2025:PHHC:104634

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

CR-38-2016(O&M)
Date of Decision: August 12, 2025

[redacted]

...Petitioner

Versus

[redacted]d another

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Akshay Jindal and Mr.Vijayveer Singh, Advocates
for the petitioners.

Mr.Nandan Jindal and Mr.Aniket Singla, Advocates
for the respondents.

****

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 27.11.2015 passed by learned trial Court, thereby, allowing an application filed by the respondent No.1-plaintiff and ordered conducting of DNA test of the petitioner-defendant No.1.

For the convenience of discussion, the parties are referred to as making appearance before learned trial Court.

The facts germane to be noticed, are as follows:-

That, plaintif[redacted] had filed a suit for declaration, thereby, asserting himself to be son of defendant No.1-[redacted] and defendant No.2-Smt.Anita. Therein, he averred that he had filed a petition

under Section 125 Cr.P.C., through his mother i.e. defendant No.2, being minor at that time and in the written statement/reply filed to the same, defendant No.1 denied the parentage of the plaintiff and stated therein that plaintiff is not the biological son of defendant No.1. Also, it was averred in the plaint that defendant No.1 came into contact with defendant No.2 i.e. mother of the plaintiff Smt.Anita, in the year 1988, as he took the accommodation in the house of defendant No.2 as tenant. With the passage of time, relations developed between defendant No.1 and defendant No.2 and accordingly, they started living as husband and wife and from their wedlock, the plaintiff was born in the year 1990.

Also, it was averred that the plaintiff lived along with defendants No.1 and 2, till the year 2000 and in the year 2000, defendant No.1 had left the house and since then, the plaintiff is living with his mother. The plaintiff is well aware that defendant No.1 was living with defendant No.2, as husband and plaintiff used to address defendants No.1 and 2, as 'Papa' and 'Mummy'. He was 10 years old, at the relevant time. He also further asserted that father's name in the school record was got mentioned as [redacted], i.e. earlier husband of defendant No.2, by defendant No.1 in clandestine manner. The plaintiff is real son of defendant No.1, as mother of the plaintiff conceived pregnancy from the loins of defendant No.1, but defendant No.1 is running from his liability/duty and on this account, plaintiff sought declaration.

Upon notice, both the defendants i.e. [redacted] and Anita had made appearance and filed their respective written statements.

Defendant No.1-[redacted], in the written statement, asserted about the claim of date of birth of the plaintiff to be 1990. However, defendant No.2-Smt.Anita filed a criminal complaint against defendant No.1, under Sections 376, 406, 493, 494, 495, 496 IPC read with Section 120-B IPC, vide criminal complaint No.29 of 2001. Therein, defendant No.2 had alleged her marriage with defendant No. on 16.12.1998. The complaint was dismissed by the then Additional Chief Judicial Magistrate vide judgment dated 07.05.2012. In the same, it was also averred by defendant No.2 that she had divorced her previous husband Sh.[redacted], on 26.02.1994. Even, the appeal filed against the judgment was dismissed.

On merits, it was averred about the plaintiff to be a stranger to defendant No.1. The contents of paragraph No.4 of the plaint, as such, were averred to be incorrect and it was further stated that the plaintiff is not son of defendant No.1. Defendants No.1 and 2 never lived together. The question of desertion, on the part of defendant No.2 by defendant No.2, as such, does not arise.

Defendant No.2-Anita, in the written statement, admitted her relationship. By and large, all the assertions made by the plaintiff were admitted to be correct and a prayer was made for passing of the appropriate order, keeping in view the facts and circumstances of the case.

During the pendency of the aforesaid case, when it was at the stage of recording of the evidence, an application under Section 75(e) and Order 26 Rule 10-A CPC, for issuance of direction to defendant No.1, to get his DNA test conducted from the expert, for scientific investigation was

filed. It was asserted that defendant No.2-mother of the plaintiff has disclosed that defendant No.1 is the father of the plaintiff and that there is ample evidence, coming on record, to establish about the plaintiff to be son of defendant No.1. Keeping in view the same, a prayer was made for conducting of the DNA test upon defendant No.1, to prove the fatherhood of the plaintiff, to meet the ends of justice.

