

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.15424 of 2021

Arising Out of PS. Case No.- Year-0 Thana- District- Bhojpur

Meera Devi, W/o Ramjee Singh @ Ravindar Kumar @ Ravindra Kumar Singh, Resident of Village- Sakari Ram Nagar, P.S.- Piro, Distt- Bhojpur at present- Chintanand Singh, Resident of Kusumha, P.S.- Ayar, Distt- Bhojpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Ramjee Singh @ Ravindra Kumar @ Ravindra Kumar Singh, Son of Manbodh Singh @ Radha Kishun Singh, Resident of Village- Sakari Ram Nagar, P.S.- Piro, Distt- Bhojpur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mrs. Mira Kumari, Advocate
For the Opposite Party/s	:	Mr. APP
For Opp. Party No.2	:	Mr. Kameshwar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 19-07-2024

Heard Mrs. Mira Kumari, learned Advocate for the petitioner and the learned APP for the State. The opposite party no.2 appears through Mr. Kameshwar Singh, learned Advocate.

2. By filing the present application, the petitioner is seeking quashing of the order dated 18.09.2019, passed by learned Principal Judge, Family Court, Bhojpur, Ara in Maintenance Case No. 110 of 2014, whereby the learned court has allowed the prayer of opposite party no.2 and directed for DNA test to ascertain the paternity of child at Central Forensic



Science Laboratory, Directorate of Forensic Science Services
Ministry of Home Affairs, Government of India, Hyderabad.

3. The marriage of the petitioner was solemnized with opposite party no.2 on 02.06.1998. The Gawna was performed in February, 2001 and thereafter the petitioner went to her matrimonial home and blessed a male child on 17.11.2001. Soon after the marriage, the petitioner was subjected to torture by opposite party no.2 and her in-laws in various ways. In order to resolve the dispute, Panchayati was held but the opposite party no. 2 did not get ready to keep the petitioner. On account of the demand of dowry and torture, Complaint Case No.1065 © of 2005 was filed on 18.07.2005 against opposite party no.2 and his family members.

4. On the other hand, the opposite party no. 2 filed a Divorce case on 06.10.2005 on the ground of adultery, which stood dismissed for non-prosecution on 20.06.2007. Again, the opposite party no.2 filed another matrimonial case for grant of Divorce under Section 13 of the Hindu Marriage Act, bearing Matrimonial Case No. 241 of 2016, which is pending before the Principal Judge, Family Court, Bhojpur. Despite all the efforts and request, when the opposite party no.2 refused to maintain the petitioner and her son, she filed



Maintenance Case No. 110 of 2014 before the Principal Judge, Family Court, Bhojpur at Ara.

5. Adverting to the aforesaid facts, learned Advocate for the petitioner contended that initially opposite party no.2 filed a petition on 11.11.2014 in Complaint Case No.1065 © of 2005 before the learned Sub-Divisional Judicial Magistrate, Ara seeking a direction to allow the D.N.A. test for ascertaining the paternity of child alleged to be begotten from the wedlock of the petitioner and opposite party no.2.

6. The petitioner filed response to the aforesaid petition and opposes the prayer. After hearing the parties, learned Sub-Divisional Judicial Magistrate, Ara rejected the petition of the opposite party no.2 by its order dated 22.05.2015. The opposite party no.2 never assailed the said order and, as such, the order became final. The copy of the order dated 22.05.2015 is marked as Annexure-4 to the application.

7. In the meantime, the learned Family Court directed the opposite party to pay Rs.8,000/- to the petitioner and her son for their maintenance vide order dated 01.07.2016. The opposite party no.2 being aggrieved moved before this Court in Cr. Misc. No. 51214 of 2017 by taking a plea that he has already been paying Rs.2,000/- to the petitioner in view of



the order passed in Cr. Misc. No. 12210 of 2015, which stood dismissed on 10.12.2019 by this Court.

8. Amid the aforesaid litigation, the opposite party no.2 filed another petition before the learned Principal Judge, Family Court seeking a direction for D.N.A. Test for ascertaining the paternity of the child. The learned Family Court vide its order dated 18.09.2019 allowed the petition for D.N.A. test for ascertaining paternity of child, which order is impugned herein.

9. Assailing the impugned order, learned Advocate for the petitioner contended that the child was born during the subsisting valid marriage with opposite party no.2 and, as such, no DNA test is required till the husband is able to dislodge the presumption under Section 112 of the Evidence Act, which suggests conclusive proof of legitimacy. It is further submitted that the DNA test of a minor child is not required to be ordered routinely in such a casual manner in a matrimonial dispute. Moreover, when an earlier occasions, the prayer of opposite party no.2 for DNA Test of the paternity of the child was refused and which order has never been assailed. It is also the contention of the petitioner that the order passed by the learned Principal Judge, Family Court is quite cryptic and non-



speaking, no reason whatsoever has been assigned, which persuaded the Court to pass the order for DNA test.

