

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.269 of 2018

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1. Rinki @ Rinki Singh, W/o Harsh Bardhan Singh, D/o Chandra Shekhar Singh, Resident of Mohalla- Bahadurpur, P.S.- Bahadurpur, Distt.- Patna.

.... Petitioner/s

Versus

1. Harsh Bardhan Singh, S/o Anirudh Prasad Singh, Resident of Village-Basti, P.S. Harnaut, Distt.- Nalanda.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Neeraj Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

3 30-04-2018 Heard both sides.

The petitioner filed this civil miscellaneous petition against the order dated 11.12.2017 passed in Matrimonial (Divorce) Case No.303 of 2015 by which the Principal Judge, Family Court, Biharsharif, Nalanda ordered for D.N.A. test of the respondent and her son at the cost of the husband-respondent.

The petitioner is the respondent-wife. The husband filed matrimonial suit (divorce) on the ground of desertion and cruelty but during the pendency of the suit, the husband filed petition for D.N.A. test of the child born out of the wedlock and on such petition, the Principal Judge ordered for D.N.A. test of the child at the cost of the husband vide order dated 11.12.2017. Being aggrieved by the aforesaid order, the wife filed this civil



miscellaneous petition.

The learned counsel for the petitioner assailing the order aforesaid submitted that the husband did not file the suit seeking divorce on illicit or having extra-marital relation. The husband did not state anywhere in the plaint of the matrimonial suit that the child was born on account of wife having illicit and extra-marital relation. It is admitted that the husband and wife live together till 2011. The marriage was solemnized on 02.06.2006. But during the pendency of the suit, the D.N.A. test of the child was ordered to be held to ascertain the paternity of the child which is not in dispute. Husband has not sought divorce on the ground of extra-marital relation of his wife and in absence of such pleading, there shall be presumption of legitimacy of the child born out of the wedlock.

The learned counsel for the husband-respondent submitted that of course the husband did not seek relief of divorce on the ground of illicit relation of his wife but in the petition for D.N.A. test the husband stated that his wife was having illicit relation.

From perusal of the facts and the plaint of the matrimonial suit, it appears that the husband sought relief of divorce on the ground of desertion and cruelty on the part of wife.



Admittedly, marriage was solemnized in the year 2006. The husband and wife live together till 2011. The child was born out of the wedlock and the paternity of the child was never in doubt by any side, therefore, the D.N.A. test of the child is not at all required for decision of the matrimonial suit.

Thus, I find that the learned Principal Judge has committed jurisdictional error in allowing the petition of the applicant-husband for D.N.A. test of the child. Accordingly, the order dated 11.12.2017 is set aside and civil miscellaneous petition is allowed.

(Prabhat Kumar Jha, J)

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