Reply to the said application was filed by defendant No.1, thereby, resisting the claim of the plaintiff for conducting DNA test.

After hearing counsel for the parties and also considering the material coming on record, learned trial Court allowed the application for conducting of the DNA test of defendant No.1 and furthermore, a direction was given to the parties to appear at Forensic Science Laboratory, Madhuban, Karnal, for drawing samples of blood with police help, if required and further also, it was observed that in case, the police assistance is found absolutely necessary, then a direction is issued to the police to offer help with reasonable care, in case resistance is made by the defendant.

Being aggrieved by the aforesaid order, defendant No.1-[redacted] has filed the present revision petition.

Upon notice, respondents made appearance through counsel.

Learned counsel for the parties heard.

At the very outset, it is submitted by learned counsel for the petitioner-defendant No.1 that there is ample evidence, brought on record, to establish the hollowness of the case, as pleaded by respondent No.1-plaintiff. In fact, it is submitted that from the assertions of the defendant

No.2, who is mother of the plaintiff, as evident from other round of litigation, it stands established that defendant No.2 was married to one Sh.[redacted]. She took divorce from Sh.[redacted] on 26.02.1994 and allegedly married defendant No.1 on 16.12.1998. The plaintiff asserts his birth in the year 1990, though, no further particulars have been given. Therefore, the plaintiff was born during the subsistence of marriage of his mother with Sh.[redacted].

Such being the circumstances coming forth, it is submitted that presumption under Section 112 of the Indian Evidence Act, has to be raised and there is no evidence, coming on record, about the mother of the plaintiff, having no access to her husband Sh.[redacted], at that time, when the plaintiff was begotten and thus, paternity in any manner, cannot be fastened upon petitioner-defendant No.1.

In fact, learned counsel for the petitioner emphasized upon the plaintiff to be a stranger to defendant No.1. That being so, it is submitted that defendant No.1 cannot be made to undergo DNA test, which infringes upon his right of dignity and privacy. Thus, he cannot be compelled, pressurized or forced, in any manner, to provide blood samples for DNA testing.

To substantiate further, about the conduct and circumstances to be taken into consideration, while ordering DNA test, learned counsel for the petitioner has relied upon ***Goutam Kundu vs. State of West Bengal, 1993(2) RCR (Criminal) 497, Sharda vs. Dharmpal, 2003(2) RCR (Civil) 795, Ashok Kumar vs. Raj Gupta & Ors., 2021 INSC 587, Bhabani Prasad***

Jena vs. Convenor Secretary, Orissa State Commission for Women & Anr., 2010 (4) RCR (Civil) 53 and ***Ivan Rathinam vs. Milan Joseph, 2025 INSC 115***.

Thus, summing up, it is submitted by learned counsel for the petitioner-defendant No.1 that the impugned order be set aside and the application be dismissed.

On the other hand, learned counsel for the respondents vehemently submits that the plaintiff, who is major, asserts about defendant No.1 to be his father. Therefore, it is in his 'best interest' that defendant No.1 undergoes the DNA test, as he has right to know about his parentage and accruing rights, emanating therefrom. Learned counsel referred to the pleadings of the case to assert about the manner of the circumstances, coming forth, which constrained the plaintiff to file the suit, to know who fathered him. It is further submitted that the Courts, time and again, have reiterated the guidelines to be taken into consideration, while ordering such a test, which is best suited for the child, who comes to the Court and the proportional force for necessary compliance of undergoing the DNA test, can be made. Beneficial reference is made to ***Rohit Shekhar vs. Narayan Dutt Tiwari and another, 2012 (2) RCR (Civil) 1011***.

The advent of scientific testing has made it much easier to prove that a child is a particular person's offspring. However, the Courts have time and again cautioned the sparing use of the DNA testing.

Before proceeding further, it is essential to take note of Section 112 of the Indian Evidence Act, which is reproduced, as herein given:-

> *"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."*

The very language of the aforesaid provision makes it sufficiently clear about there to be existing a strong presumption that the husband is the father of the child, borne by his wife during the subsistence of their marriage. It provides that conclusive proof of legitimacy is equivalent to paternity. However, the object of this principle is to prevent any unwarranted enquiry, into the parentage of the child. Considering the same, in ***Ivan's case (supra)***, it was held by the Hon'ble Supreme Court since the presumption is in favour of legitimacy, the burden is cast upon the person, who asserts '**illegitimacy**' to prove it only through '**non-access**.' Furthermore, it was also observed as herein given:-

> *"29. It is well-established that access and non-access under Section 112 do not require a party to prove beyond reasonable doubt that they had or did not have sexual intercourse at the time the child could have been begotten. 'Access' merely refers to the possibility of an opportunity for marital relations.30 To put it more simply, in such a scenario, while parties may be on non-speaking terms, engaging in extra-marital affairs, or residing in different houses in the same village, it does not necessarily preclude the possibility of the spouses having an opportunity to engage in marital relations. Non-access means*

> *the impossibility, not merely inability, of the spouses to have marital relations with each other. For a person to rebut the presumption of legitimacy, they must first assert non-access which, in turn, must be substantiated by evidence."*

Furthermore, it was also observed that it is only when the aforesaid assertion is made, that the court can consider the question of ordering a DNA test to establish paternity. Also, reference was made to ***Goutam Kundu's case (supra)***, whereby, the Hon'ble Supreme Court had laid down the parameters to decide whether a Court can order a DNA test for the purpose of Section 112. This was again reiterated as under:-

> *"(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 have 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."*

Thus, in ***Goutam Kundu's case (supra)***, the Hon'ble Supreme Court had cautioned against conducting of the scientific test of the nature of giving blood samples, for the purposes of DNA testing, in a routine manner, but did not altogether ban their conduct upon the third party.

In ***Sharda's case (supra)*** as well as in ***Bhabani's case (supra)***, the Apex Court has held that there is no violation of the right to life, or privacy of a person, in directing a DNA test to be undergone by him-to undergo such test is not an invasion of his right to life. However, it was held that DNA test may be ordered, only if a strong prima facie case of non-access is made out, without sufficient material placed before the Court to arrive at a decision.

However, the rationale of the aforesaid decisions, is relating to any of the partner to the subsisting marriage, resisting the parenthood of the child. This ought to be taken into consideration, while assailing the order in question.

In ***Ivan's case (supra)***, it was thus held that there has to be 'balancing of interest' and the 'eminent need' for the DNA test. It has to be kept in mind that in the case in hand, there is additional access impliedly asserted and the same in itself, may not automatically negate the access between the spouses, during the subsistence of marriage and non-access has to be proved. In this regard, the claim of the mother of a person, who knocked the door of the Court, would be of utmost importance, to be taken note of. Considering the same, as held in ***Ivan's case (supra)***, there has to be balancing of interest and the eminent need for DNA test.

In ***Ivan's case (supra)***, the Hon'ble Supreme Court, consciously observed about taking into consideration the interest of all the stakeholders, while ordering the DNA test and also considered the '**eminent need**'. It was observed, as herein given:-

> *"46. When dealing with the eminent need for a DNA test to prove paternity, this Court balances the interests of those involved and must consider whether it is possible to reach the truth without the use of such a test.*
>
> *47. First and foremost, the courts must, therefore, consider the existing evidence to assess the presumption of legitimacy. If that evidence is insufficient to come to a finding, only then should the court consider ordering a DNA test. Once the insufficiency of evidence is established, the court must consider whether ordering a DNA test is in the best interests of the parties involved and must ensure that it does not cause undue harm to the parties. There are thus, two blockades to ordering a DNA test: (i) insufficiency of evidence; and (ii) a positive finding regarding the balance of interests.*

However, in the case under consideration, in ***Ivan's case***, considering its own peculiar facts and circumstances and when seemingly, there was ample evidence to presume legitimacy and that there was no confusion, as to whether the presumption would apply, it was held that balance of interest do not support mandating the DNA testing, as it is likely to have a disproportionately adverse impact, on the person, who knocked the door of the Court as well as the respondent's mother and on this account, it was held that there is no '**eminent need**' for a DNA test.

The presumption of legitimacy of child born from the subsistence of lawful wedlock provided under Section 112 of the Indian Evidence Act, is directed towards safeguarding the interest of the child and protecting him from gaining the status of 'bastard', in the event that his paternity is in question.

However, it is not so in the case in hand. The rationale laid down in the decisions aforesaid, where it was one partner of the marriage, who resisted the parenthood, in any manner, would not apply, where a child on attaining adulthood moves to the Court to assert his paternity. In that eventuality, application of Section 112 of the Indian Evidence Act does not arise.

In ***Rohit Shekhar vs. Narayan Dutt Tiwari and another, 2011(4) RCR (Civil) 459***, the Hon'ble Delhi High Court held that where there is a dispute over, whether a person was biological father of a child or not, the Court has a right to order DNA test of the person. Also, it was observed that birth of a child, during the subsistence of valid marriage, is conclusive of legitimacy of a child under Section 112 of the Indian evidence Act. It was also held that however, it is not conclusive proof of paternity, which ought to be established by scientific test.

Further, while deciding IA No.10394 of 2011, in C.S. (OS) No.700 of 2008, the Hon'ble Delhi High Court had further held that the Court can direct a person to give blood sample for DNA test to ascertain the paternity and on refusal of such person to give sample, the Court has no power to compel him to give sample. But however, the Court may draw adverse inference, in the facts of the case, but not in all cases. Therein, the Hon'ble Court had also collated the principle laid down by the Hon'ble Supreme Cout as well as by the High Court, in several judicial pronouncements and observed as herein given:-

"216. In this background, it would be appropriate to collate the

principles laid down by the Supreme Court as well as the High Courts in the several judicial pronouncements noticed hereinabove which are to the following effect:-

(i) A matrimonial court and the civil court have the implicit and inherent power to order a person to submit himself for medical examination (Re: Sharda)

(ii) The court under section 75(e) of the CPC and order XXVI, rule 10A has the requisite power to issue a direction to hold a scientific, technical or expert investigation. (Re : Sharda; Selvi)

(iii) Passing of an order for medical examination would not be in violation of the right to personal liberty under Article 21 of the Indian Constitution (Re : Goutam Kundu)

(iv) The direction for the medical examination can be issued suo motto by the court or upon an application filed by a party (Re : Sharda) The principles of natural justice would require to be complied with.

(v) The court would examine that the proportionality of the legitimate aims being pursued are not arbitrary, discriminatory or pointless or which may adversely impact the best interest of the child (for instance, bastradise a child) and that they justify the restrictions on privacy and personal autonomy concerns of the person directed to be subjected to medical examination.

(vi) The court should not exercise such power as matter of course or in order to have a roving inquiry (Re : Goutam Kundu) Such power would be exercised if the applicant has a strong prima facie case and there is sufficient material before the court (Re: Sharda) The court would consider the age; physical and mental health of the persons involved.

(vii) No one can be compelled to give a sample of blood for analysis (Re:Goutam Kundu). If despite the order of the court, the respondent refuses to submit himself to medical examination, the court will be entitled take the refusal on record and to draw an adverse inference against him (Re: Sharda)

(viii) A direction to a person to undergo a medical examination could be made to enable the court to leading the truth; in matrimonial cases also for removal of misunderstanding, bringing a party to terms; for judging competency of a person to be a witness; whether a person/party needs treatment or protection; the capacity of a person/party to protect his interest

or defence in litigation; whether the person needs legal aid (Re;Sharda)

(ix) In a case involving a paternity claim/denial issue, the conclusive proof standard mandated by Section 112 of the Evidence Act, read with Section 4, admits an extremely limited choice before the Court, to allow evidence of "non access" to a wife by the husband, who alleges that the child begotten by her is not his offspring; it is designed to protect the best interests of the child, and his legitimacy" (Re: Goutam Kundu ; Rohit Shekhar (Bhat, J - DOJ 23rd December, 2010)

(x) A "paternity" action by the son or daughter of one, claiming the defendant to be his or her biological father, filed in a civil court by an adult plaintiff, or claims paternity, for other reasons, (such as non- consensual sexual relationship the basis of facts, and on the basis of the child"s rights/either under Section 125 Cr.PC, or in a suit for declaration or for maintenance) cannot be jettisoned by shutting out evidence, particularly based on DNA test reports, on the threshold application of Section 112; the Court has to weigh all pros and cons, and, on being satisfied about existence of "eminent need" make appropriate orders; (Re: Goutam Kundu; Bhabhani Jena; Rohit Shekhar (Bhat, J- DOJ 23rd December, 2010)

(xi) In a case involving a parentage issue, the child"s best interest shall dominate the consideration by the court. The court may refrain from ordering a test if it considers that this may not be in the child"s best interest." The court would also consider the reasons for refusal of the examination of the child by the party having custody and make appropriate orders based on the best interest principle."

(xii)	XXXX	XX	XX	XXXX
(xiii)	XXXX	XX	XX	XXXX
(xiv)	XXXX	XX	XX	XXXX
(xv)	XXXX	XX	XX	XXXX
(xvi)	XXXX	XX	XX	XXXX
(xvii)	XXXX	XX	XX	XXXX
(xviii)	XXXX	XX	XX	XXXX
(xix)	XXXX	XX	XX	XXXX
(xx)	XXXX	XX	XX	XXXX

Also, it was observed that these guidelines, would guide consideration of an application for medical examination, before a civil court and matrimonial court.

However, in ***FAO (OS) No.547 of 2011 decided on 27.04.2012***, titled ***Rohit Shekhar vs. Narayan Dutt Tiwari and another, 2012(2) RCR (Civil) 1011***, the Hon'ble Division Bench had observed that if, in case of refusal of the compliance of the direction given by the Court to undergo DNA testing to determine the paternity of a child, the Court can order use of police force to take the sample. However, in ***Ivan's case (supra)***, the Hon'ble Supreme Court, reiterated the guidelines, wherein it was observed that no one can be compelled to give sample of blood for analysis. Also that, the ordering of DNA test, while taking into consideration and balancing the interest and the eminent need for the DNA test and that the Courts must be mindful of the collateral infringement of the privacy, on which, balancing of interest, has to be made. The parameters laid down in ***Goutam Kundu's case (supra)***, for DNA testing to establish paternity, were reiterated and observed about the same to have been followed in ***Sharda' s case (supra)*** and ***Bhabani's case (supra)*** and thereupon, observed about the Courts to undertake the exercise of balance of interest of the parties involved and decide, whether there is eminent need for the DNA test and that this pertains, not simply to the interest of the child, but also to the interest of the other side.

Further, it was observed therein that forcefully undergoing a DNA test, would subject to individual's private life to scrutiny from the outside world and the consequences of the same were also noticed and applying this principle, as observed aforesaid, it was concluded about there to be no eminent need for DNA test, while appraising the factual circumstances of

the case under consideration.

In this backdrop, adverting to the case in hand, it is pertinent to mention that it is the child, who is now major, who has come forth to assert paternity upon defendant No.1. In view of the contents of the plaint, which as such, have not been controverted by his mother i.e. defendant No.2, in her written statement and that being read, in the light of the denial of defendant No.1, of he being the father and who had further asserted about the plaintiff to be stranger to him, presumption under Section 112 of the Indian Evidence Act, would not arise, when impliedly, additional access of the mother of the plaintiff, at the relevant time of begetting of the plaintiff, at the behest of defendant No.1, is asserted.

Considering the same, at this stage, 'balancing of the interest' and the 'eminent need' has to be looked into. The child, as a plaintiff, has a right to know his parentage in the context of denial of relationship by defendant No.1, in one of the rounds of litigation of defendant No.1 with defendant No.2. Justice to this child/plaintiff, is a factor, not to be ignored. Rather, his assertion demands that truth be known, when truth has to be established, as it undoubtedly can.

Simultaneously, the right of defendant No.1 to privacy and dignity, also has to be taken into consideration. However, the right of privacy, as such, cannot override the right of the child and vest interest in his favour. So far as, the stakeholders are concerned, it is pertinent to mention that the child, who asserts defendant No.1 to be his father, is major and while asserting paternity, he is thus very well aware of the consequences of the

order, which may downsize his position and that of his mother, in the society. Even, mother of the plaintiff is of mature age and she is bound to be well aware of the consequences of the action of her son and his claim qua the paternity issue. They having come forward unhesitatingly has to be considered.

That being so, now the claim of defendant No.1, to be looked into. There is simple denial, more particularly to the contents of paragraph No.4 of the plaint, which reads as herein given:-

> *"4. That the defendant No.1 came into contact of defendant No.2 in the year 1988 as he took the accommodation in the house of defendant No.2 as tenant and with the passage of time, the relations developed between the defendant No.1 & 2 and accordingly they started living together as husband and wife at the said address and from their wedlock, the plaintiff was born in the year 1990."*

Rather, it was also asserted in the written statement that plaintiff is not the son of defendant No.1 and that he is a stranger to him. In the plaint, it was also asserted by the plaintiff that he was taken care of by defendant No.1, who was living with defendant No.2, as husband and wife and that he used to address them as 'Papa' and 'Mummy' and they used to address him as 'Beta'.

It is also evident that defendant No.2-mother of the plaintiff, did not deny the relationship. Rather, while conducting cross-examination of the witnesses, has put forth the claim about showering of love and affection, towards the plaintiff, at the behest of defendant No.1 and the few

of the photographs, depicting the trio to be a happy-go family, has also been placed on record.

The DNA test is surer test to affix the paternity. If the plaintiff and defendant No.1 are strangers in any manner as asserted, no injustice shall be done to defendant No.1 by conducting of this test. Rather, if he is father, his position will be put beyond doubt by the testing and the paternity as pleaded shall be ascertained. Why there should be any hesitation to undergo this test is not coming forth. Of course, the evidence is to be led by both the sides, but the question arises, when the paternity can be affixed by surer test, then why decision based on legal presumption or gathering of inference, on the basis of the evidence or any gap, on account of misjudgment, be left. Considering all these aspects, this test will surely assist the Court to reach the right conclusion, vis-a-vis, relationship between the parties concerned. That being so, it ought to be undertaken.

However, use of force as ordered by the trial Court, need not to be carried out. At this stage, eventuating such circumstance, will go too far to conclude about there to be no inclination, on the part of defendant No.1, to undergo this test. But anyhow, the compliance/non-compliance, or there being no inclination, the inference of this conclusion, will be noted by the trial Court, at the appropriate stage, in the light of the guidelines, as observed in ***Ivan's case (supra)***, that '**no one can be compelled to give sample of blood**'.

With these observations, the revision petition is hereby dismissed with modification of conducting of the test, but without any

compel or assistance of the police. In the eventuality of any disinclination, on the part of defendant No.1 and the reason therefor, to be recorded by the trial Court, shall be appraised by the trial Court, at appropriate stage, in the backdrop of the other evidence, brought on record.

However, the observations aforesaid are circumscribed purely for the purposes of disposal of the revision petition and shall not in any manner, be construed as expression on merits of the case.

August 12, 2025 **(ARCHANA PURI)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **Yes/No**