

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CR No.4537 of 2023

Date of Decision: 10.08.2023

Devender Kumar

.....*Petitioner*

Versus

Priyanka and Anr.

.....*Respondents*

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH.

Present: Mr. Rahul Makkar, Advocate
for the petitioner.

GURBIR SINGH, J (ORAL)

1 Challenge in this revision petition is to impugned order dated 10.05.2023 passed by the learned Principal Judge, Family Court, Bhiwani Camp Court at Loharu, whereby application filed by the petitioner for issuance of directions to the respondents No.1 and 2 to give their blood samples for conducting DNA test of Neelux, minor daughter of respondent No.1 was dismissed.

2 Learned counsel for the petitioner submits that the marriage between the petitioner and respondent No.1 was solemnized on 28.11.2013 as per Hindu rites and ceremonies at village Damkaura, Tehsil Loharu District Bhiwani. The respondent No.1 refused to make any physical and sexual relationship with the petitioner. The petitioner started residing at his work place and stopped visiting his house at village Barwas. The respondent No.1 mostly remained at her paternal house at village Damkaura. In June, 2015 when he tried to make physical relationship with her, she refused to

allow him by saying that she was pregnant and thereafter she started fighting with the petitioner. Later on, she left the house of the petitioner. Thereafter, she gave birth to a baby namely Neelux-respondent No.2 on 20.09.2015, which was result of the adulterous and immoral relationship of respondent No.1. So, petitioner filed a divorce petition on the ground of cruelty. The respondent No.1 is not disclosing the name of the biological father of respondent No.2 and in this scenario only way to prove the adulterous relationships of respondent No.1, is to get the DNA test of petitioner and respondent No.2 conducted. The learned trial Court without any basis dismissed the application filed by the petitioner vide impugned order dated 10.05.2023 and the same is not in accordance with law.

3 I have heard the submissions made by learned counsel for the petitioner.

4 There is no dispute that respondent No.2 was born during the continuance of a valid marriage between petitioner and respondent No.1. As per provisions of Section 112 of the Indian Evidence Act, 1872 (for short 'the Act'), she is their legitimate child and it is a question of fact which is to be proved during the trial that the parties to the marriage had no access to each other at any time when she could have been begotten. In case 'Shik Fakruddin Vs. Shik Mohammed Hasan, AIR 2006 AP 48', it is held that DNA test cannot rebut the conclusive presumption envisaged under Section 112 of the Act. The parties cannot avoid the rigor of such conclusive presumption only by proving non-access which is a negative proof. So, burden is on the petitioner to prove the non-access and child cannot be subjected to DNA test. Learned trial Court has relied on case 'Aparn Ajinkya Firodia Vs. Ajinkya Arun Girodia, Civil Appeal of 2023 arising

out of SLP (Civil) No.9855 of 2022, decided by Hon’ble Supreme Court
of India on 20.02.2023’,

5 There is no illegality in the order passed by the learned
Principal Judge, Family Court, Bhiwani Camp Court at Loharu. The petition
is without merit and the same is hereby *dismissed*.

10.08.2023
jyoti3

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No