

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.R. No.385 of 2019

1. Smt. Preeti Miraniya W/o Sanjay Miraniya Aged About 27 Years
2. Ku. Shrijanamya Miraniya D/o Sanjay Miraniya Minor Aged About 4 Months, Represented Through Mother Smt. Preeti Miraniya
(both are r/o M.I.G. 06, B.D.A. Colony, Nootan Chowk, Sarkanda, Bilaspur, Tahsil And District- Bilaspur, Chhattisgarh)

---- Applicant

Versus

- Sanjay Miraniya S/o Shri Bhimsen Miraniya Aged About 34 Years R/o C/o Manoj Kumar Miraniya Advocate, Near Gouri Shankar Mandir, Raigarh, Official Address- Assistant Professor, Govt. Kirodimal Technical College, Raigarh, District- Raigarh, Chhattisgarh

---- Non-applicants

For Applicants	:	Ms. Nupoor Sonkar on behalf of Mr. Goutam Khetrapal, Advocate.
For Non-applicant	:	Mr. Rishi Rahul Soni, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

09-02-2021

Heard.

1. This revision petition has been brought being aggrieved by the order dated 28.08.2018 passed by the learned Additional Principal Judge, Family Court, Bilaspur, C.G. in M.JC. No.394/2017.
2. The petitioners have filed an application under Section 125 of Cr.P.C. which is pending before the Family Court, Bilaspur. The respondent/non-applicant filed an application praying to conduct D.N.A. test for determining the parentage of applicant No.2. On the date of hearing i.e.

28.08.2018, it was submitted on behalf of applicants that they do not want to file any reply and they also do not have any objection on the application of the non-applicant, on that basis the application was allowed and order was passed for conducting D.N.A. Test. The applicants have not submitted to the D.N.A. test, which is yet to be conducted and instead of that, this revision petition has been filed challenging the legality, correctness and propriety of that order passed.

3. It is submitted by the learned counsel for the applicant that on 28.08.2018, the applicants were not assisted by any amicus curiae, therefore, without giving consideration to the consequences of such D.N.A. examination, the statement of no objection was made by her. The applicant No.1 has now realized that the effect of the D.N.A. test may be of branding a child as a bastard and mother as an unchaste woman, therefore, the applicants cannot be compelled to submit to D.N.A. Test.
4. Relying on the judgment of Supreme Court in the **Dipanwita Roy Vs. Ronobroto Roy** reported in (2015) 1 SCC 365, it is submitted that it was held by the Supreme Court that the wife is at liberty to comply with or disregard the order passed by the Court requiring the holding of D.N.A. test.
5. Reliance has also been placed on the judgment of Supreme Court in **Bhabani Prasad Jena Vs. Convenor Secretary, Orissa State Commission for Women and Another** reported in (2010) 8 SCC 633 and on the judgment of the case of **Goutam Kundu Vs. State of West Bengal And Another** reported in (1993) 3 SCC 418.
6. Learned counsel for the non-applicant has opposed the submissions

made by the applicant side and submits that the application for determining the parentage of the applicant No.2 was allowed unopposed, therefore, there is no illegality in the impugned order. The respondent also placed reliance on the judgment of Supreme Court in Dipanwita Roy (Supra), in which the Supreme Court has held by referring to the judgment in Bhabani Prasad Jena (supra), that in case where paternity of a child is an issue before the Court than the conduct of D.N.A. test would be essential. It is the allegation of the respondent/non-applicant that the applicant No.1 had been living in adultery, hence, D.N.A. Test for determining the parentage of the applicant No.2 in this case is very much essential. The applicant No.1 has already given consent, which cannot be withdrawn by her. There is no illegality, impropriety or incorrectness in the order passed by the Court below. Therefore, it is prayed that this Revision petition may be dismissed.

7. The scope of a Revisional Court is very limited to the extent of determining the legality, propriety and correctness of the order passed. In the present case, the application filed by the respondent was allowed unopposed by the applicant side. Therefore, there is nothing to make out that the impugned order is illegal, improper or incorrect in any sense. The concern of the applicants with respect to the consequences of the D.N.A. test have come up at a subsequent stage and it is because of that the applicants now do not want to submit to D.N.A. Test. In the case of Dipanwita Roy (Supra) the Supreme Court has made observation in paragraph 18 as follows:-

“18. We would, however, while upholding the order passed by the High Court, consider it just and appropriate to record a caveat, giving the appellant-wife

liberty to comply with or disregard the order passed by the High Court, requiring the holding of the DNA test. In case, she accepts the direction issued by the High Court, the DNA test will determine conclusively the veracity of accusation levelled by the respondent-husband against her. In case, she declines to comply with the direction issued by the High Court, the allegation would be determined by the concerned Court, by drawing a presumption of the nature contemplated in [Section 114](#) of the Indian Evidence Act, especially, in terms of illustration (h) thereof. [Section 114](#) as also illustration (h), referred to above, are being extracted hereunder:

“114. Court may presume existence of certain facts – The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustration (h) - That if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him.”

This course has been adopted to preserve the right of individual privacy to the extent possible. Of course, without sacrificing the cause of justice. By adopting the above course, the issue of infidelity alone would be determined, without expressly disturbing the presumption contemplated under [Section 112](#) of the Indian Evidence Act. Even though, as already stated above, undoubtedly the issue of legitimacy would also be incidentally involved.”

8. Therefore, it has been expressed by the Supreme Court that even after the passing of an order for conducting D.N.A. Test, one of the parties which is the applicant in this case, has option either to submit or to

decline the same. Therefore, in case, the applicants refuse to submit in D.N.A. Test, they cannot be compelled to do so, of course there shall be consequences of such non submission.

9. Consent has been defined in the Section 13 of the Contract Act that “Two or more persons are said to consent when they agree upon the same thing in the same sense.” Any consent given can be revoked at any later stage and it is same case present her. Hence, on the basis of the discussions made hereinabove, it is held that there is no ground present under Section 397 of Cr.P.C. to entertain this revision for setting aside the impugned order. Hence, the petition is dismissed, however, according to the observations made hereinbefore, the applicants are at liberty to exercise any option and in case of their refusal, there shall be no compulsion on them in any manner.

10. Accordingly, the petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge