

CRM-M-50033 of 2021

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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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**CRM-M-50033 of 2021 (O&M)
Date of decision:27.01.2022**

Amarjit Singh

... Petitioner

Vs.

Arshpreet Kaur, minor daughter of Amarjit
Singh under the guardianship of
Pardeep Kaur (mother) wife of Gurcharan Singh ... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Tribhawan Singla, Advocate
for the petitioner.

SUVIR SEHGAL J.

Heard through video conferencing.

CRM No.2433 of 2021

Application is allowed, as prayed for.

Agreement/compromise dated 20.04.2019 is taken on record as
Annexure P-4, in compliance of order dated 30.11.2021 passed by this
Court.

CRM-M-50033 of 2021

Instant petition has been filed under Section 482 of the Code of
Criminal Procedure, 1973, (for short, hereinafter referred to as “the Code”),
for setting aside of the order dated 27.10.2021 (Annexure P-3) passed by
the learned Principal Judge, Family Court, Barnala, in MNT/144/2019

registered on 28.08.2019 titled as 'Arshpreet Kaur Vs. Amarjit Singh', whereby, the petitioner has been directed to undergo DNA test for determining the paternity of the respondent-minor.

Facts, in succinct, leading to filing of the instant petition are that Arshpreet Kaur, minor daughter of the petitioner, has filed an application under Section 125 of the Code claiming maintenance from the petitioner, wherein, it has been pleaded that the petitioner had an adulterous relationship with her mother, who was also married and the respondent was born out of the relationship. It has been further pleaded that the petitioner had entered into an agreement (Annexure P-4) with the mother of the respondent, wherein, the petitioner had admitted the relationship with her mother and agreed to pay Rs.7.00 lacs for the welfare of the minor, but he failed to make the payment.

In his reply, the petitioner has denied the relationship with the mother of the respondent and denied the paternity besides submitting that the agreement (Annexure P-4) has been entered into under pressure from police. An application (Annexure P-1) has been filed by the respondent for directing the petitioner to undergo a DNA test to determine her paternity, which after contest, has been allowed by the trial Court, vide impugned order, Annexure P-3.

Counsel for the petitioner has been heard.

It is evident from the agreement/compromise (Annexure P-4) that the petitioner has admitted his relationship with the mother of the respondent and also the fact that the minor is born out of this relationship. It

has been further stated in agreement that the petitioner has broken up with the mother of the respondent and consented to pay Rs.7.00 lac to her for taking care of the minor. Respondent-minor invoked Section 125 of the Code, when the petitioner did not honour his commitment and was compelled to file an application (Annexure P-1) when the petitioner denied the paternity.

Argument raised by the counsel that the petitioner cannot be compelled to undergo the DNA test does not cut any ice. It has been observed by the Hon'ble Supreme Court in **Sharda Vs. Dharampal 2003(4) SCC 493** as under:-

*“40. In **Goutam Kundu v. State of West Bengal and Another, (1993) 3 SCC 418**, this Court while dealing with a question about the paternity of a child noticed the provision of **Section 112** of the Evidence Act and held that the presumption arising thereunder can only be displaced by a strong preponderance of evidence and not by a mere balance of probabilities. It was held:*

"26. From the above discussion it emerges-

- (1) that courts in India cannot order blood test as a matter of course;*
- (2) wherever applications are made for such prayers in order to having 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".

41. Goutam Kundu (supra) 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 regard 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."

In the present case, application has been filed by a minor child, who is willing to subject herself to the DNA test and in the background of the compromise, Annexure P-4, the Family Court is justified in accepting the prayer made as it is for the benefit of the child. It has further come on the record that the petitioner is himself a police officer and the stand taken by him that he was compelled to sign the agreement under pressure from the police authorities is of no help to him.

Finding no ground to interfere with the impugned order passed by the Family Court, the instant petition is dismissed with no order as to costs.

(SUVIR SEHGAL)
JUDGE

January 27, 2022
savita

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes