

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

Date of Order: January 08, 2019

+ **CRL.M.C. 6637/2018 & CRL.M.A. 50757/2018**

VIJAY KUMAR

.....Petitioner

Through: Ms. Shalini Sharma, Advocate

Versus

RENU & ANR.

.....Respondents

Through: Ms. Namita Roy & Mr. Amit,
Advocates

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

1. Impugned order of 7th December, 2018 directs DNA testing to ascertain paternity of the minor child, whose right to claim maintenance is disputed by petitioner on the ground that he is not the natural father of the child in question. Trial court has relied upon Supreme Court's decision in *Nandlal Wasudeo Badwaik vs. Lata Nandlal Badwaik & Ors.* (2014) 2 SCC 576 for allowing DNA testing for paternity of the child.

2. The challenge to impugned order by petitioner's counsel is on the ground that DNA testing is not to be routinely allowed. Petitioner's counsel submits that petitioner disputes that he was

married with the first respondent. It is submitted that there is no proof on record that the child in question was born out of the marriage of petitioner with first respondent. So, quashing of the impugned order is sought while relying upon Supreme Court's decision in *Nandlal Wasudeo Badwaik (Supra)*.

3. Upon hearing and on perusal of impugned order and decision in *Nandlal Wasudeo Badwaik (Supra)*, I find that Supreme Court in *Nandlal Wasudeo Badwaik (Supra)* has clarified that if the issue of paternity arises before the matrimonial court, then the said court is competent to pass appropriate orders. Supreme Court in *Nandlal Wasudeo Badwaik (Supra)* has reiterated that DNA is an accurate test. In the instant case, the occasion to pass the impugned order had arisen while considering application under Section 125 Cr.P.C., which requires that maintenance has to be paid even to an illegitimate minor child.

4. In such a situation, conclusive proof of marriage cannot be made the basis to repel the impugned order, which directs petitioner and the minor child to be subjected DNA test. In the considered opinion of this Court, impugned order does not suffer from any illegality or infirmity.

5. This petition and application are accordingly dismissed while refraining to comment on the merits of the case, lest it may prejudice either side before the trial court.

(SUNIL GAUR)
JUDGE

JANUARY 08, 2019

v/r

