



2025:AHC:208952

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL REVISION No. - 3271 of 2021

Ramraj Patel

.....Revisionist(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Revisionist(s) : Virendra Singh, Virendra Singh Yadav
Counsel for Opposite Party(s) : G.A., Shailesh Kumar Tripathi

Court No. - 92

HON'BLE CHAWAN PRAKASH, J.

1. Heard Sri Virendra Singh, learned counsel for the revisionist, learned A.G.A. for the State and Sri Shailesh Kumar Tripathi, learned counsel for the opposite party no. 2 and perused the record.

2. The present revision has been filed against the order dated 07.10.2021 passed by the Additional Sessions Judge, Court No. 1, Varanasi in Criminal Appeal No. 19 of 2021 (Ramraj Patel Vs. State of U.P. and another), under Section 29 of Protection of Women from Domestic Violence Act filed against the order dated 18.01.2021 passed by the Special Chief Judicial Magistrate, Varanasi in Criminal Case No. 120 of 2015 (Savita Patel Vs. Ramraj Patel), under Section 23 of Protection of Women from Domestic Violence Act, rejecting the application filed by the revisionist for D.N.A. Test of Priyambada, daughter of opposite party no. 2.

3. The facts of the case are that the opposite party no. 2 filed an application under Section 12 of Protection of Women from Domestic Violence Act in the court of Special Chief Judicial Magistrate, Varanasi, which was registered as Criminal Case No. 120 of 2015 (Savita Patel Vs. Ramraj Patel). Notices were sent to opposite parties to appear before the concerned trial court and file reply to the application seeking D.N.A. test about paternity. The said application was dismissed by the Special Chief Judicial Magistrate, Varanasi vide order dated 18.01.2021. Against the said order, the revisionist filed an appeal before the learned Additional Sessions Judge, Court No. 1, Varanasi, which was also dismissed vide order dated 07.10.2021. Hence this revision.

4. It is submitted by learned counsel for the revisionist that the revisionist was married with opposite party no. 2 on 15.04.2008 according to Hindu Rites and after marriage, she came at her matrimonial house and she lived

only for one week. Thereafter she went back to her parents' house and use to live at parents' house continuously. She used to visit the house of the revisionist's house for few days even less than a week after about six months. She is educated B.A., B.P.Ed. and is doing the job as teacher in Inter College. Since the revisionist is only High School, due to this reason, she does not want to live with him on the ground that he is illiterate villager and she is educated. It is further submitted that the opposite party no. 2 filed a Case No. 120 of 2015 (Smt. Savita Devi Vs. Ramraj Patel and six others), under Section 12 of the Protection of Women from Domestic Violence Act in the court of Special Chief Judicial Magistrate, Varanasi. It is next submitted that the opposite party no. 2 used to say that the revisionist is having illicit relation with his sister-in-law (Bhabhi). It is next submitted that the opposite party no. 2 gave birth to a female child on 17.12.2012. It is next submitted that at last, the opposite party no. 2 visited at the house of the revisionist on 20.05.2011, since then she is residing at her parental house. It is next submitted that the revisionist moved an application on 03.02.2020 for D.N.A. test of Priyambada, daughter of the opposite party no. 2, but the same was dismissed by the Special Chief Judicial Magistrate, Varanasi vide order dated 18.01.2021. Against the said order, the revisionist filed an appeal before the learned Additional Sessions Judge, Court No. 1, Varanasi, which was also dismissed vide order dated 07.10.2021. It is next submitted that the impugned orders passed by both the courts are illegal, arbitrary and liable to be set aside.

5. Per contra, learned counsel for the opposite party no. 2 and learned A.G.A. vehemently opposed the submissions made by learned counsel for the revisionist and submitted that the orders passed by the learned Special Chief Judicial Magistrate, Varanasi and learned Additional Sessions Judge are legal and perfect orders and have been passed as per provisions of Section 112 of Evidence Act and no illegality has been committed by both the courts.

6. I have considered the rival submissions made by the learned counsel for the parties and have gone through the entire record including the impugned orders.

7. As per the fact of the case, it is an admitted fact that the opposite party no. 2 Smt. Savita Devi was married with the revisionist Ramraj Patel on 15.04.2008 according to Hindu Rites. After marriage, the opposite party no. 2 came to her matrimonial house. She filed a case under Section 12 of the Protection of Women from Domestic Violence Act and notices were sent to revisionist. The revisionist appeared before the court and challenged paternity of the child stating that the child has not born from cohabitation with the opposite party no. 2. The said application was dismissed by the learned trial court and criminal appeal filed against the said order has also been dismissed.

8. Section 112 of the Evidence Act is as follows:-

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."

9. It is evident from the aforesaid provisions that a successive presumption is established in favour of the legitimacy of a child born during subsistence of a valid marriage and awarded presumption is a legal recognition that the husband is the father of the child born. This presumption also operates against unwarranted intrusion into the illegally produced status of illegitimacy, thereby ensuring a familiar relationship and protection of the child.

10. The presumption under Section 112 of the Evidence Act operates as conclusive proof of legitimacy of the child born from a valid marriage, provided that the parties had access to each other at the relevant time. This presumption denotes affirmation established by evidence that the parties to the marriage had no occasion to remain away from each other at the time when the child could have been begotten. Since the law favours legitimacy and the burden of proof casts upon the person who disbelieves the presumption.

11. Access or Non-access under Section 112 of the Evidence Act must be understood in a very narrow and specific sense. Non-access denotes not merely absence of access but even where cohabitation existed, non-access may arrive due to impotency or absence during relevant period.

12. It is settled principles of law that an order for D.N.A. test cannot be given in routine manner and can be directed in specific circumstances where any person proves that there was no chance for cohabitation between the parties during the relevant period. Also, at this stage, it is pertinent to refer to the authoritative pronouncement of the Hon'ble Apex Court in **Ivan Rathinam v. Milan Joseph, 2025 SCC OnLine SC 175** in the Apex court has categorically held as follows:

"D.1.2.1 Right to privacy and right to dignity

37. Having recognized the diverging pathways in the present analysis, it is pertinent to first address the aspect of the right to privacy. At the outset, a cursory reference to the decision in K.S. Puttaswamy (Privacy-9J.) v. Union of India, reveals that privacy is concomitant to the right of the individual to exercise control over his or her

personality. Privacy includes, at its core, the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home, and sexual orientation. Privacy also connotes a right to be left alone, as a corollary to the safeguarding of individual autonomy and the ability of an individual to control vital aspects of his life. Elaborating further, this Court held that:

“325. Like other rights which form part of the fundamental freedoms protected by Part III, including the right to life and personal liberty under Article 21, privacy is not an absolute right. A law which encroaches upon privacy will have to withstand the touchstone of permissible restrictions on fundamental rights. In the context of Article 21 an invasion of privacy must be justified on the basis of a law which stipulates a procedure which is fair, just and reasonable. The law must also be valid with reference to the encroachment on life and personal liberty under Article 21. An invasion of life or personal liberty must meet the threefold requirement of (i) legality, which postulates the existence of law; (ii) need, defined in terms of a legitimate State aim; and (iii) proportionality which ensures a rational nexus between the objects and the means adopted to achieve them.”

38. In this context, while permitting an enquiry into a person's paternity vide a DNA test, we must be mindful of the collateral infringement of privacy. For this, the court must satisfy itself that the threshold for the abovementioned three conditions is satisfied. If even one of these conditions fails, it is considered an unwarranted invasion of privacy and consequently, of life and personal liberty as embodied in Article 21 of the Constitution.

39. Similarly, when dealing with the right to dignity, this Court, in X2 v. State (NCT of Delhi), held that the right to dignity encapsulates the right of every individual to be treated as a self-governing entity having intrinsic value. It means that every human being possesses dignity merely by being a human, and can make self-defining and self-determining choices. Further, this Court held that the right to dignity is intertwined with the right to privacy. This means that a person can exercise his right to privacy in order to protect his right to dignity and vice-versa. Together, these rights protect an individual's ability to make the most intimate decisions regarding his life, including sexual activity, whether inside or outside the confines of marriage.

40. Forcefully undergoing a DNA test would subject an individual's private life to scrutiny from the outside world. That scrutiny, particularly when concerning matters of infidelity, can be harsh and can eviscerate a person's reputation and standing in society. It can irreversibly affect a person's social and professional life, along with his mental health. On account of this, he has the right to undertake certain actions to protect his dignity and privacy, including refusing to undergo a DNA test.

41. Usually in cases concerning legitimacy, it is the child's dignity and privacy that have to be protected, as they primarily come under the line of fire. Though in this instance, the child is a major and is voluntarily submitting himself to this test, he is not the only stakeholder bearing personal interest in the results, whatever they may be. The effects of social stigma surrounding an illegitimate child make their way into

the parents' lives as there may be undue scrutiny owing to the alleged infidelity. It is in this backdrop that the Appellant's right to privacy and dignity have to be considered."

13. In the present case, the revisionist has merely stated that his wife remained in matrimonial house for few days and child is not his biological child. The learned trial court as well as learned appellate court have given specific findings and there is no illegality in passing the aforesaid orders. The revision lacks merit and is accordingly **dismissed**.

(Chawan Prakash,J.)

November 21, 2025

Rmk.