

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

CR No.507 of 2019

Date of Decision: January 31, 2019

Sanjay Kumar

.... Petitioner

Versus

Navneet Singh & Anr.

.... Respondents

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Vikas Chaudhary, Advocate for the Petitioner.

SUDIP AHLUWALIA, J.

This Revisional Application is directed against the Order dated 13.04.2018 passed by the Ld. Civil Judge (Senior Divison), Jagadhri whereby the application moved by the Respondent No.1/Plaintiff to undergo DNA Test had been allowed.

2. Vide the impugned Order, the Ld. Court below had allowed the Application filed on behalf of Respondent No.1/Plaintiff in the original Suit directing the Petitioner to undergo DNA Testing to determine the Paternity of said Respondent, who in the Suit had claimed to be his biological son and had therefore, sought a Decree for declaration to that effect apart from a Permanent Injunction to restrain him from denying in public or otherwise that he is father of Plaintiff.

3. The Petitioner is aggrieved with the impugned Order and it has been contended from his side that he could not have been directed to undergo the DNA Testing, which should not have been ordered by the Ld. Court below

for conducting a roving enquiry. A number of decisions on the point have been cited to support the Petitioner's contention, which are taken up for consideration in the following Paragraphs -

4. In '**Rohit Shekhar Vs. Shri Narayan Dutt Tiwari and another**' **2011(1) R.C.R.(Criminal) 289** in allowing a similar application for DNA Testing against the Defendant, it was held by the Delhi High Court *inter alia* -

"35. The Court would now examine if a third party (to a marriage, like the first defendant here) may be compelled to undergo scientific tests of the nature of giving blood samples for the purpose of DNA testing. The case of Goutam Kundu (supra) provides us with assistance here. In this case, the Court held that

"1. A matrimonial court has the power to order a person to undergo medical test.

2. Passing of such an order by the court would not be in violation of the right to personal liberty under Article 21 of the Indian Constitution.

3. However, the Court should exercise such a power if the applicant has a strong prima facie case and there is sufficient material before the Court. If despite the order of the court, the respondent refuses to submit himself to medical examination, the court will be entitled to draw an adverse inference against him."

37. ...The three Judge Bench in Sharda (supra) stated in no uncertain terms that a direction, (after taking into consideration all relevant facts), to the person, to undergo such a test is not an invasion of his right to life. Bhabani Prasad Jena (supra), after noticing all the previous judgments, including Goutam Kundu and Sharda, on the point, affirmed the power of the Court to direct a DNA test by one of the parties, and stated that it must be exercised with caution, after weighing all "pros and cons", the evidence, and satisfying itself if the "test of `eminent need'" for such an order, is fulfilled. This Court is therefore, bound by those principles.

38. ...To be fair to the first defendant, there can be explanations; yet *prima facie* there appears to be some consistency or pattern in his behavior; he is definitely seen as a close friend of the family, with a special fondness for the plaintiff. The plaintiff alleges that the defendant used to see him very frequently, and he had access, but later he was denied such access, to the first defendant and that the last time he could meet the plaintiff was in 2005.

42. ...No doubt, there are possibilities that the first defendant is not the biological father; the Court cannot direct him to undergo DNA test on the assumption that he is the father, at the mere asking of the plaintiff. That is where, the other materials, such as the second defendant mother's affidavit, and photographs of the plaintiff, together with the first defendant, are relevant. They do, taken cumulatively with such the DNA test results, indicate a strong *prima facie* case, suggesting "eminent need" to issue the directions.

44. The previous discussion may be summarized as follows :

(i)

(ii) A "paternity" action by the son or daughter of one, claiming the defendant to be his or her biological father, filed in Court, particularly after the plaintiff as in this case, attains adulthood, or claims paternity, for other reasons, (such as non-consensual sexual relationship the basis of facts, and on the basis of the child's rights/either under Section 125 Criminal Procedure Code, or in a suit for declaration or for maintenance) cannot be jettisoned by shutting out evidence, particularly based on DNA test reports, on a threshold application of Section 112; the Court has to weigh all pros and cons, and, following the ruling in *Kundu and Jena (supra)*, on being satisfied about existence of "eminent need" make appropriate orders."

5. In '**Goutam Kundu Vs. State of West Bengal**', 1993(2) R.C.R.

(Criminal) 497', it was observed by the Supreme Court -

"26. From the above discussion it emerges :-

(1) that courts in India cannot order blood test as matter of course;

(2) wherever applications are made for such prayers in order to have roving inquiry, the prayer for blood test cannot be entertained.

(3) There must be a strong prima facie case in that the husband must establish non-access in order to dispel the presumption arising under section 112 of the Evidence Act.

(4) The court must carefully examine as to what would be the consequence of ordering the blood test; whether it will have the effect of branding a child as a bastard and the mother as an unchaste woman.

(5) No one can be compelled to give sample of blood for analysis.”

6. In 'Bhabani Prasad Jena vs. Convenor Secretary, Orissa State Commission for Women & Anr.', 2010(4) R.C.R. (Civil) 53, the Apex Court observed -

“13. 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....