10. On the other hand, learned Advocate for opposite party no.2 justifying the order of the learned Principal Judge, Family Court has submitted that the marriage was solemnized on 02.06.1998. However, the Gawna was performed in February, 2001, but the co-habitation took place on or after 02.05.2001. Thus, the birth of the child on 17.11.2001 clearly suggests that the petitioner was living in adultery. In order to resolve the dispute, the learned Principal Judge, Family Court to meet the ends of justice has directed for DNA Test and there is no infirmity in the order is the contention of the learned Advocate for the opposite party no.2.

11. This Court has heard the rival contention of the parties and also perused the materials available on record. Section 112 of the Indian Evidence Act, 1872 speaks about conclusive proof of legitimacy of a child during continuance of marriage.

12. It would be apt and proper to quote Section 112 of the Indian Evidence Act, 1872:

“112. Birth during marriage, conclusive proof of legitimacy. - The fact that any person was born during the continuance of a



valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.”

13. The principle underlying in Section 112 of the Indian Evidence Act is to prevent an unwarranted enquiry as to the paternity of the child, whose parents, at the relevant time had access to each. In other words, once a marriage is held to be valid, there is a strong presumption as to the children born from that wedlock as being legitimate.

14. The Hon’ble Supreme Court in the case of **Aparna Ajinkya Firodia Vs. Ajinkya Arun Firodia**, reported in **2023 (2) PLJR (SC) 207** having taken note of earlier judgments on this point enunciated the circumstances under which DNA test of a minor child may be directed to be conducted, which reads as follows:

“12. Having regard to the aforesaid discussion, the following principles could be culled out as to the circumstances under which a DNA test of a minor child may be directed to be conducted:

i. That a DNA test of a minor child is not to be ordered routinely, in matrimonial



disputes. Proof by way of DNA profiling is to be directed in matrimonial disputes involving allegations of infidelity, only in matters where there is no other mode of proving such assertions.

ii. DNA tests of children born during the subsistence of a valid marriage may be directed, only when there is sufficient prima-facie material to dislodge the presumption under Section 112 of the Evidence Act. Further, if no plea has been raised as to non-access, in order to rebut the presumption under Section 112 of the Evidence Act, a DNA test may not be directed.

iii. A Court would not be justified in mechanically directing a DNA test of a child, in a case where the paternity of a child is not directly in issue, but is merely collateral to the proceeding.

iv. Merely because either of the parties have disputed a factum of paternity, it does not mean that the Court should direct DNA test or such other test to resolve the controversy. The parties should be directed to lead evidence to prove or disprove the factum of paternity and only if the Court finds it impossible to draw an inference based on such evidence, or the controversy in issue cannot be resolved without DNA test, it may direct DNA test and not otherwise. In other words, only in exceptional and deserving cases, where such a



test becomes indispensable to resolve the controversy the Court can direct such test.

v. *While directing DNA tests as a means to prove adultery, the Court is to be mindful of the consequences thereof on the children born out of adultery, including inheritance-related consequences, social stigma, etc.”*

15. From the reading of the aforementioned principle, there is no hesitation to observe that DNA test is not required till the husband is able to dislodge the presumption under Section 112 of the Indian Evidence Act of conclusive proof of legitimacy. Such a presumption is rebuttable, but only by way of establishing strong *prima facie* case.

16. The Hon'ble Supreme Court further taking note of the interest of the child held that children have the right not to have their legitimacy questioned frivolously before a Court of Law and cautioned that courts are required to acknowledge that children are not to be regarded like material objects, and be subjected to forensic/DNA testing, particularly when they are not parties to the proceeding. The interest of child should be given primary consideration in actions involving children.

17. This Court has also perused the application filed by opposite party no.2 seeking a prayer for DNA test of the



child. There is neither any averment nor any material suggesting that opposite party no.2 has had no access to the petitioner. The application completely lacks any material, which necessitate any direction for DNA test of the child by the learned Principal Judge, Family Court, Bhojpur at Ara.

18. In view of the aforesaid facts and the settled proposition of law, the impugned order suffers from severe infirmity and thus held to be unsustainable in law.

19. Accordingly, the order dated 18.09.2019 passed by learned Principal Judge, Family Court, Bhojpur, Ara in Maintenance Case No. 110 of 2014 is hereby set set aside.

20. The application stands allowed.

(Harish Kumar, J)

uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.07.2024
Transmission Date	NA

