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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Date of Judgment: 2<sup>nd</sup> April, 2019*

+ **MAT.APP.(F.C.) 190/2018**

C K P

..... Appellant

Through: Ms. Shilpa G. Mittal, Advocate.

versus

M P

..... Respondent

Through: Ms. Anjani Kumar and Mr. Abhishek  
Kumar, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE G.S.SISTANI**

**HON'BLE MS. JUSTICE JYOTI SINGH**

**G.S. SISTANI, J. (ORAL)**

**MAT.APP.(F.C.) 190/2018 and C.M. Appl. Nos. 31738/2018 (for stay),  
31740/2018 (for delay)**

1. The challenge in this appeal is to the order dated 16.5.2018 passed by the Family Court on an application filed by the appellant herein for conducting a DNA test on the child. This application has been rejected by the Family Court. The order passed by the Family Court reads as under:-

“Present: Petitioner with Ld. counsel Sh. R.K. Bacchan.

Respondent with Ld. counsel Sh. Anjani Kumar.

Replication filed. Copy furnished.

Today, petitioner has handed over a sum of Rs. 1,000/- in cash to the respondent towards travelling expense.

An application has also been moved by the petitioner seeking DNA examination of the child to ascertain the paternity of the child.

It is submitted by Sh. Bacchan that respondent left the matrimonial home on 25.02.2015 and has thereafter not returned to the matrimonial home. She was blessed with the child on 31.12.2015. It is, therefore, submitted that petitioner/applicant has doubt on the paternity of the child and therefore, the parties be put to DNA test to ascertain the paternity of the child.

Heard.

The pleadings in the petition that respondent left the matrimonial home on 25.02.2015 has been denied by the respondent in her WS by pleading that she was dropped back to her parental home in November, 2015. There is of-course, no documentary evidence on record filed by the petitioner to indicate that respondent was not in the matrimonial home, between 25.02.2015 to November, 2015. The same is, therefore, matter of trial and subject matter of evidence being brought on record. Section 112 of Indian Evidence Act provides presumption of legitimacy of the child, if the child is born during the continuance of valid, unless it can be shown that the parties to marriage had no excess to each other during the relevant time. It is, therefore, incumbent about the petitioner/applicant to establish that he had no excess to the respondent at the relevant time. Merely moving an application seeking test of paternity on bald statement that respondent had left the matrimonial home would not help the petitioner/applicant. DNA testing has been discouraged by higher courts in **Boomi & Anr. Vs. Munirathnam reported as (2005) IDMC 636**, holding as under:-

"In matrimonial litigations blood test for a baby may not be passed, unless court specifically addresses itself as to whether such test would be for the benefit of baby. For an adverse report may affect its future life. Welfare of baby of litigating parties is of paramount consideration".

Application is, therefore, dismissed.

Vide separate order dictated and announced in the open court, application under section 24 of HMA is disposed of.

Now to come up on 29.08.2018 for framing of issues and reporting payment of maintenance amount.”

2. Learned counsel for the appellant states that since the appellant has made additional assertions with regard to the paternity of the child the DNA would be the only answer.

3. We have heard counsels for the parties and have examined the order so passed.

4. Section 112 of the Indian Evidence Act reads as under:-

“112. Birth during marriage, conclusive proof of legitimacy.—The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.”

5. No doubt, it has been contended before us that once the appellant rebuts the assertion so made he can lead evidence on this issue.

6. Para 12 of the application reads as under:-

“12. That admittedly the Respondent left the company and society of Petitioner on 25.02.2015 and admittedly the child has been born on 31.12.2015 i.e. more than after 10 months. Thus, it is clear that the Respondent has developed illicit relations with some other person and the Petitioner is not father of said girl child. The Petitioner is also ready for DNA test. Hence, the Respondent had voluntary sexual intercourse with any other person and is guilty of committing offence under Section 13(1) (i) of the Hindu Marriage Act.”

7. Having regard to the submissions made, we find that there is no infirmity in the order passed and the view taken by the Family Court.

8 An application seeking DNA test of the child in our view has very strong repercussion on the child and such an order for conducting a DNA test should be passed in very rare cases where very strong reasons are set out and in extreme circumstances when the matter cannot be resolved by leading evidence in the matter.

9. Various judgments have been referred to by counsel for the appellant, which in our view do not apply to the facts of the present case. Whereas the Family Court has placed reliance on ***Boomi & Anr. Vs. Munirathnam reported as (2005) 1 DMC 636***, which has correctly portrayed the current picture.

10. No grounds are made out in the present appeal and the same is accordingly dismissed. All pending applications are also disposed of.

11. Needless to say it will be open to the appellant to lead such evidence as may be permissible in accordance with law with regard to the ground sought to be urged before us.

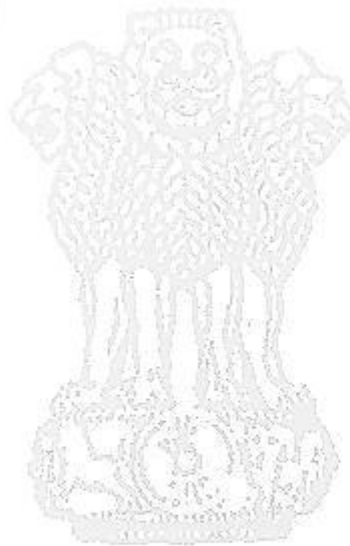
**G.S.SISTANI, J**

**JYOTI SINGH, J**

**APRIL 02, 2019**

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HIGH COURT OF DELHI



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