14. There is no conflict in the two decisions of this Court, namely, Goutam Kundu and Sharda. In Goutam Kundu, it has been laid down that 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 strong prima facie case and court must carefully examine as to what would be the consequence of ordering the blood test. In the case of Sharda while concluding that a matrimonial court has power to order a person to undergo

a medical test, 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. Obviously, therefore, any order for DNA can be given by the court only if a strong prima facie case is made out for such a course...”

7. In '**Sharda vs. Dharmpal**', 2003(2) R.C.R.(Civil) 795, the Supreme Court observed *inter alia* -

“84. It is, however, axiomatic that a Court shall not order a roving inquiry. It must have sufficient materials before it to enable it to exercise its discretion. Exercise of such discretion would be subjected to the supervisory jurisdiction of the High Court in terms of the Section 115 of the Civil Procedure Code and/or Article 227 of the Constitution of India. Abuse of the discretionary power at the hands of a Court is not expected. The Court must arrive at a finding that the applicant has established a strong prima facie case before passing such an order.

87. To sum up, our conclusions are

- 1. A matrimonial court has the power to order a person to undergo medical test.*
- 2. Passing of such an order by the court would not be in violation of the right to personal liberty under Article 21 of the Indian Constitution.*
- 3. However, the Court should exercise such a power if the applicant has a strong prima facie case and there is sufficient material before the Court. If despite the order of the court, the respondent refuses to submit himself to medical examination, the court will be entitled to draw an adverse inference against him.”*

8. In '**Kuldeep Singh Vs. Joginder Kaur & Anr.**', 2007(1) Civil Court Cases 493 (P&H), however, the prayer for DNA Test was made on behalf of the father-respondent, who sought to deny the paternity of the child, and the prayer was rejected by a Coordinate Bench of this Court for not only being belated, having been made eight years after the birth of the child, but also in a situation where maintenance order in favour of the child had

already been passed against the applicant earlier.

9. In addition, the following citations have also been placed on behalf of the Petitioner before this Court -

(i)RM. PM. Ranganathan Chettiar Vs. Chinna Lakshmi Achi, AIR 1955 (Madras) 546;

(ii)Shanti Devi Vs. Ram Nath, AIR 1972 (Punjab) 270;

(iii)Sadashiv Mallikarjun Kheradkar Vs. Nandini Sadashiv Kheradkar, 1996 (1) RCR (Criminal) 229 (Bombay) ;

(iv)Sunil Eknath Trambake Vs. Leelvati Sunil Trambake, 2006(2) RCR (Criminal) 691 (Bombay) ;

(v)Anjana Saharawat Vs. State of Rajasthan and others, 2015(7) RCR (Criminal) 383 (Rajasthan).

The view of their Lordships in the aforesaid citations has been consistently that an individual cannot be compelled to undergo any Scientific or Medical Examination, although in the event of his/or refusal for that purpose, appropriate inferences as deemed fit and proper can be drawn by the Court in the given facts and circumstances.

10. After having considered the above citations, this Court finds no justification to interfere with the impugned order. This is so because it is to be noted first of all that determination of paternity of the Respondent/Plaintiff is the real issue involved in the Suit, since the relief prayed for by him itself happens to be declaration regarding his paternity alongwith injunction to restrain his alleged biological father from denying the same. So, reference to the scientific testing with the purpose of coming to a decision on the actual subject-matter/only issue involved in the Suit, can certainly not be considered a 'roving enquiry'.

11. Furthermore, it is noted that in above cited cases, where scientific tests to determine the paternity were refused by the Court, the refusal was

basically in the context of the alleged father who had insisted for such Tests to deny paternity of the child, and the underlying purpose was to protect the concerned child from facing the Trauma and Stigma of being “bastardized or illegitimatised”. In the present case however, it is the child himself who after attaining complete adulthood, seeks a declaration regarding what he claims is his actual paternity. So, the element of protecting him from any such Trauma/Stigma, which could have the effect of branding him as 'bastard/illegitimate child', is no longer a factor. Suffice it to say, the Plaintiff/Respondent in the present case is no more a child, but a fullfledged adult, who had filed the Suit for a declaration regarding his actual biological paternity way back in the year 2014 when according to the plaint, he was already 24 years old.

12. It can also not be said that the Respondent/Plaintiff had no material even *prima facie* to support his claim regarding his alleged paternity, since it transpires that his own mother who happens to be the Defendant/Respondent No.2 in the case had specifically admitted the Plaintiff's claim regarding his alleged paternity in her own Written Statement filed in the Trial Court.

13. In such situation, this Court finds no substantive merit in the present Revision in view of the decision of Supreme Court in **Goutam Kundu's case (supra)**, according to which the DNA Testing is not a violation of any Fundamental Right, and while any person cannot be forced to undergo such Test, an adverse presumption against him can be drawn for such refusal.

14. With the above observations, the Revision Petition is dismissed and the impugned order of the Court below is upheld with a further observation that in case the Petitioner is not willing to submit him for DNA Testing,

appropriate presumption in accordance with law in the light of the pleadings, available evidence and the conduct of the parties, can be drawn by the Trial Court.

(SUDIP AHLUWALIA)
JUDGE

January 31, 2019
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| 1. Whether speaking/reasoned ? | Yes/No |
| 2. Whether reportable ? | Yes/No |