

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 12 of 2018

Ramnarayan Raje, S/o. Late Bhaskar Prasad Raje, aged about 47 years, (now aged about 63 years), R/o. Sahdevnagar, Rajnandgaon, Tahsil and District Rajnandgaon, Chhattisgarh.

---- Petitioner

Versus

Vikram Singh, S/o. not known to the petitioner, aged about 26 years, Resident of C/o. Smt. Shanti Bai, Sikola Basti, Durg, Tahsil and District Durg, Chhattisgarh.

---- Respondents

For Petitioner	: Mr. Goutam Khetrapal, Advocate
For State/Respondents	: Mr. Ratnesh Kumar Agrawal, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

29/06/2021

1. This petition has been brought under Article 227 of the Constitution of India, seeking indulgence of this Court to set-aside the impugned order dated 13.12.2017, passed by the Additional Principal Judge, Family Court, Durg in Civil Suit No. 160-A/2010, by which the application for DNA examination to determine the paternity of the respondent has been dismissed.
2. Petitioner has filed a civil suit against the respondent seeking declaration that respondent is not the son of the petitioner/plaintiff

along with other reliefs. The suit has been contested by the respondent and it is claimed that he is the son of the petitioner/plaintiff. During the pendency of the civil suit, the petitioner moved an application on 16.11.2016 praying for DNA examination to determine the paternity of the respondent, which was opposed by respondent. The learned Family Court has dismissed the application on this ground that the respondent can not be compelled to submit to DNA examination.

3. It is submitted by the learned counsel for the petitioner, that looking to the relief that has been claimed by the petitioner/plaintiff for declaration that respondent is not his son, there is requirement of proof for which, DNA test is necessary. It is clearly pleaded by the petitioner that birth of respondent is not the result of his cohabitation with the mother of the respondent. It is submitted that the learned Family Court has placed reliance on the judgment of Supreme Court in case of **Gautam Kundu Vs. State of West Bengal**, reported in **AIR 1993 SC 2295**. The views expressed by the Supreme Court in this case, is not a fortified view. It is submitted that in case of **Bhabani Prasad Jena Vs. Convenor Secretary, Orissa State Commission for Women & Anr.**, reported in **(2010) 8 SCC 633**, even though the parties had not consented the Court ordered for DNA test. In case of **Nandlal Wasudeo Badwaik Vs. Lata Nandlal Badwaik & Anr.**, in **Cr.A. No.24 of 2014** decided **06th of January, 2014**, it has been held that result of DNA test is considered as scientifically accurate. Section 112 of the Evidence Act only provides for presumption.

4. It is submitted that in case of **Smt. Rameshwari Bai & Ors. Vs. Ishwar Lal Sahu**, in **Cr.R. No. 601 of 2014**, decided on **05.07.2017**, this Court has after discussing the judgment of **Sharda Vs. Dharmpal**, reported in **(2003) 4 SCC 493**, **Gautam Kundu Vs. State of West Bengal** (supra) and the judgment of **Narayan Dutt Tiwari Vs. Rohit Shekhar & Another**, reported in **(2012) 12 SCC 554**, has held that the question of paternity can not be left in infinity and uncertainty and on the basis of the facts and circumstances present, DNA test should be permitted. Therefore, the petitioner has burden to discharge and regarding that there is no legal hurdle. The impugned order is unsustainable, which may be set-aside and the petitioner be granted relief.
5. Counsel for the respondent opposes the petition and the submission made in this respect. It is submitted that no order can be passed in routine. There is specific provision under Section 112 of the Evidence Act, according to which, on the presence of evidence presumption can be drawn to determine the paternity of the child. Therefore, the petitioner/plaintiff has ample opportunity to bring evidence to prove his point, that he had no access to his wife and thus he is not the biological father of the respondent. Placing reliance on the judgment of Supreme Court in case of **Goutam Kundu's** case (supra), it is submitted that the respondent has very clearly disagreed and denied to participate in the DNA examination of his paternity, therefore, the learned Family Court has not committed any error. The impugned order is sustainable, which needs no interference.

