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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment reserved on: 20.03.2026*
Judgment pronounced on: 03.07.2026
Judgment uploaded on: 03.07.2026

\+ **CRL.M.C. 3855/2024 & CRL.M.A. 14726/2024**

RAVI KUMAR .....Petitioner

Through: Ms. Babita Seth, Advocate

versus

GEETA DEVI & ORS. .....Respondents

Through: Ms. Neelakshi Bhadauria, Amicus Curiae with Mr. Sarthak Karol and Ms. Tanishka Pawar, Advocates

CORAM:
HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

J U D G M E N T

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DR. SWARANA KANTA SHARMA, J

INTRODUCTION

1. The present case and its factual matrix raises issues that travel beyond the questions of paternity and maintenance. It concerns the interplay between personal autonomy and legal responsibility, and whether a person can exercise the freedom to make personal choices and yet disown the consequences of those very choices when they later become inconvenient.

2. The present case concerns a situation where a man, despite being in a valid and subsisting marriage, is alleged to have lived with another woman in a relationship in the nature of marriage and, from such relationship, three children were allegedly born. Public documents and other evidence placed on record *prima facie* reflect him as the father of the said children. However, he now disputes their claim, denies paternity, opposes the conduct of a DNA test and seeks to avoid liability towards their maintenance, his principal concern being the possible impact on his own reputation and that of his legally wedded wife, who holds a public office.

3. The case also raises the question whether an apprehension of reputational harm to the adults involved can outweigh the concerns of children who seek to know their biological parentage and whose public records and lived experiences have, throughout, recognized a particular person as their father. The Court is called upon to examine whether, in such circumstances, the law should accord greater weight

to the desire of an adult to avoid embarrassment or to the right of children to know their parentage, assert their identity and seek the legal consequences that may flow from such determination.

4. The present petition has been filed by the petitioner, seeking setting aside of the order dated 13.03.2024 [hereafter '*impugned order*'], passed by the learned Principal Judge, Family Court (North-West), Rohini Court, Delhi [hereafter '*Family Court*'], in MT No. 56313/2016, titled *'Geeta Devi v. Ravi Kumar'*, under Section 125 of the Code of Criminal Procedure, 1973 [hereafter '*Cr.P.C.*'].

5. *Vide* impugned order, the learned Family Court was pleased to allow an application filed by the respondent nos. 2 to 4 (children of respondent no. 1) under Section 45 of the Indian Evidence Act, 1872, and direct DNA test be conducted of the petitioner and respondent nos. 2 to 4, for ascertaining their paternity.

FACTUAL BACKGROUND

6. The facts leading to the filing of the present petition, as set out by the petitioner-Ravi Kumar, are that he is a resident of Munger, Bihar and had married Smt. Kumkum Devi on 06.02.1986 according to Hindu rites and ceremonies at Nalanda, Bihar. Out of the said wedlock, two children, namely PK and AK, were born, and the petitioner claims that he has throughout resided at Munger, Bihar and has never resided in Delhi.

7. It is the case of the petitioner that respondent no. 1-Geeta Devi had instituted a petition under Section 125 of the Cr.P.C. before the

learned Family Court on 04.08.2014, claiming that she had married the petitioner on 16.05.1991 at Shakarpur, Delhi according to Hindu rites and ceremonies and that out of the said wedlock, respondent nos. 2 to 4 were born, in 1995, 1999 and 2002 respectively. In the said petition, respondent no. 1 alleged that she and the petitioner had lived together as husband and wife in Delhi and that the petitioner had abandoned her and the children in the year 2005 and had thereafter failed to maintain them. It was alleged that when the petitioner did not return even after a month, respondent no. 1 visited his native place and discovered that he had contracted another marriage with one Smt. Kumkum Devi. She further alleged that she was threatened by the petitioner's family and compelled to leave the village, and has since been residing separately and caring for the children on her own. In support of her claim, she had filed certain photographs and documents on record. The petitioner filed his written statement denying the entire case set up by the respondents and asserted that he had never married respondent no. 1, had never cohabited with her, and was already married to Smt. Kumkum Devi since the year 1986. According to the petitioner, the photographs and other documents relied upon by respondent no. 1 were forged and fabricated and respondent nos. 2 to 4 were not his children. In support of his defence, the petitioner relied upon documents pertaining to his marriage with Smt. Kumkum Devi and documents concerning their children and residence at Munger, Bihar.

8. It is further stated that upon learning of the proceedings under

Section 125 of the Cr.P.C., the petitioner's wife, Smt. Kumkum Devi, instituted Matrimonial Case No. 51/2016 before the learned Family Court, Munger, Bihar, seeking a declaration regarding her marital status. The said proceedings culminated in a judgment and decree dated 25.07.2016, whereby the Family Court, Munger, Bihar declared Smt. Kumkum Devi to be the legally wedded wife of the petitioner and further held that no marital relationship existed between the petitioner and respondent no. 1. The petitioner thereafter moved an application before the learned Family Court at Delhi, relying upon the aforesaid decree and seeking dismissal of the proceedings under Section 125 of the Cr.P.C. However, *vide* order dated 05.02.2018, the learned Family Court observed that the issues raised by the petitioner could not be decided without the parties leading evidence. During the course of the proceedings, respondent no. 1 filed her evidence by way of affidavit and relied, *inter alia*, upon a photograph and her Aadhaar Card.

9. Subsequently, respondent nos. 2 to 4 filed the application under Section 45 of the Indian Evidence Act seeking a direction for conducting a DNA test of the petitioner and respondent nos. 2 to 4 for determination of their paternity. The petitioner opposed the said application by filing a reply.

10. By way of the impugned order dated 13.03.2024, the learned Family Court allowed the aforesaid application and directed that the DNA test of the petitioner and respondent nos. 2 to 4 be conducted, which has led to the filing of the present petition. While passing the

said order, the learned Family Court *inter alia* observed that although the petitioner had denied his marriage with respondent no. 1 and the paternity of respondent nos. 2 to 4, respondent no. 1 had placed on record certain documents, including photographs depicting the petitioner with respondent no. 1 and the children, photographs of birthday celebrations, family photographs, voter identity cards, school certificates of the children, and ration card, showing the petitioner as the father of respondent nos. 2 to 4. The relevant portion of the impugned order reads as under:

> " Petitioner's case is that she was married to respondent according to Hindu rites and customs on 16.05.1991 at Khatik Samaj Mandir, H Block, Shakurpur, Delhi and out of the wedlock three children i.e., petitioner no. 2 to 4 were born. Respondent despite means was denying to maintain them. In the present application, it is stated that respondent had been denying the marriage with petitioner no. 1 and also the paternity of petitioner no. 2 to 4. Therefore, requested that respondent be directed to undergo DNA test in this regard. Respondent's case is that he had no acquaintance with petitioner no. 1 and he had never resided with her and therefore there was no question of his relation with petitioners in any manner. Respondent's main objection to the application is 1) that petitioners had no prime facie case in their favour 2) the petition had been filed in connivance with the opponents of the respondent's wife who was a politician and therefore petitioners' main aim was to malign and tarnish his image and 3) the application was not maintainable as it was against the presumption u/s 112 Indian Evidence Act.
>
> In regard to the first objection, petitioner has placed on record her marriage photographs with respondent, also filed photographs showing respondent celebrating birthday of his children with relatives. She has also filed family photograph wherein all the three children along with petitioner no. 1 and respondent are clearly visible. In addition petitioner has also filed the voter ID card, the school certificates of the children, photocopy of ration card wherein respondent is shown as the

