IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Rev. No. 973 of 2025

Sanjay Singh Munda @ Sanjay Gandhi Sardar, aged about 30 years, son of Late Kanak Singh Munda @ Kanaka Singh Sardar, permanent resident of village Parsidih, P.O.-Saridih, P.S. Bagmundi, District-Purulia, West Bengal PIN-723212, as per Aadhar No. present resident of Sanjay Gandhi Sardar, S/o Kanak Singh Sardar, Vill-Hudu, P.O. Hudu, Dumra, P.S. Kandra, District-Seraikella-Kharsawan, Jharkhand.

..... … Petitioner

Versus

1. The State of Jharkhand.
2. Smt. Shanti Singh Munda Wife of Sri Sanjay Singh Munda D/o Sri Parmeshwar Singh Munda, resident of village Chano, P.O. and P.S. Tiruldih, Sub Division Chandil, District Seraikella-Kharsawan, Jharkhand.

..... … Opposite Parties

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner : Mr. Saibal Mitra, Advocate.
: Mr. Jageshwar Mahto, Advocate.
For the State : Mr. B. Shastri, A.P.P.

05/ 02.12.2025 Heard learned counsel appearing for the petitioner and learned A.P.P. for the State.

2. This revision petition has been preferred for setting aside the order dated 14.07.2025, passed by the learned Principal Judge, Family Court, Seraikella-Kharsawan, in O.M. Case No. 62 of 2024, whereby, the petition filed by the petitioner dated 04.03.2025 for DNA examination of the child has been rejected by the learned court.

3. Learned counsel appearing for the petitioner submits that the marriage between the petitioner and O.P. No. 2 was solemnized on 17.04.2023, however the child was born just after three months of

marriage i.e. in the month of July, 2023. He submits that in this background, the petitioner has filed a petition for DNA Test of the child, however, the learned court has rejected the same, which is not in accordance with law. He relied in the case of ***Nandlal Wasudeo Badwaik Versus Lata Nandlal Badwaik & Anr.***, reported in **AIR 2014 Supreme Court 932**.

4. Learned A.P.P. appearing for the State has opposed the prayer and submits that the learned court has given the cogent reason in arriving on such a decision and has rightly rejected the petition filed for DNA test.

5. In view of the above, it is an admitted position that without leading any evidence on the issue in question the petitioner has straightway filed a petition for DNA Test of the child only on the ground that just after three months of the marriage, the child has born. Such an order is not required to pass in violation of the rights under Article 21 of the Constitution of India and the burden is on the litigating party to prove his case by adducing evidence in support of his plea and unless it is proved by way of leading the evidence, in a routine manner, the DNA test of the child cannot be ordered. This aspect of the matter has been recently considered by the Hon'ble Supreme Court in the case of ***Aparna Ajinkya Firodia Verus Ajinkya Arun Firodia***, reported in **(2024) 7 SCC 773**, where in paras-38, 46, 56, 60 and 62 to 66, the Hon'ble Supreme Court has held as under:-

> *"**38.** A Family Court, no doubt, has the power to direct a person to undergo medical tests, including a DNA test and such an order would not be in violation of the right to personal liberty under Article 21 of the Constitution, vide Sharda [Sharda v. Dharmpal, (2003) 4 SCC 493]. However, the court should exercise*

such power only when it is expedient in the interest of justice to do so, and when the fact situation in a given case warrants such an exercise. Thus, an order directing that a minor child be subjected to DNA test should not be passed mechanically in each and every case.

46. *It is trite that the burden is on a litigating party to prove his case by adducing evidence in support of his plea. The court is not to compel one party to the dispute to assist the other contesting party, vide Ashok Kumar [Ashok Kumar v. Raj Gupta, (2022) 1 SCC 20 : (2022) 1 SCC (Civ) 303] . Therefore, DNA tests are not to be directed on a routine basis, merely to enable a party to prove his case of adultery.*

56. *It is undeniable that a finding as to illegitimacy, if revealed in a DNA test, would, at the very least adversely affect the child psychologically. It can cause not only confusion in the mind of the child but a quest to find out who the real father is and a mixed feeling towards a person who may have nurtured the child but is not the biological father. Not knowing who one's father is creates a mental trauma in a child. One can imagine, if, after coming to know the identity of the biological father what greater trauma and stress would impact on a young mind. Proceedings which are in rem have a real impact on not only the child but also on the relationship between the mother and the child itself which is otherwise sublime. It has been said that parents of a child may have an illegitimate relationship but a child born out of such a relationship cannot carry the stamp of illegitimacy on its forehead, as, such a child has no role to play in its birth. An innocent child cannot be traumatised and subjected to extreme stress and tension in order to discover its paternity. That is why Section 112 of the Evidence Act speaks about a conclusive*

presumption regarding the paternity of a child, subject to a rebuttal, as provided in the second part of the section.

60. *A child should not be lost in its search for paternity. Precious childhood and youth cannot be lost in a quest to know about one's paternity. Therefore, the wholesome object of Section 112 of the Evidence Act which confers legitimacy on children born during the subsistence of a valid marriage, subject to the same being rebutted by cogent and strong evidence, is to be preserved.*

62. *Further, questions surrounding paternity have a significant impact on the identity of a child. Routinely ordering DNA tests, particularly in cases where the issue of paternity is merely incidental to the controversy at hand, could, in some cases even contribute to a child suffering an identity crisis. It is also necessary to take into account that some children, although born during the subsistence of a marriage and on the desire and consent of the married couple to beget a child, may have been conceived through processes involving sperm donation, such as intrauterine insemination (IUI), in-vitro fertilisation (IVF). In such cases, a DNA test of the child, could lead to misleading results. The results may also cause a child to develop a sense of mistrust towards the parents, and frustration owing to the inability to search for their biological fathers. Further, a child's quest to locate its biological father may compete with the right to anonymity of the sperm donor. Having regard to such factors, a parent may, in the best interests of the child, choose not to subject a child to a DNA test. It is also, antithetical to the fundamentals of the right to privacy to require a person to disclose, in the course of proceedings in rem, the medical procedures resorted to in order to conceive.*

63. *The reasons for the parent's refusal may be several, and hence, it is not prudent to draw an adverse inference under Section 114 of the Evidence Act, in every case where a parent refuses to subject the child to a DNA test.*

64. *Therefore, it is necessary that only in exceptional and deserving cases, where such a test becomes indispensable to resolve the controversy, the court can direct such test. Further, a direction to conduct DNA test of a child, is to be ordered even rarely, in cases where the paternity of a child is not directly in issue but is merely collateral to the proceeding, such as in the instant case.*

Conclusions

65. *"Illegitimate" a term that brands an individual with the shame of being born outside wedlock, casts a shadow on one's identity. Times change and attitudes may change, but the impact of growing up with the social stigma of being illegitimate, does not. The courts must hence be inclined towards upholding the legitimacy of the child unless the facts are so compulsive and clinching as to necessarily warrant a finding that the child could not at all have been begotten to the father and as such a legitimisation of the child would result in rank injustice to the father, vide Dukhtar Jahan v. Mohd. Farooq [Dukhtar Jahan v. Mohd. Farooq, (1987) 1 SCC 624 : 1987 SCC (Cri) 237] .*

66. *Questions as to illegitimacy of a child, are only incidental to the claim of dissolution of marriage on the ground of adultery or infidelity. Allowing DNA tests to be conducted on a routine basis, in order to prove adultery, would amount to redefinition of the maxim, "Pater est quem nuptiae demonstrant" which means, the father is he whom the nuptials point out. While dealing with allegations of adultery and infidelity, a request for a DNA*

> *test of the child, not only competes with the presumption under Section 112, but also jostles with the imperative of bodily autonomy."*

6. Admittedly, without leading any evidence on the issue in question, straightway the petition has been filed and in view of the ratio laid down by the Hon'ble Supreme Court in the case of ***Aparna Ajinkya Firodia (Supra)***, no case of interference is made out. As such, this petition is dismissed.

(Sanjay Kumar Dwivedi, J.)

Dated:-02.12.2025
Amitesh/-

[A.F.R.]

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