

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 82 of 2018

1. Sushma Verma, W/o. Balram Kumar Verma, Aged About 30 Years, R/o. Village Bija, at Present Village Padmi, Tehsil Bemetara District Bemetara Chhattisgarh.
2. Ku. Astha Verma, Minor through Mother Sushma Verma, W/o. Balram Kumar Verma, Aged About 08 Years, R/o. Village Bija, at present Village Padmi, Tehsil Bemetara, District Bemetara Chhattisgarh.

---- Petitioners

Versus

Balram Kumar Verma @ Adhar Verma, Aged about 32 years, Profession Service, Shiksha Karmi, Village Bija Tehsil Saja, District Bemetara Chhattisgarh.

-----Respondent

For Petitioners	: Mr. Sunil Otwani, Advocate
For Respondent	: Mr. Goutam Khetrapal, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

06/02/2020

1. This petition has been brought under Article 227 of the Constitution of India being aggrieved by the order dated 21.11.2017, passed by the learned Family Court, Bemetara in Case No.151/2013, allowing the application filed by the respondent and permitted DNA test for the purpose of determining the paternity of the petitioner No.2.
2. Learned counsel for the petitioners submits that the petitioner No.1 got married to the respondent on 30.04.2005 and during continuity of this wedlock, petitioner No.2 was born on 05.06.2006. Application has been filed by the petitioners under

Section 125 of Cr.P.C. praying for grant of maintenance in which the respondent has clearly made a statement of denial that the petitioner No.2 is not his daughter. During the pendency of the proceeding under Section 125 of Cr.P.C., the respondent filed an application making prayer for conducting DNA test to determine the paternity of the petitioner No.2. The application was contested by the petitioners, however, the impugned order has been passed in which the application has been allowed.

3. It is submitted that the respondent has made contradictory statements. In the proceeding under Section 12 of the Guardian and Wards Act, before the Family Court, Bemetara, registered as M.J.C. No.4/2011, the respondent had not disputed that the petitioner No.2 was not his child. The learned Family Court passed the order in favour of the petitioner No.1 granting her custody of her daughter. This order was challenged before the High Court in FAM No.9/2014, which has been decided on 08.11.2017. Thereafter, the respondent has changed his stand.
4. Referring the judgment of Supreme Court in case of ***Dipanwita Roy Vs. Ronobroto Roy***, reported in **2015 (1) SCC 365**, ***Kamti Devi (Smt.) & Another. Vs. Poshi Ram***, reported in **(2001) 5 SCC 311**, in ***Bhabani Prasad Jena Vs. Convenor Secretary, Orissa State Commission for Women & Anr.***, reported in **AIR 2010 SC 2851** and the order passed by this Court in ***Vidya Verma Vs. Shankar Verma***, passed in **W.P.(227) 756 of 2018** dated **23.10.2018**, it is submitted that as there is already a

provision of law to prove legitimacy or illegitimacy of a child by bringing evidence and Section 112 of Evidence Act also creates presumption in this respect that child born in continuity of marriage shall be regarded as born out of wedlock and that the prestige of petitioner No.2 is on stake, therefore, the order so passed by the Family Court is liable to be set-aside.

5. Counsel for the respondent submits that the proceeding in the case is at primary stage and the evidence of the witness are yet to be recorded. Reference has been made to the order of this Court in case of ***Shyamal Mallik Vs. Mamta Das***, passed in ***W.P. (227) 837 of 2019 dated 19.12.2019***, it is submitted that for the present the respondent agrees to concede to the prayer made by the petitioners for setting aside the impugned order. However, it is prayed that liberty be granted to the respondent for filing such application for DNA examination to determine the paternity of petitioner No.2 at a later stage of the proceeding.
6. In reply, it is submitted by the counsel for the petitioners that because of this application filed by the respondent, the position of the petitioner No.2 has become very precarious and whatsoever may be the result of DNA test that shall be subject to challenge. The petitioner No.2 shall for the whole life suffer from stigma and affliction. The counsel for the petitioners makes a statement at Bar that the petitioner No.2 now relinquishes her claim in the proceeding under Section 125 of Cr.P.C., before the learned trial Court, therefore, on this basis that petitioner No.2 has

relinquished her claim for maintenance in the proceeding under Section 125 of Cr.P.C. and that she will not make any claim in future from the respondent, therefore, on this basis, it is prayed that the impugned order be set-aside. This is statement at Bar made by the counsel for the petitioners.

7. I have heard the learned counsel for the parties and perused the documents placed on record.
8. On the basis of the statement at Bar made by the counsel for the petitioners, the issue involved in this petition with respect to the petitioner No.2 regarding question of her paternity, which has been raised by the respondent side no longer needs to be examined. Therefore, the question of determining her paternity no longer remain relevant for the remaining proceeding, which is pending. Hence on account of this development and according to the discussions that has been made hereinabove, I am of this opinion that because of the non-relevance and non-requirement of procedure of DNA test to be conducted for determination of paternity of the petitioner No.2, impugned order is not required to be continued. Hence for this reason, this petition is disposed off. The impugned order of the Court below is set-aside.

Sd/-
(Rajendra Chandra Singh Samant)
Judge