father of petitioners 2 to 4. In addition to this, petitioner has also examined PW2 Smt. Vijay Laxmi the landlady of the parties, who has stated that respondent was her husband's friend and had been residing in their premises. Thereafter, he had brought petitioner no. 1 to the premises after marriage and in their premises petitioner no. 2 to 4 were born. People in the entire gali were knowing this fact. Respondent on the other hand has filed the photograph of his marriage with Kumkum Devi and copy of the judgment passed by Ld. Principal Judge, Family Court, Munger, Bihar declaring Kumkum Devi as legally wedded wife of Ravi Kumar (respondent herein) and the two children Preeti Kumari and Avinash Kumar to be born out of the said wedlock and Geeta Devi (petitioner no. 1 herein) not being the wife of defendant no. 1. This judgment only declares the legal status of petitioner no. 1 and respondent as not being husband and wife but no presumption can arise from the same that respondent had no access to the petitioner no. 1 at any point of time relating to the period in question or there was no possibility of petitioner nos. 2 to 4 being born out of the relation between petitioner no. 1 and respondent. This issue would be matter of trial but for the purpose of prime facie case petitioner has placed enough material on record to show that petitioner no. 2 to 4 could have been both out of the relation with respondent. In regard to the respondent's 2 and 3 objections, petitioner no. 2 to 4 have an important right to know about their paternity and since the legal status of petitioner no. 1 as wife of respondent has been negated by the concerned Family Court at Munger, Bihar therefore they have a right to explore the means to establish their paternity as claimed by them. The judgments cited by the Ld. counsel for respondent also support petitioner's case and in the judgment of Gautam Kundu Vs. State of West Bengal (Supra) has held that the test for determining paternity cannot be allowed as matter of routine but in appropriate cases where there is strong prime facie case and keeping in mind the consequences of the said test vis-a-vis the child's right and their status, such test can be allowed in appropriate cases. In the present case, the petitioner no. 2 to 4 who are now major have themselves filed the application and have also shown strong prime facie case in their favour by producing documentary evidence as well as oral evidence of PW2 in this regard. Accordingly, the application is allowed.

Let a notice be issued to the SHO PS Shakurpur to depute a

police personnel, not below the rank of ASI, to appear along with the petitioners no. 2 to 4 and respondent before the MS/HOD Forensic Medicines, BSA Hospital.

The MS/HOD Forensics Medicines, BSA Hospital is directed to collect the requisite sample for DNA analysis of the parties concerned, to ascertain the paternity of the petitioner no. 2 to 4, who shall appear before him. Thereafter, ASI concerned shall get the samples sealed, collect them and deposit the same in FSL, during the minimum time required.

The director, FSL shall either call the ASI concerned to collect the report or shall send the report directly to this court, latest within one month.

SHO PS Shakurpur is further directed that after collection and deposit of the samples in FSL, the concerned ASI shall give due intimation to this court immediately.

Put up for remaining PE on 26.04.2024."

SUBMISSIONS BEFORE THE COURT

11. The learned counsel appearing for the petitioner assails the impugned order on the ground that the learned Family Court has passed the same in a mechanical manner without proper appreciation of the facts and settled principles governing the exercise of power to direct DNA testing. It is argued that the impugned order is contrary to the law laid down by the Hon'ble Supreme Court in ***Goutam Kundu v. State of West Bengal:*** *(1993) 3 SCC 418* and that DNA testing cannot be directed as a matter of course. It is further contended that the respondents had failed to make out a fit case warranting DNA examination and that the application under Section 45 of the Indian Evidence Act was frivolous, premature and an abuse of the process of law. According to the petitioner, the proceedings have been initiated in collusion with the political opponents of his wife, Smt. Kumkum

Devi, with the sole object of harassing the petitioner and tarnishing the reputation of his family. The learned counsel argues that the learned Family Court has failed to appreciate that the matter was still at the stage of evidence, respondent no. 1 was yet to complete her cross-examination and the petitioner had not even led his evidence. It is argued that the authenticity and veracity of the documents relied upon by the respondents had not yet been tested and, therefore, there was no material on record necessitating the direction for DNA testing at such a stage. It is further submitted that there is ample material on record to demonstrate that the petitioner had no access to respondent no. 1 and that he neither cohabited with her nor had any relationship with her. In this regard, it is pointed out that the petitioner had been married to Smt. Kumkum Devi since 06.02.1986 and that a son, Avinash Kumar, was born out of the said wedlock in the year 1994 at Munger, Bihar. It is contended that the respondents have not placed on record any document to show that the petitioner was residing in Delhi or living with respondent no. 1 at any point of time. The learned counsel also argues that no weight ought to have been attached to the ration card, voter identity card and school certificates relied upon by the respondents since the said documents were brought on record after several years of the institution of the proceedings, are yet to be proved in accordance with law and, according to the petitioner, are forged and fabricated. It is also contended that respondent no. 1, in her evidence, had formally exhibited only two documents, i.e. a photograph and her Aadhaar

Card, and that the remaining documents had neither been exhibited nor tested during cross-examination. It is further submitted that the learned Family Court has failed to assign any reason for disregarding the judgment and decree dated 25.07.2016 passed by the Family Court, Munger, Bihar, whereby Smt. Kumkum Devi was declared to be the legally wedded wife of the petitioner and it was held that no marital relationship existed between the petitioner and respondent no. 1. It is also argued that respondent no. 1 herself had admitted a previous marriage but had failed to disclose the particulars of her previous husband or to plead that the said marriage had been dissolved or that she had no access to her previous husband at the time of the birth of respondent nos. 2 to 4. In these circumstances, it is contended that the learned Family Court exceeded its jurisdiction in directing DNA testing and that the impugned order deserves to be set aside.

12. *Per contra*, the learned counsel appearing for the respondents submits that in view of the petitioner's persistent denial of both his marriage with respondent no. 1 and the paternity of respondent nos. 2 to 4, the respondents were constrained to file an application under Section 45 of the Indian Evidence Act seeking DNA testing for scientific determination of paternity. It is argued that the said application was filed to facilitate the discovery of truth and for an effective adjudication of the proceedings under Section 125 of the Cr.P.C., particularly when the petitioner had categorically denied the relationship despite documentary and oral evidence having already

been placed on record. The learned counsel further contends that the learned Family Court, upon considering the pleadings and the material on record, rightly found that a *prima facie* case existed warranting scientific determination of the issue and, therefore, correctly allowed the application and directed the conduct of DNA testing. It is also submitted that the petitioner cannot derive any benefit from the judgment and decree dated 25.07.2016 passed by the learned Family Court, Munger, Bihar, since the same has been set aside by the High Court of Judicature at Patna in Miscellaneous Appeal No. 643 of 2017 *vide* order dated 11.11.2024 and the matter has been remanded for fresh adjudication. It is contended that the said decree had been passed *ex-parte* and the material relied upon by respondent no. 1, including the marriage certificate and photographs allegedly evidencing her marriage with the petitioner, could not be considered therein. Consequently, the said decree cannot be relied upon by the petitioner to defeat the present proceedings. The learned counsel for the respondents further submits that the direction for DNA testing goes to the very root of the controversy in the proceedings under Section 125 of the Cr.P.C., since the petitioner has consistently denied not only his marriage with respondent no. 1 but also the paternity of respondent nos. 2 to 4. It is contended that in such circumstances, determination of paternity is foundational to the adjudication of the respondents' claim for maintenance and, therefore, the learned Family Court has rightly exercised its discretion in directing scientific examination. It is further argued that

where paternity is directly in issue, the Family Court is competent to determine such question as incidental and necessary for deciding the claim for maintenance. The learned counsel also argues that respondent no. 1 has placed sufficient *prima facie* material on record demonstrating cohabitation and access between the parties. In this regard, reliance is placed upon marriage and family photographs, birth certificates and other official documents showing the petitioner as the father of respondent nos. 2 to 4, school records reflecting the petitioner's parentage, and oral evidence, including the testimony of the landlady, to establish that the petitioner and respondent no. 1 had resided together. It is, therefore, contended that in view of the petitioner's categorical denial of both marriage and paternity despite the aforesaid material, the learned Family Court rightly considered scientific determination of paternity to be essential for the effective adjudication of the maintenance proceedings.