6. In reply, it is submitted by the counsel for the petitioner that the petitioner/plaintiff has the burden to prove and it is already pleaded by him that he is not the biological father of respondent. He has right to ask for DNA examination, which may be facilitated with the permission of the Court.
7. I have heard the learned counsel for the parties and perused the documents placed on record.
8. In case of **Nandlal Wasudeo Badwaik (supra)**, the Supreme Court has held in paragraph -22, which is as under :-

“22. In our view, when there is apparent conflict between the right to privacy of a person not to submit himself forcibly to medical examination and duty of the court to reach the truth, the court must exercise its discretion only after balancing the interests of the parties and on due consideration whether for a just decision in the matter, DNA test is eminently needed. DNA test in a matter relating to paternity of a child should not be directed by the court as a matter of course or in a routine manner, whenever such a request is made. The court has to consider diverse aspects including presumption under Section 112 of the Evidence Act; pros and cons of such order and the test of “eminent need” whether it is not possible for the court to reach the truth without use of such test.” Miss Anagha S. Desai appearing on behalf of the appellant submits that this Court twice ordered for DNA test and, hence, the question as to whether this was a fit case in which DNA profiling should or should not have been ordered is academic. We find substance in the submission of Ms. Desai. Fact of the matter is that this Court not only once, but twice gave directions for DNA

test. The respondents, in fact, had not opposed the prayer of DNA test when such a prayer was being considered. It is only after the reports of the DNA test had been received, which was adverse to the respondents, that they are challenging it on the ground that such a test ought not to have been directed. We cannot go into the validity of the orders passed by a coordinate Bench of this Court at this stage. It has attained finality. Hence, we do not find any merit in the submission of the learned counsel for the respondents. As regards the decision of this Court in the cases of Goutam Kundu (*supra*), Banarsi Dass (*supra*) and Bhabani Prasad Jena (*supra*), the same have no bearing in the facts and circumstances of the case. In all these cases, the court was considering as to whether facts of those cases justify passing of an order for DNA test. When the order for DNA test has already been passed, at this stage, we are not concerned with this issue and we have to proceed on an assumption that a valid direction for DNA test was given.”

9. The Supreme Court in case of **Dipanwita Roy Vs. Ronobroto Roy**, reported in **(2015) 1 SCC 365** has reiterated the principles laid down in case of **Bhabani Prasad Jena (*supra*)**, which is reproduced as under :-

“23. There is no conflict in the two decisions of this court, namely, Goutam Kundu Vs. State of West Bengal (1993) 3 SCC 418 and Sharda Vs. Dharmpal (2003) 4 SCC 493. 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 the court must carefully examine as to what would be the consequence of ordering the blood test. In Sharda [2013 (4) SCC 493], 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 prime facie case and there is sufficient material before the court. Obviously, therefore, any order for DNA test can be given by the court only if a strong prima facie case is made out for such a course.”

10. In case of **Smt. Rameshwari Bai (supra)** this Court has held that depending on facts and circumstances of the case, it would be permissible for a Court to direct the holding of a DNA examination to determine the veracity of the allegation if it is eminently needed.
11. Taking into consideration, the view that has been settled in the aforementioned judgments by the Supreme Court, the necessity of DNA examination in this case has to be considered.
12. On perusal of the plaint of the petitioner, it is apparent that the petitioner has pleaded that the mother of the respondent though is married wife is living separate from 10.12.1983, subsequent to that he never had access to her or physical relation with her, therefore, he is not the biological father of the respondent. This pleading of the petitioner/plaintiff has been contested by the respondent side. Prima-facie there is dispute regarding paternity of the respondent. It is not a case for grant of a maintenance or for any other benefits in the background of any matrimonial dispute. It is civil suit filed praying for declaration of the status of the respondent, therefore,

following the view of the Supreme Court in case of **Dipanwita Roy (supra)** and also that the judgment in **Goutam Kundu (supra)** can be distinguished in such case, where DNA examination appears to be a necessity. Hence for this reason, this Court is of the view that the learned Family Court has committed an error in rejecting the application of the petitioner.

13. Accordingly, the petition is allowed. The impugned order dated 13.12.2017 is set-aside. The application filed by the petitioner praying for DNA examination to determine the paternity of the respondent is allowed. The learned Family Court is directed to proceed with the case after complying with the orders in this petition.

Sd/-
(Rajendra Chandra Singh Samant)
Judge