

**109 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR-75-2017 (O&M)

Date of decision: 18.05.2022

Gurtej Singh

...Petitioner

Versus

Paramjit Kaur and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Namit Gautam, Advocate for the petitioner

ANIL KSHETARPAL, J (Oral)

The trial court has allowed an application filed for the DNA test. The plaintiff has been directed to give the sample for the DNA test. The correctness of the aforesaid order has been challenged before this court. The petitioner disputes that Paramjit Kaur is not his sister. On an application of Paramjit Kaur the aforesaid direction of carrying out the DNA test has been issued. Such a matter has been examined in detail in **Bibly Monica vs. Vir Vikram Kumar @ Jason Victor Steele and another, 2020 (2) PLR 130.** The court, after examining the various judgments passed by the Hon'ble Supreme Court held as under:-

“ 12. The question , whether DNA test should be permitted has been drawing attention of the Courts for quite sometime . In the case of Goutam Kundu Vs. State of West Bengal and another , (1993) 3 SCC 418 , the Court was examining the conduct of blood test in the context of presumptions under Section 112 of the Indian Evidence Act . 1872. The Supreme Court while concluding , has observed as under :

*" 26. From the above discussion it emerges
(1) that courts in India cannot arder blood test as matter of course,
(2) wherever applications are made for such prayers . in order to have roving inquiry , the prayer for blood test cannot be entertained.
(3) There must be a strong prima facie case in that*

the husband must establish non - access in order to dispel the presumption arising under Section 112 of the Evidence Act.

(4) The court must carefully examine as to what would be the consequence of ordering the blood test ; whether it will have the effect of branding a child as a bastard and the mother as an unchaste woman.

(5) No one can be compelled to give sample of blood for analysis."

13 . Thereafter , once again this question was came up for consideration before a Three Judge Bench of the Supreme Court in the case of Sharda Vs. Dharmpal , (2003) 4 SCC 493. In the aforesaid case , matrimonial Court had permitted the DNA test . Hon'ble the Supreme Court in para 39 , observed as under :

" 39. Goutam Kundu is , therefore , not an authority for the proposition that under no circumstances the Court can direct that blood tests be conducted . It , having regard to the future of the child , has , of course , sounded a note of caution as regards mechanical passing of such order . In some other jurisdictions , it has been held that such directions should ordinarily be made if it is in the interest of the child . "

14. Thereafter , once again , this question was raised in the case of Bhabani Prasad Jena Vs. Convenor Secretary , Orissa State Commission for Women and another , (2010) 8. SCC 633. Again , the Supreme Court examined the question in the context of Section 112 of the Indian Evidence Act , 1872. Once again , the matter was considered in the case of Nand Lal Wasudeo Badwaik Vs. Lata Nand Lal Badwaik , (2014) 2 SCC 576.

15. There is another judgment of Hon'ble the Supreme Court in the case of Dipan Wita Rov Vs. Ronobroto Roy , (2015) 1 SCC 365 , In this judgment , the Supreme Court has permitted the DNA test . There is another famous judgment of Delhi High Court in the case of Rohit Shekhar Vs. Shri Narayan Dutt Tiwari and another , 2011 (4) RCR (Civil) 459.

16. After careful reading of the aforesaid judgments , this Court has come to the conclusion that as rightly observed by the Supreme Court in the case of Goutam Kundu (Supra) . DNA profiling should not be allowed in routine and the Court must evaluate as to whether it will have the effect of branding a child as a bastard and a mother as an unchaste woman. "

Similarly, in CR 4756-2018 decided on 09.05.2022
(Rajwinder Kaur and another vs. Charanjit Kaur and others) a
similar view has been taken.

In view thereof, no ground to interfere is made out.

Hence, dismissed.

All the pending miscellaneous applications, if any, are also
disposed of.

18.05.2022

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE