

APHC010473562025



IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3330]

THURSDAY, THE TWELFTH DAY OF MARCH
TWO THOUSAND AND TWENTY SIX

PRESENT
THE HONOURABLE SRI JUSTICE TARLADA RAJASEKHAR RAO

CIVIL REVISION PETITION No.3393 of 2025

Between:

1. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

...PETITIONER

AND

1. [REDACTED]
[REDACTED]
[REDACTED]

...RESPONDENT

Petition under Article 227 of the Constitution of India, praying that in the circumstances stated in the grounds filed herein, the High Court may be pleased to set aside the order dated 10-07-2024 passed by the Senior Civil Judge at Vizianagaram in I.A. No. 553 of 2022 in HMOP No. 45 of 2019 and kindly allow the DNA test petition filed by the petitioner in the interest of justice.

Counsel for the Petitioner:

1.M.M.M. KRISHNA SANAPALA

Counsel for the Respondent:

1.ARRABOLU SAI NAVEEN

The Court made the following:

ORDER:

The petitioner herein is the petitioner in H.M.O.P.No.45 of 2019 on the file of the Civil Judge (Senior Division), Vizianagaram. The petitioner filed the above said O.P. to dissolve the marital relationship of the petitioner and the respondent by way of divorce under Section 13(1)(b) of the Hindu Marriage Act, 1955.

2. The following provision is hereby extracted for effective disposal of the present Civil Revision Petition:

"Section 13. Divorce— (1) Any marriage solemnized, whether before or after the commencement of this Act, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party—

(ia) xxxxxx

(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition;"

3. While the said O.P. is pending for consideration, the petitioner herein filed I.A.No.553 of 2022 in H.M.O.P.No.45 of 2019 under Section 45 of the Indian Evidence Act, 1872, to send the two children by names [REDACTED] for DNA Fingerprinting and Diagnostics, Amaravathi, to know that the petitioner is not

the legitimate father of the two children and the two children were not born in the wedlock of the petitioner along with the respondent herein. The said I.A.No.553 of 2022 in H.M.O.P.No.45 of 2019 was dismissed vide order dated 10.07.2024, observing that if the DNA Test is ordered, they are looked down upon in society and they will be ridiculed and stating that the Hon'ble Apex Court also held view of judgments that a children cannot be mechanically subjected to DNA tests in each and every case between warring parents as a short-cut to establish proof of infidelity.

4. The said order in I.A.No.553 of 2022 in H.M.O.P.No.45 of 2019 dated 10.07.2024 is assailed in the present Civil Revision Petition on the ground that ordering DNA test would not cause undue prejudice to the respondent, as it merely facilitates the discovery of truth and the right to privacy must be balanced with the right to justice, especially when the paternity is directly under challenge and denial of DNA testing deprives the petitioner of a critical piece of evidence necessity to prove his case.

5. Point for consideration:

Learned counsel for the respondent would rely on the judgment of the Hon'ble Supreme Court in the case of ***R.Rajendran Vs. Kamar***

Nisha and other reported in 2025 LiveLaw (SC) 1086, for the proposition that the use of DNA test is an extremely delicate and sensitive aspect and the Court must be reluctant in the use of such scientific advances and tools which result in invasion of right to privacy of an individual and may not only be prejudicial to the rights of the parties, but may have devastating effect on the child and sometimes the result of such scientific test may bastardise an innocent child even though his mother and her spouse were living together during the time of conception. The said judgment is aptly applicable to the present case.

6. Admittedly, the O.P. is filed to grant divorce on the ground of desertion under Section 13(1)(ib) of the Hindu Marriage Act. The Hon'ble Apex Court also in the case of **Goutam Kundu Vs. State of West Bengal and another** reported in AIR 1993 SC 2295, held that the Courts should not order blood tests as a matter of course and the presumption under Section 112 of the Evidence Act that a child born during a valid marriage is legitimate is very strong and the Court emphasized that ordering blood tests without strong reasons may harm the child's reputation and social status. As the Hon'ble Supreme Court has categorically held that unless a strong presumption under the

Evidence Act, the child born during the valid marriage should not order blood test as a matter of course.

7. Recently, a similar issue has come before the Hon'ble Apex Court in the case of ***Aparna Ajinkya Firodia v. Ajinkya Arun Firodia*** reported in (2024) 7 SCC 773. The Apex Court held that— *“The question as to whether a DNA test should be permitted on the child, is to be analyzed through the prism of the child and not through the prism of the parents. The child cannot be used as a pawn to show that the mother of the child was living in adultery. It is always open to the respondent-husband to prove by other evidence, the adulterous conduct of the wife, but the child’s right to identity should not be allowed to be sacrificed.”*

8. The contention raised before the Apex Court to find out the truth and that every party to a litigation is entitled to produce the best evidence. Enabling the party to produce the best of evidence, is part and parcel of right to fair trial. That the refusal to subject the child to DNA test would infringe upon the respondent’s right to fair trial. In support of the contention that the right to privacy of an individual must yield to the right to fair trial of another, reliance is placed upon the

decision of this Apex Court in ***Sahara India Real Estate Corporation Limited and others Vs. Securities and Exchange Board of India and another*** reported in (2012) 10 SCC 603. The Apex Court has answered in the following— *“Argument is attractive as it may seem at first blush, the said argument does not carry any legal weight. The lis in these cases is between the parties to a marriage. The lis is not between one of the parties to the marriage and the child whose paternity is questioned. To enable one of the parties to the marriage to have the benefit of fair trial, the Court cannot sacrifice the rights and best interests of a third party to the lis, namely, the child.”*

9. The petitioner herein filed an application under Section 45 of the Indian Evidence Act to conduct deoxyribonucleic acid test (DNA for short) of children in order to prove that his wife in adulteration. Even assuming that the wife is committing adultery, the petitioner cannot file an application to send the children for DNA testing particularly when the children are not claiming any maintenance from the father and the adulterer and children are not parties to the *lis*. To prove that his wife is in adulteration, the petitioner has to adduce evidence in any other manner to that extent. For the purpose of proving the wife is adultery, the petitioner cannot seek a DNA of his children.

10. Hence, the petitioner has not made out any case and the petitioner is seeking divorce on the ground of desertion.

11. Accordingly, the Civil Revision Petition is dismissed with costs of Rs.3,000/- (Rupees three thousand only) that is payable to the District Legal Services Authority within a period of three weeks from the date of order, failing which the Civil Judge (Senior Division), Vizianagaram, is directed to collect the said amount, and if necessary, send the petitioner to the civil imprisonment. There shall be no order as to costs.

As a sequel thereto, Interlocutory Applications pending in both the cases, if any, shall stand closed.

JUSTICE TARLADA RAJASEKHAR RAO

Date: 12.03.2026

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THE HON'BLE SRI JUSTICE TARLADA RAJASEKHAR RAO

CIVIL REVISION PETITION No.3393 of 2025

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