

HIGH COURT OF CHHATTISGARH AT BILASPUR

(SINGLE BENCH:HON'BLE SHRI JUSTICE SANJAY K. AGRAWAL)

Criminal Revision No. 483 of 2012

PETITIONER : Dwarika Halba

VERSUS

RESPONDENTS : Smt. Savitri Bai & another

(CRIMINAL REVISION UNDER SECTION 19(4) of THE FAMILY COURTS
ACT, 1984)

Appearance: Shri P.P.Sahu, Counsel for the petitioner.

O R A L O R D E R
(Passed on 19.08.2014)

1. Feeling aggrieved and dissatisfied with the order dated 11.04.2012, passed by Additional Principal Judge, Family Court, Balod, District Durg, in Misc. Criminal Case No. 83/2010, instant criminal revision has been preferred by the petitioner/husband against the respondents [wife and daughter Ku. Durgeshwari].
2. The core facts necessary for disposal of this revision are as under-
 - 2.1 That the respondents herein jointly filed an application under Section 125 Cr.P.C seeking maintenance stating inter alia that petitioner had

forcefully committed sexual intercourse with her and on that account, she became pregnant and gave birth to a female child i.e. respondent No.2/Durgeshwari herein. It was further alleged that offence under Section 376, 506 IPC was also registered against the petitioner in which he was acquitted by the competent criminal court.

2.2 The Petitioner replied the said application stating inter-alia that he is not the father of respondent No.2 by disputing his paternity, and pleaded that he was falsely implicated in that criminal case and he has rightly been acquitted by the said court.

2.3 The family court by its order impugned dated rejected the application for maintenance so far as respondent No. 1 is concerned finding inter alia that marriage between petitioner and respondent No. 1 is not established. However, granted maintenance of Rs. 2000/-per month to respondent No. 2 holding that she is illegitimate girl child of the petitioner. Against this order, instant revision has been preferred.

3. Shri P.P. Sahu, learned counsel appearing for the petitioner would submit that respondent No. 2 is not his daughter. He would further submit that DNA

test conducted upon the order of the Family Court and the opinion based on DNA profiling holding that the respondent No. 2 is illegitimate girl child, is not scientifically accurate, cannot be relied upon to make him liable for maintenance therefore, the order impugned be set aside.

4. I have heard the counsel appearing for the petitioner and perused the order impugned carefully.
5. The DNA stands for deoxyribonucleic acid, which is the biological blueprint of every life. DNA is made-up of a double standard structure consisting of a deoxyribose sugar and phosphate backbone, cross-linked with two types of nucleic acids referred to as adenine and guanine, purines and thymine and cytosine pyrimidines. The most important role of DNA profile is in the identification, such as an individual and his blood relations such as mother, father, brother, as so on. Successful identification of skeleton remains can also be performed by DNA profiling. DNA usually can be obtained from any biological material such as blood, semen, saliva, hair, skin, bones etc. The question as to whether DNA tests are virtually infallible may be a moot question,

but the fact remains that such test has come to stay and is being used extensively in the investigation of crimes and the Court often accepts the views of the experts, especially when cases rest on circumstantial evidence. [Please See para-34 of the judgment of the Supreme Court in case of **Dharam Deo Yadav Vs. State of U.P.**¹]

6. In the Supreme Court in case of **Kamti Devi v. Poshi Ram**² has said with regard to accuracy of DNA test as under:-

"10.....The result of a genuine DNA test is said to be scientifically accurate. But even that is not enough to escape from the conclusiveness of Section 112 of the Act e.g. if a husband and wife were living together during the time of conception but the DNA test revealed that the child was not born to the husband, the conclusiveness in law would remain irrebuttable. This may look hard from the point of view of the husband who would be compelled to bear the fatherhood of a child of which he may be innocent. But even in such a case the law leans in favour of the innocent child from being bastardised if his mother and her spouse were living together during the time of conception."

7. Very recently in case of **Nandlal Wasudeo Badwalk v. Lata Nandlal Badwalk and another**³ the Supreme Court has considered the meaning of DNA test and its ultimate accuracy and held that result of the

¹ 2014(4) Scale 730

² (2001) 5 SCC 311

³ (2014) 2 SCC 576

DNA test is scientifically accurate in following words:-

"13.....All living beings are composed of cells which are the smallest and basic unit of life. An average human body has trillions of cells of different sizes. DNA (Deoxyribonucleic Acid), which is found in the chromosomes of the cells of living beings, is the blueprint of an individual. Human cells contain 46 chromosomes and those 46 chromosomes contain a total of six billion base pairs in 46 duplex threads of DNA. DNA consists of four nitrogenous bases - adenine, thymine, cytosine, guanine and phosphoric acid arranged in a regular structure. When two unrelated people possessing the same DNA pattern have been compared, the chances of complete similarity are 1 in 30 billion to 300 billion. Given that the Earth's population is about 5 billion, this test shall have accurate result. It has been recognized by this Court in Kamti Devi that the result of a genuine DNA test is scientifically accurate. It is nobody's case that the result of the DNA test is not genuine and, therefore, we have to proceed on an assumption that the result of the DNA test is accurate. The DNA test reports show that the appellant is not the biological father of the girl child."

8. Again in the later part of the aforesaid judgement **Nandlal Wasudeo Badwalk** (supra) their Lordships of the Supreme Court considered the accuracy of the DNA test qua presumption of conclusive proof of legitimacy of the child under Section 112 of the Indian Evidence Act and held that in case of conflict between conclusive proof provided under Section 112 of the Indian Evidence Act and proof based on scientific advancement, later has to

prevail over the former. The report states as under:-

"17.....Where there is evidence to the contrary, the presumption is rebuttable and must yield to proof. The interest of justice is best served by ascertaining the truth and the court should be furnished with the best available science and may not be left to bank upon presumptions, unless science has no answer to the facts in issue. In our opinion, when there is a conflict between a conclusive proof envisaged under law and a proof based on scientific advancement accepted by the world community to be correct, the latter must prevail over the former."

9. From the aforesaid enunciation of law it is quite vivid that result of the DNA test is scientifically accurate and can be safely relied upon to determine the paternity of the child. Turning back to the facts of the case in hand it is apparent that blood sample of the parties and respondent No.2 was sent for DNA test to the laboratory concerned and report of the DNA test has been filed and Exhibited as **Article A-1** and in said report it has been held that the present petitioner is biological father of the respondent No.2. The learned Family Court has relied and acted upon the said DNA test report based on scientific analysis which clearly suggests that the petitioner is the biological father of the respondent No.2. In the considered opinion of

this Court the order of the Family Court holding the petitioner as the biological father of the respondent No.2 based on DNA test report which is scientifically accurate, has not committed any illegality in granting monthly allowance for maintenance to the respondent No.2 and as such the revision petition deserves to be dismissed.

10. In the result, the criminal revision being sans substratum is dismissed at the admission stage without notice to the other side.

Judge

inder

Head Note

1. Result of DNA Test is scientifically accurate and can be relied upon to determine paternity of a child.
2. डी०एन०ए० परीक्षण का परिणाम, वैज्ञानिक तरीके से विशुद्ध है एवं बच्चे के पितृत्व के निर्धारण के लिए विश्वास किया जा सकता है।

(Indrajeet sahu)
Private Secretary

Head

Head