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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-3474-2023 (O&M)

Date of decision: June 02, 2023

Harvarinder Singh

....Petitioner

versus

Manvir Kaur

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Akshay Chadha, Advocate for the petitioner.

ARUN MONGA, J. (ORAL)

Petition herein *inter alia* is for setting aside the impugned order dated 13.02.2023 (Annexure P-6) passed by learned Principal Judge, Family Court, Ludhiana whereby in divorce petition instituted by husband, application (Annexure P-3) filed by petitioner-husband for conducting his DNA test and that of minor male child by directing the C.M.O., Ludhiana to constitute a Board of Doctors for taking blood samples of both petitioner as well as respondent, was declined.

2. Averments are that marriage of petitioner was solemnized with respondent on 12.10.2018 at Village Bhanboursa, Tehsil Malerkotla, District Sangrur as per Sikh rites and ceremonies. On 12.06.2019, respondent left for her parental house for about 17-18 days and came back on 29.06.2019. After a few days on coming back from her parental house, respondent-wife informed about her pregnancy to which petitioner-husband denied to accept as from 12.06.2019 to 29.06.2019, they were having no contact with each other. During conversation, respondent-wife disclosed/ admitted her extra-marital relationship with another person. Thereafter, respondent-wife again started her cruel behavior with petitioner and his family. On 04.03.2020, respondent-wife delivered a male child.

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2.1. Petitioner-husband filed a divorce petition before learned District Judge, Ludhiana. Petitioner also filed an application seeking permission to conduct his DNA test and that of his minor child by directing C.M.O., Ludhiana to constitute a Board of Doctors for taking blood samples of both petitioner as well as respondent.

2.2. Vide impugned order dated 13.02.2023 (Annexure P-6), learned Principal Judge, Family Court, Ludhiana dismissed the application filed by the petitioner.

3. Learned counsel for the petitioner-husband contends that petitioner-husband had no access to respondent-wife between 12.06.2019 to 29.06.2019 when she was away to her parental house and through a clinching piece of evidence, respondent-wife admitted her extra-marital relationship with another male person. He contends that in case DNA test is allowed, the above said controversy will come to rest. He also contends that petitioner even in countering the act of infidelity on the part of respondent-wife, he in his all honesty and *bonafide* is taking complete care of respondent and male child in respect of monthly expenses etc.

4. I have heard learned counsel for petitioner and perused the record.

5. Impugned order dated 13.02.2023 passed by learned Principal Judge, Family Court, Ludhiana, is premised, *inter alia*, on the following reasoning:

“4. *I have also perused the case law D. Velusamy versus D. Pathaiammal Special, Leave Petition (Criminal) Nos. 2273-2274/2010 and Nandlal Wasudeo, Badwalk versus Lata Nandlal Badwalk & another as relied upon by the learned counsel for the applicant. The facts of the said case are quite different from the facts of the case. In that case it was alleged that respondent was married to one Laxmion 25.06.1980 who was not made party to the proceedings. Therefore, the said authority is not relevant for the purpose of disposing of this application as the matter in issue in the said case was different. In the said citation relied by the counsel for respondent, it has been observed that DNA test is matter relating to paternity of Should not be directed by the court as a matter if such request is made. Further, in the citation Gautam Kundu versus State of West*

Bengal, 193 (2) RCR (criminal) 497 and in the citation Smt. Dukhtar Jahan Vs Mohammed Farooq (1987 (1) SCC 624), it was observed that in para 10 that the party who wants to dislodge the conclusiveness has the burden to show a negative, not merely that he did not have the opportunity to approach his wife but that she too did not have the opportunity of approaching him during the relevant time. Normally, the rule of evidence in other instances is that the burden is on the party who asserts the positive but in this instance the burden is cast on the party who pleads the negative. The raison d'etre is the legislative concern against legitimating a child. It is sublime public policy that children should not suffer social disability on account of laches or lapses of parents. It was further observed that result of genuine DNA is said to be scientifically accurate. But even that is not enough to escape from the conclusiveness of Section 112 of the Act e.g. if a husband and wife were living together during the time of conception but the DNA test revealed that the child was not born to the husband, the conclusiveness in law would remain un-rebuttable, This may look hard from the point of view of the husband who would be compelled to bear the fatherhood of a child of which he may be innocent. But even in such case the law leans in favour of the innocent child from being bastardized if his mother and her spouse were living together during the time of conception. The question regarding the degree of proof of non-access for rebutting the conclusiveness must be answered in the light of what is meant by access or non-access as delineated above. Further in this case citation it was observed in Para 9 that no. condition could be imposed to compel undergoing the DNA test of the male child. Therefore, it has been found that when the parties are living together in a matrimonial relationship, the burden is upon the husband to prove non access to him.

5. *In the instant case there is nothing in the application to mention that respondent had non access to Applicant/Petitioner. A mere suspicion of the applicant that the said child is of the paramour of his wife, cannot be a ground to compel the innocent child to undergo the DNA test. This is the dictum laid down by the Hon'ble Supreme Court of India in the citation No.2 Kanti Devi and another Vs Poshi Ram and Gautam Kundu versus State of West Bengal, 1993 (3) RCR(Criminal) 497. Therefore, in view of the above said facts and circumstances and the case law cited above, the instant application, is hereby dismissed. Now the case is posted for 21.03.2023 for evidence of the applicant."*

6. A perusal of above leaves no manner of doubt that there is no irregularity either in facts or in law, so as to exercise extraordinary revisional jurisdiction vested with this Court.

7. Contentions in the petition have been duly considered and rejected by Learned Court below by giving sound and convincing reasons in the impugned

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order, more particularly in para-5 extracted above. I am inclined to agree with the view thereon taken by learned Court below.

8. There is no room for interference in the aforesaid valid reasons recorded by learned Court below.

9. No material irregularity in law or procedure has been committed by learned Court below, so as to exercise extraordinary revisional jurisdiction herein.

10. Dismissed.

11. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

June 02, 2023

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No