him party to the divorce case with specific pleading of adultery against the petitioner. This contention is not sustainable in view of the fact that the respondent immediately after marriage went to Chandigarh where the wife also visited in the month of July 2013 and so it was not possible for the respondent to give details of adultery in the divorce application. The medical examination in such circumstance would be conclusive for adjudication of plea of adultery as asserted by the respondent-husband. The Court below has not committed any jurisdiction error in directing the petitioner, her male child and the respondent to undergo for D.N.A. test at the cost of the respondent.

10. In the above facts and circumstances of the case, I do not find any merit in this application requiring any interference in the impugned order.

11. This application is, accordingly, dismissed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	15.12.2017
Transmission Date	

