

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No.131 of 2021

- Smt. Vidya Verma D/o Arun Verma Aged About 24 Years Wife Of Shankar Verma, Resident Of Village And Post Jhaal, Police Station Bemetara, Tehsil And District Bemetara, Chhattisgarh

---- Petitioner

Versus

- Shankar S/o Sheetal Verma Aged About 25 Years Resident Of Village And Post Jiya, Police Station Bemetara, Tehsil And District Bemetara, Chhattisgarh

---- Respondent

For Petitioner : Mr. Umakant Singh Chandel, Advocate.

For respondent : Mr. Anish Tiwari, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

09/07/2021

1. This petition has been brought seeking indulgence of this Court to set aside the order dated 29.01.2021, passed by the learned Family Court, Bemetara, C.G.
2. The respondent has filed Civil Suit Class- A/63/2019, praying for decree of divorce on the ground that the petitioner/plaintiff has given birth to a child just after 05 months from the date of marriage. Therefore, the paternity of the child is denied by the respondent and on this basis, decree of divorce is prayed for. The respondent then filed an application praying for D.N.A. examination to determine the paternity of the child. This application was opposed by the petitioner/defendant. The impugned order has been passed by which the permission for D.N.A.

examination has been granted.

3. It is submitted by the learned counsel for the petitioner that the impugned order is arbitrary, illegal and against the settled principles of law. In a divorce petition, the legitimacy of child is not an issue. The consequence to any such D.N.A. examination would be that of branding a child as bastard and the mother as an unchaste woman. The respondent has opportunity to bring evidence so that the Court may consider for drawing presumption under Section 112 of the Indian Evidence Act. It is also submitted that the intention of the respondent is not in the interest of child, on the contrary his intention is to humiliate the petitioner.
4. Reliance has been placed on the judgment of the Supreme Court in Dipanwita Roy Vs. Ronobroto Roy reported in (2015) 1 SCC 365, in which it is held that if the direction of the Court hold that D.N.A. examination, it should be avoided, it should be avoided for the reason that the legitimacy of the child should not be put to doubt. Therefore, the impugned order is not sustainable, which may be quashed.
5. The petitioner has also relied on the judgment of Co-ordinate Bench of this High Court in W.P.(227) No.756 of 2018 vide order dated 23.10.2018, in which the Single Bench has held that the respondent/husband is seeking D.N.A. test, which is not in the interest of this child but in his own interest to establish that the petitioner/wife lived in adultery and therefore, the direction of D.N.A. test was unjustified.
6. Learned counsel for the respondent opposes the petition and the submissions. It is submitted that the facts of the case are very clear that marriage of the petitioner with respondent was performed on

22.04.2016. The 'gauna' ceremony took place on 28.05.2016, the respondent had access to his wife after 28.05.2016 and he had no previous physical relation with her. The child of the petitioner was born just after 05 months from the date of marriage, therefore, clearly no presumption can be drawn in favour of the legitimacy of the child under Section 112 of the Indian Evidence Act. It is submitted that in the W.P. (227) No.756 of 2018, the Single Bench has held against the D.N.A. test for the reason that the petition was filed under Section 9 of Hindu Marriage Act for restitution for conjugal rights, whereas this petition is for divorce. Therefore, the view in that case is not applicable to the present case.

7. Reliance has been placed on the judgment of Supreme Court in Nandlal Wasudeo Badwaik Vs. Lata Nandlal Badwaik & Anr. reported in (2014) 2 SCC 576, in which it is held that the scientific proof provided by the D.N.A. test report is acceptable.
8. It is also submitted that in Dipanwita Roy (Supra), the Supreme Court has held that in special cases, the permission for D.N.A. examination can be given, hence, the present petition is liable to be dismissed.
9. Considered on the submissions. It is clearly a case in which the respondent is claiming decree of divorce on the ground that his wife had been in adulterous relationship with someone. It has been held in the case of Dipanwita Roy in paragraph 16 :-

“10.It is borne from the decisions rendered by this Court in Bhabani Prasad Jena (supra), and Nandlal Wasudeo Badwaik (supra), that depending on the 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(s), which constitute one of the grounds, on which the concerned party would

either succeed or lose. There can be no dispute, that if the direction to hold such a test can be avoided, it should be so avoided. The reason, as already recorded in various judgments by this Court, is that the legitimacy of a child should not be put to peril.”

10. Section 112 provides for presumption of legitimacy of a child, who is born during the continuation of marriage. There are no other documents filed so as to consider as to what is the written statement of the petitioner submitted and in what manner she has contested the case against her. However, it appears that the divorce petition is being contested by the petitioner side. Hence, the view of the Supreme Court in the Dianwita Roy case in paragraph 17:-

“17. The question that has to be answered in this case is in respect of the alleged infidelity of the appellant-wife. The respondent husband has made clear and categorical assertions in the petition filed by him under [Section 13](#) of the Hindu Marriage Act, alleging infidelity. He has gone to the extent of naming the person who was the father of the male child born to the appellant-wife. It is in the process of substantiating his allegation of infidelity, that the respondent-husband had made an application before the Family Court for conducting a DNA test, which would establish whether or not, he had fathered the male child born to the appellant-wife. The respondent feels that it is only possible for him to substantiate the allegations levelled by him (of the appellant-wife's infidelity) through a DNA test. We agree with him. In our view, but for the DNA test, it would be impossible for the respondent-husband to establish and confirm the assertions made in the pleadings. We are therefore satisfied, that the direction issued by the High Court, as has been extracted hereinabove, was fully justified. DNA testing is the most legitimate and scientifically perfect means, which the husband could use, to establish his assertion of infidelity. This should simultaneously be taken as the most authentic, rightful and correct means also with the wife, for her to rebut

the assertions made by the respondent-husband, and to establish that she had not been unfaithful, adulterous or disloyal. If the appellant-wife is right, she shall be proved to be so.”

11. Is also required to be taken into consideration that at this stage, this Court cannot draw any conclusion, whether such a test can be avoided in this case. Therefore, it can be said that although there is an order for D.N.A. test by the trial Court, the petitioner has option for not participating in the D.N.A. test, hence, for these reasons, I do not feel inclined to interfere with the impugned order. Therefore, the petition is dismissed.

12. Accordingly, the petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge