

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP(227) No. 65 of 2019

Smt. Madhulata Tandon W/o Raju Vijay Tandon Aged About 34 Years
R/o House No. 26, Ward No. 28, Forest Department Colony, Near
Dayanand Public School, Kosabadi, Korba, District Korba Chhattisgarh.
(Defendant)

---- Petitioner

Versus

Raju Vijay Tandon S/o Duberam Tandon Aged About 40 Years Caste -
Satnami, R/o Village Kotmisonar, Tahsil - Akaltara, District Janjgir
Champa Chhattisgarh. (Plaintiff).

---- Respondent

For Petitioner	: Mr. Samsun Samual Masih, Advocate.
For Respondent	: Mr. R.V. Rajwade, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

24-02-2020

1. This petition has been brought challenging the order dated 30.10.2018 of the Family Court Janjgir-Champa, by which an application filed praying for conducting DNA test of the child of Ruteshwari Nishad @ Rutesh, was rejected by the Family Court. It is submitted that the respondent is the husband of the petitioner who has filed a petition under Section 13 of the Hindu Marriage Act which is registered as Civil Suit No.206-A of 2018.
2. The petitioner is contesting the divorce petition and she has alleged in her reply that the respondent is living in adultery with a woman named Ruteshwari Nishad @ Rutesh and also having a child from her, therefore, to establish the case against the respondent the petitioner for the purpose of bringing proof made a prayer for conducting DNA examination of the paternity of the child of Ruteshwari Nishad @ Rutesh. By dismissal of the application of the petitioner, she has been

deprived of the valuable right of the defence and no proper reason has been assigned for dismissing the application of the petitioner. Learned counsel placed reliance on the judgment of this Court in the case of **Smt. Rameshwari Bai and Others vs. Ishwar Lal Sahu** reported in **2017(4)C.G.L.J. 258**, wherein this Court has ordered that when the question of paternity of any child is present in the case claiming maintenance, then looking to the need the permission should be granted for conducting DNA test and therefore, it is a case where there is such need. It is submitted that it is similarly held in the case of **Sunder Lal vs. Sarik Ahmad** in **Criminal Revision No. 564 of 2011** dated 9.12.2016, wherein a child of nine months was claiming maintenance from his father whose paternity was denied. This Court held in the said order that an opportunity should be given to the child claiming maintenance to establish his paternity. Hence, the impugned order is liable to be set aside.

3. Learned counsel for the respondent opposes the petition and submits that in this particular case the paternity of the child which has been disputed and the petitioner wants to determine the same by conducting DNA test, is not a party in the suit and neither he has any claim against the petitioner. Therefore, the prayer made by the petitioner's side is totally misconceived. The petitioner may have other modes of bringing evidence to show that the respondent is continuing with some illicit relation for that the child cannot be bothered to submit to such a proceeding. Hence, the petition is devoid of any substance which may be dismissed.
4. Heard counsel for both the parties and perused the documents present on record.

5. In the case of **Dipanwita Roy vs. Ronobroto Roy** reported in **(2015) 1 SCC 365**, the Supreme Court has held that in case where the issue of legitimacy is involved then the DNA test can be permitted after balancing the interest of the parties. Further, in the case of **Goutam Kundu vs. State of West Bengal** reported in **AIR 1993 SC 2295**, it has been held that the Courts in India cannot order blood test as a matter of course and such prayers cannot be granted to have such roving inquiry.
6. In this particular case, firstly, the right of the child whose test the petitioner wants to be conducted is at stake and he is not the party in the case to represent and oppose the prayer made by the petitioner, therefore, on this ground alone, the application has no merit. Secondly, there is no issue of any legitimacy involved in the case of the petitioner and the respondent. The interest of the petitioner in this case is only to this extent that she wants to prove that the respondent is either having some other wife or he is living in illicit relationship with some other woman. For this purpose, a child cannot be subjected to such test who has no connection with the dispute which is between the petitioner and the respondent. Therefore, I do not find any error committed in the order passed by the Family Court.
7. Accordingly, this revision petition is dismissed at motion stage.

Sd/-
(Rajendra Chandra Singh Samant)
Judge