IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRR(F)-117-2019
Judgment Reserved on 25.05.2022
Date of decision :02.06.2022

Smt. Satya Roopa Sinha **...Petitioner**

Versus

Sarwan Kumar Mehto **...Respondent**

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. A.K. Jindal, Advocate
for the petitioner.

Mr. Ashish Gupta, Advocate
for the respondent.

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SUVIR SEHGAL, J.

Instant petition has been filed under Section 401 of the Code of Criminal Procedure, 1973, (for short “the Code”), impugning order dated 19.01.2019 passed by Family Court, Gurugram, whereby application filed by the respondent seeking DNA test of the child of the petitioner, has been allowed.

Brief background of the case is, that the petitioner has approached the Family Court with a petition under Section 125 of the Code claiming maintenance on the ground that she was married with the respondent on 08.03.2001 at a temple at Haridwar and a child was born out of the wedlock on 08.06.2005, who is studying in a school. It has been averred that the respondent is an educated person and has a monthly income of more than Rs.90,000/-. He is getting a substantial monthly rentals, besides earning from the agricultural land owned by him in his native village in Bihar. It has been claimed that they resided together as a married couple at Gurugram, but she was treated with mental and physical cruelty and was turned out from the matrimonial home as she could not

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meet the material demands of her in-laws. She is residing in a rented accommodation and is dependent upon her father. A claim of monthly maintenance of Rs.50,000/- has been raised to meet her expenses, which has been opposed by the respondent by filing his reply dated 25.01.2017, Annexure P-2, wherein he has denied marital ties with the petitioner. Respondent has claimed that he is of an advanced age and was married to Babita in the year 1998, who expired on 28.11.2002 and that he has two sons out of the wedlock, both of whom are married. He has denied the paternity of the child. It has been further claimed that the petitioner, who has sufficient income to maintain herself, had married one Ajay in the year 2000 and ran away from there and subsequently started living with Shanker as his wife. Application, Annexure P-7, has been filed by him for conducting the DNA test of the child, which has been resisted by the petitioner by filing reply, Annexure P-8. The application has been allowed vide order impugned herein.

Learned counsel for the petitioner has assailed the order passed by the Family Court on the ground that the paternity test of the child is not required and the fatherhood of the respondent stands established from the ration card, aadhar cards and school fee receipts and other record appended as Annexures P-3 to P-6 with the petition. He has placed reliance upon the judgment of the Hon'ble Supreme Court in **Goutam Kundu Versus State of West Bangal and another** **(1993) 3 SCC 418**.

Opposing the petition, counsel representing the respondent has made a reference to the cross-examination of the petitioner, wherein she has stated that she has no objection in case the child is subjected to DNA analysis. Reliance has been placed by him upon the judgments of the Supreme Court in **Dipanwita Roy Versus Ronobroto Roy** **2014 (4) RCR (Civil) 724** and **Nandlal Wasudeo Badwaik Versus Lata Nandlal Badwaik and another** **(2014) 2 SCC 576,** to contend that there is no absolute bar in the conducting of blood test of the child.

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I have heard counsel for the parties and perused the documents appended with the petition with their able assistance.

The sole question to be determined as whether it is necessary to conduct the DNA test of the child in order to decide the application for maintenance instituted by the wife-petitioner under Section 125 of the Code, particularly when the child is not a claimant.

In **Goutam Kundu's** case (supra), Supreme Court has held as under:-

> *"26. From the above discussion it emerges:-*
> *(1) that courts in India cannot order blood test as 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."*

In **Sharda Versus Dharmpal 2003 (4) SCC 493**, noticing the above judgment, Apex Court has held as under:-

> *"39. Goutam Kundu (supra) is, therefore, not an authority for the proposition that under no circumstances the Court can direct the blood tests be conducted. It, having regard to the future of the child, has, of course, sounded a note of caution as regards mechanical passing of such order. In some other jurisdictions, it has been held that such directions should ordinarily be made if it is in the interest of the child."*

Coming to the facts of the present case, a perusal of the application, Annexure P-1, filed by the petitioner shows that she has claimed maintenance from the respondent on the ground that she is his legally wedded wife and a child

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was born out of the wedlock. No claim has been raised on behalf of the minor. The petitioner, on the basis of evidence which she chooses to lead has to establish her marriage as the same is being disputed by the respondent. This Court therefore, is of the opinion that determining the paternity of the child is not the moot point.

In **Dipanwita Roy's** case (supra) relied upon by the counsel for the respondent, the Hon'ble Supreme Court was dealing with a case, where the husband was seeking divorce from his wife on the ground of infertility. It was in these circumstances that the Court permitting the holding of the DNA test in order to enable the husband to prove his case. While doing so, the Court held that there can be no dispute that if the direction to hold such a test can be avoided, it should be avoided. The reason according to the Court is that the legitimacy of a child should not be put to peril. Coming to the second judgment relied upon by counsel for the respondent, it deserves to be noticed that in **Nandlal Wasudeo Badwaik's** case (supra), was a matter, where the mother and daughter had approached the Court seeking maintenance and the father had opposed the claim and questioned the paternity of the child. The facts in both the cases are totally different.

In view of the above discussion, this Court is of the view that the order passed by the Family Court directing the petitioner to undergo a blood test is not warranted from the facts and circumstances of the present case. Consequently, impugned order cannot be sustained.

Petition is allowed. Impugned order dated 19.01.2019 passed by the learned Family Court, Gurugram, is set aside.

02.06.2022 **(SUVIR SEHGAL)**
sheetal **JUDGE**

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No

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