13. The arguments in the present case were concluded on 20.03.2026 and the matter was reserved for judgment.

14. On 01.07.2026, the learned counsel for the petitioner appeared before this Court and submitted that, in the interregnum, a subsequent development had taken place. By way of CRL.M.A. 18684/2026, she apprised this Court that the learned Family Court, Munger, Bihar, had passed a judgment dated 30.05.2026 in the proceedings which had been remanded to it by the High Court of Judicature at Patna. It is stated that the learned Family Court, Munger, has held that the petitioner-Ravi Kumar and Smt. Kumkum Devi are legally wedded

spouses, having been married on 06.02.1986, and that respondent no. 1-Geeta Devi had failed to establish her alleged marriage with the petitioner. It has further been held that, in any event, since the marriage between the petitioner and Smt. Kumkum Devi was found to be valid and subsisting, any alleged marriage between the petitioner and respondent no. 1 could not have been legally valid.

15. This Court has **heard** arguments addressed on behalf of the petitioner as well as the respondents, and has perused the material available on record.

ANALYSIS & FINDINGS

16. In the present case, the validity of the alleged marriage between the petitioner-Ravi Kumar and respondent no. 1-Geeta Devi is itself a disputed question. The record reveals that the judgment and decree dated 25.07.2016 passed by the learned Family Court, Munger, Bihar, whereby respondent no. 1 was held not to be the wife of the petitioner, was set aside by the High Court of Judicature at Patna and the matter was remanded for fresh adjudication. Thereafter, the learned Family Court, Munger, by judgment dated 30.05.2026, has once again held that the petitioner and Smt. Kumkum Devi are legally wedded spouses and that respondent no. 1 has failed to establish her marriage with the petitioner.

Issue before the Court

17. However, the issue before this Court is not regarding validity of the alleged marriage between the petitioner and respondent no. 1.

This question also now stands adjudicated upon by the learned Family Court, Munger, Bihar *vide* a judgment dated 30.05.2026 wherein it has been held that respondent no. 1 has failed to prove her marriage with the petitioner herein. The issue before this Court is to examine the legality of the impugned order *vide* which the learned Family Court has allowed the application for conducting DNA test to decide as to whether respondent nos. 2 to 4 are the biological children of the petitioner herein. In other words, the issue before this Court, irrespective of the validity of such marriage, is as to whether there existed a relationship between the petitioner and respondent no. 1 which resulted in the birth of respondent nos. 2 to 4, who assert themselves to be the biological children of the petitioner.

18. The determination of this issue is significant because the petitioner has not only denied the alleged marriage with respondent no. 1, but has also categorically denied the paternity of respondent nos. 2 to 4, and on this ground, has refused to pay maintenance to the respondents.

Examination of the Material on Record

19. A perusal of the material placed on record reveals that respondent no. 1 and respondent nos. 2 to 4 have relied upon various documents and circumstances to *prima facie* establish the existence of relationship between the petitioner and respondent no. 1 and to support their claim regarding paternity. These include:

(i) photographs allegedly depicting the marriage of the

petitioner and respondent no. 1;

(ii) photographs showing the petitioner celebrating the birthdays of respondent nos. 2 to 4;

(iii) family photographs wherein the petitioner, respondent no. 1 and respondent nos. 2 to 4 are seen together;

(iv) voter identity card and the ration card, reflecting the name of petitioner as husband of respondent no. 1

(v) school records of the children, such as 8th or 10th class certificates, school identity cards, etc. wherein the petitioner's name is reflected as the father of respondent nos. 2 to 4; and

(v) the testimony of PW-2, Smt. Vijay Laxmi, the landlady of the parties, who has deposed before the Trial Court that the petitioner and respondent no. 1 had resided together and that respondent nos. 2 to 4 were born during such cohabitation.

20. At this stage, this Court is not called upon to record any final finding regarding the genuineness or evidentiary value of the aforesaid documents or testimony, but at the same time, the said material cannot be ignored and does constitute *prima facie* material suggesting that the petitioner and respondent no. 1 may have shared a relationship, out of which the respondent nos. 2 to 4 were born.

