

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Criminal Misc. No.M- 8242 of 2017(O&M)

Date of Decision: April 5 , 2017.

Rajinder Kaur PETITIONER (s)

Versus

Sardool Singh and others RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. K.S.Sidhu, Advocate
for the petitioner.

LISA GILL, J.

The petitioner is aggrieved of order dated 21.02.2014 passed by the learned Additional Chief Judicial Magistrate, Bathinda (Annexure P4) as well as order dated 29.09.2016 passed by the learned Additional Sessions Judge, Bathinda vide which application filed by the petitioner for conducting the DNA test for ascertaining the paternity of the minor child, namely, Parampreet Kaur, was dismissed. The minor child is alleged to be the daughter of respondent No.1 Sardool Singh (petitioner's husband) and respondent No.3 (alleged to be the second wife of respondent No.1).

The petitioner initiated proceedings under the Protection of Women from Domestic Violence Act, 2005 (for short, 'the Domestic Violence Act'). Apart from various other reliefs claimed by her as mentioned in her

petition (Annexure P1), she also prayed for interim maintenance at the rate of ₹50,000/- per month as well as residence allowance/rent at the rate of ₹5,000/- per month. An application (Annexure P2) was filed by the petitioner for conducting a DNA test of respondent No.1 – Sardool Singh and minor child Parampreet Kaur alleged to be born from an illegal matrimonial alliance between respondent No.1 with respondent No.3. It is stated in the application that respondent No.1 solemnized second marriage in an illegal manner with respondent No.3 – Smt. Veepal Kaur without dissolution of marriage between the petitioner and respondent No.1. A child (now aged 15 years) was born out of the said wedlock. This fact is denied by respondent No.1 in the reply filed by him to the petition under the Domestic Violence Act. It is specifically denied that respondent No.1 married respondent No.3. The petitioner in her application stated that such a stand taken by respondent No.1 amounts to cruelty and cheating with the petitioner. Family members of respondent No.1 are also not ready to rehabilitate the petitioner and minor children in the matrimonial home solely on account of second marriage solemnized by respondent No.1. The truth regarding the paternity of the minor daughter could be determined only after conducting a DNA test. In case the said test is not conducted, grave prejudice would be caused to the petitioner. The said application preferred by the petitioner was contested by the respondents.

The learned trial court dismissed the abovesaid application of the petitioner on 21.02.2014. It was noted that the question regarding paternity of the minor daughter is not an issue in the present case. Furthermore, a criminal case i.e. FIR under Sections 494/498A/406 IPC registered at the behest of the

petitioner stood decided. The accused were acquitted of the charge under Section 494 IPC as the petitioner/prosecution failed to prove the factum of second marriage of respondent No.1. Aggrieved therefrom, the petitioner filed a revision petition challenging order dated 21.02.2014. Finding no merit, the learned Additional Sessions Judge, Bathinda vide order dated 29.09.2016 dismissed the revision petition preferred by the petitioner. Aggrieved from the abovesaid orders, the petitioner has filed the present petition.

Learned counsel for the petitioner vehemently argues that in order to dispense complete justice to the parties, it is imperative that the DNA test of the minor child allegedly born to respondent No.1 and respondent No.3 be conducted. It is due to solemnization of second marriage by respondent No.1 with respondent No.3 that the petitioner is not being rehabilitated in the matrimonial home. In case the said DNA test is conducted, it shall set the entire controversy at rest.

I have heard learned counsel for the petitioner and have gone through the file with his assistance.

The application for conducting the DNA test of the minor child alleged to be born out of the wedlock of respondent No.1 and respondent No.3 has been filed by the petitioner in the proceedings under the Domestic Violence Act. The petitioner has claimed maintenance as well as various reliefs available to her under the Domestic Violence Act. There is no dispute that respondent No.1 as well as respondent No.3 have been acquitted on 08.09.2010 by the learned Judicial Magistrate First Class, Bathinda of the

charge under Section 494 IPC in criminal proceedings launched by the petitioner. The learned courts below have rightly held that the issue directly in dispute is not the paternity of the child.

The Hon'ble Supreme Court in **Banrasi Dass v. Teeku Dutta and another, 2005(4) SCC 449** has held that the parties should be left to prove their respective cases on the basis of evidence during the trial rather than creating evidence by directing the conduct of a DNA test. DNA test should not directed to be conducted as a matter of routine but should be resorted to only in deserving cases. The Hon'ble Supreme Court in **Bhabandi Prasad Jena v. Convener Secretary, Orissa State Commission for Women and another, 2010 (8) SCC 633** observed as under:-

“21. In a matter where paternity of a child is in issue before the court, the use of DNA is an extremely delicate and sensitive aspect. One view is that when modern science gives means of ascertaining the paternity of a child, there should not be any hesitation to use those means whenever the occasion requires. The other view is that the court must be reluctant in use of such scientific advances and tools which result in invasion of right to privacy of an individual and may not only be prejudicial to the rights of the parties but may have devastating effect on the child. Sometimes the result of such scientific test may bastardise an innocent child even though his mother and her spouse were living together during the time of conception.”

In view of the abovesaid factual matrix, learned counsel for the petitioner is unable to point out any illegality, infirmity or perversity in the impugned orders which warrants interference by this Court in exercise of its

jurisdiction under Section 482 Cr.P.C.

This petition is accordingly dismissed.

It is clarified that none of the observations made hereinabove shall be construed to be a reflection on the merits of the case and the same are confined for the purpose of decision of the present petition only.

April 5 , 2017.
'om'

(LISA GILL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No