21. In the present case, it is also significant to note that the application seeking DNA examination has been moved not by respondent no. 1 alone, but by respondent nos. 2 to 4 themselves,

who seek to establish their biological parentage. When children approach a Court asserting that they have throughout been known and recognised as the children of a particular person, and place on record public documents and other material reflecting such parentage, the Court cannot shut its eyes to such claim merely because the validity of the marriage between the adults is itself under dispute. The direction for DNA testing, in this case, aims to determine the issue of paternity, which lies at the heart of the controversy in the present proceedings under Section 125 of the Cr.P.C. seeking maintenance from the petitioner, and is not intended to reopen the issue of the validity of marriage between the petitioner and respondent no. 1.

22. Further, in the opinion of this Court, the question of invoking the presumption under Section 112 of the Indian Evidence Act, does not arise in the peculiar facts of the present case. The petitioner's own case is that he had a valid and subsisting marriage with Smt. Kumkum Devi, solemnized on 06.02.1986, and that the said marriage continued to subsist during the period when respondent no. 1 alleges that she was residing with him and respondent nos. 2 to 4 were born out of such relationship. During the pendency of the present petition, the learned Family Court, Munger, has also held that the marriage between the petitioner and Smt. Kumkum Devi is valid. Therefore, the controversy in the present case is not one where a party seeks to rebut or displace the statutory presumption under Section 112 of the Evidence Act by resorting to DNA testing. Instead, the issue concerns the claim of respondent nos. 2 to 4 that the petitioner is their

biological father, though they may have been born outside a valid marriage between the petitioner and respondent no. 1 or out of a relationship which, according to them, was in the nature of marriage. Seen in this light, the direction for DNA testing is not intended to unsettle the presumption under Section 112 of the Evidence Act, but aimed at the determination of an altogether different question – whether respondent nos. 2 to 4 are biological children of the petitioner and as to whether their assertion regarding paternity is correct, and consequently, whether the petitioner could be held liable to pay maintenance to the respondent nos. 2 to 4.

23. As regards the relevance of the DNA test to the proceedings pending before the learned Family Court, it is pertinent to note that the petition under Section 125 of the Cr.P.C. has been instituted seeking maintenance from the petitioner. Respondent nos. 2 to 4 claim to be the children of the petitioner and, if such claim is established, they would be entitled to seek maintenance in accordance with law. It is also significant that Section 125(1) of the Cr.P.C. does not confine the right to maintenance only to legitimate children. The provision expressly extends the right of maintenance even to an illegitimate child. Therefore, the determination of the issue of paternity has a direct and substantial bearing on the adjudication of the proceedings pending before the learned Family Court.

24. The decision in ***Goutam Kundu*** *(supra)*, relied upon by the petitioner, does not advance the case of the petitioner. The said judgment was rendered in a different factual context and it lays down

that DNA testing cannot be directed as a matter of course or in a routine manner. It does not prohibit a court from directing such examination in an appropriate case where the issue of paternity is directly in question and the facts and circumstances warrant recourse to scientific evidence in the interest of justice.

25. In view of the above discussion, this Court is of the opinion that the focal point in the present case is not whether the petitioner and respondent no. 1 shared a valid marriage or a relationship outside marriage, or whether either of them was married to another person. What emerges from the record is a situation where, according to the testimony of PW-2, the petitioner and respondent no. 1 were residing together as husband and wife and three children were born during their cohabitation in the same premises. Further, respondent no. 1, in her testimony before the learned Family Court, has consistently asserted that she had married the petitioner and that respondent nos. 2 to 4 were fathered by him.

26. To reiterate, the issue before this Court is not the validity of the marital status of the parties, but whether respondent nos. 2 to 4 were fathered by the petitioner from the relationship alleged by respondent no. 1. The determination required to be made is neither regarding the validity of the marriage between the parties nor regarding the morality or desirability of the relationship alleged between them. The question is a narrower one, i.e., whether the petitioner is the biological father of respondent nos. 2 to 4, who claim to have been born from such union.

27. *In this regard*, the material placed on record, including the testimony of PW-2, the photographs depicting the petitioner with respondent no. 1 and respondent nos. 2 to 4, including those showing him celebrating their birthdays, and the public documents and school records wherein the petitioner is reflected as the father of respondent nos. 2 to 4, constitute the relevant material which *prima facie* calls for an inquiry into the issue of paternity.

28. In the facts and circumstances of the present case, it would be relevant as well as necessary to take into consideration the recent decision of the Hon'ble Supreme Court in ***Chaturbhuj Pradhan v. Amar Pradhan:*** *2026 SCC OnLine SC 994.* Insofar as the applicable legal principles are concerned, the Hon'ble Supreme Court observed as under:

> "**5.** We now examine these competing claims. In doing so, we must take notice of the controlling judgments:
>
> 5.1 *Goutam Kundu* v. *State of W.B.*[8],
>
> **"26.** From the above discussion it emerges—
>
> (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."

5.2 *Dipanwita Roy* v. *Ronobroto Roy*[9]:

> **"16.** It is borne from the decisions rendered by this Court in *Bhabani Prasad Jena* [*Bhabani Prasad Jena* v. *Orissa State Commission for Women*, (2010) 8 SCC 633 : (2010) 3 SCC (Civ) 501 : (2010) 3 SCC (Cri) 1053] and *Nandlal Wasudeo Badwaik* [*Nandlal Wasudeo Badwaik* v. *Lata Nandlal Badwaik*, (2014) 2 SCC 576 : (2014) 2 SCC (Civ) 145 : (2014) 4 SCC (Cri) 65] that depending on the facts and circumstances of the case, it would be permissible for a court to direct the holding of a DNA examination to determine the veracity of the allegation(s) which constitute one of the grounds, on which the party concerned would either succeed or lose. There can be no dispute, that if the direction to hold such a test can be avoided, it should be so avoided. The reason, as already recorded in various judgments by this Court, is that the legitimacy of a child should not be put to peril."
>
> *(emphasis supplied)*

5.3 Having considered extensively the previous judgments, the following principles were enunciated in *Aparna Ajinkya Firodia* v. *Ajinkya Arun Firodia*[10]:

> **"43.** Having regard to the aforesaid discussion, the following principles could be culled out as to the circumstances under which a DNA test of a minor child may be directed to be conducted:
>
> **43.1.** That a DNA test of a minor child is not to be ordered routinely, in matrimonial disputes. Proof by way of DNA profiling is to be directed in matrimonial disputes involving allegations of infidelity, only in matters where there is no other mode of proving such assertions.

43.2. DNA tests of children born during the subsistence of a valid marriage may be directed, only when there is sufficient prima facie material to dislodge the presumption under Section 112 of the Evidence Act. Further, if no plea has been raised as to non-access, in order to rebut the presumption under Section 112 of the Evidence Act, a DNA test may not be directed.

43.3. A court would not be justified in mechanically directing a DNA test of a child, in a case where the paternity of a child is not directly in issue, but is merely collateral to the proceeding.

43.4. Merely because either of the parties have disputed a factum of paternity, it does not mean that the court should direct DNA test or such other test to resolve the controversy. The parties should be directed to lead evidence to prove or disprove the factum of paternity and only if the court finds it impossible to draw an inference based on such evidence, or the controversy in issue cannot be resolved without DNA test, it may direct DNA test and not otherwise. In other words, only in exceptional and deserving cases, where such a test becomes indispensable to resolve the controversy the court can direct such test.

43.5. While directing DNA tests as a means to prove adultery, the court is to be mindful of the consequences thereof on the children born out of adultery, including inheritance-related consequences, social stigma, etc."

5.4 *Ivan Rathinam* v. *Milan Joseph*[11],

"35. In the peculiar circumstances of this case, this Court must undertake an exercise to 'balance the interests' of the parties involved and decide whether there is an 'eminent need' for a DNA test. This pertains not simply to the interests of the child, i.e. the Respondent, but also to the interests of the Appellant.

> 36. On one hand, courts must protect the parties' rights to privacy and dignity by evaluating whether the social stigma from one of them being declared 'illegitimate' would cause them disproportionate harm. On the other hand, courts must assess the child's legitimate interest in knowing his biological father and whether there is an eminent need for a DNA test.
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> …
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> 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.
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> 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."
>
> *(emphasis supplied)*
>
> 5.5 All of the judgments referred to above were recently followed by this bench in *Nikhat Parveen* v. *Rafique*[12]."

29. Further, in ***Chaturbhuj Pradhan*** *(supra)*, while balancing the right of a child to know who his father was, *viz. a viz.* the right to privacy of the father, the Hon'ble Supreme Court upheld the direction for conducting DNA test, by observing as under:

"**6.** It is clear from the above judgments that when the Court is confronted with the question whether or not to order a DNA test, the only test to be satisfied is whether the result of the DNA test is directly in issue and whether any other evidence-on-record can substitute for the answer that may be arrived at through this scientific process. Also, whether it is in the best interest of the parties and/or justice.

6.1 In the present case, the alleged relationship between CP and the second respondent was in January 1999 and Amar was born in September 1999. CP has consistently denied paternity and there is no other evidence that can provide a categorical answer. It is nobody's case that the second respondent had ever had an intimate relationship with someone else.

6.2 Although there have been findings that state that the second respondent has been unable to establish any link between CP and Amar, those findings were not as a consequence of the full-dress trial. The civil suit filed by Amar is for this very purpose and as such, the question of paternity is directly in issue. On this count as well, we find in favour of the respondent.

6.3 In view of the above observation, the question of *res judicata* also is closed. As far as the right of privacy is concerned, we are balancing, in this case CP's privacy with Amar's desire for closure on a question that has loomed large on his life throughout. He has seen, right from childhood, his mother assert that CP is the father but the authorities, consistently found otherwise. If no positive answer is ever found out to the question, it is quite possible that Amar would forever be denied the rights he may otherwise be entitled to by virtue of being CP's son.

7. The balance of interests definitely lies in favour of Amar. As such, no error can be found in the impugned judgment. The appeal is dismissed. Let the matter be taken up by the concerned Civil Court for fixing a date to conduct a DNA test and proceed further in the civil suit pending before it as per the result received subsequently."

Reputation Cannot Become a Shield Against Truth

30. It is a peculiar case brought for adjudication before this Court, which leads it to consider a larger and more relevant question of law, as to whose interest deserves greater constitutional protection – the embarrassment of an adult who is the alleged biological father, or the search for identity and future of three children. There is no doubt in the mind of this Court that when weighed between the anxiety of an alleged biological father to preserve his and his first wife's reputation, and the right of three children to know their parentage, the constitutional conscience of this Court will not hesitate to hold that the former may yield where necessary; the latter, however, cannot be sacrificed merely to avoid social discomfort.

31. Interestingly, the petitioner compels this Court to accept his plea that conducting a DNA test will harm his reputation, while at the same time vehemently arguing that he does not even know respondent nos. 1 to 4. This argument, instead of compelling acceptance, merits outright rejection. If, according to the petitioner, he has no connection whatsoever with respondent nos. 1 to 4 and does not know how public documents came to record him as the father of respondent nos. 2 to 4, how photographs came into existence depicting him celebrating their birthdays, or how evidence has emerged suggesting that he had been residing with respondent no. 1 for a considerable period, then it is difficult to appreciate why he should fear a DNA test. On the contrary, if his assertions are true, a

DNA test would conclusively vindicate his stand and protect his reputation in society.

32. Another aspect is that the alleged apprehension of injury to reputation is, *prima facie*, a consequence of circumstances reflected from the evidence and documents placed on record. Today, when the petitioner's legally wedded wife holds public office, that circumstance appears to have compelled him to attempt to retrospectively erase a chapter of his life and his alleged voluntary choices. The law, however, cannot permit history to be rewritten merely because a person's present social circumstances make him uncomfortable about his past.

33. This Court, as a court of law, does not create facts, but it only examines the facts and evidence placed before it. If reputational consequences flow from an adult's own conscious choices, the judicial process cannot be blamed for revealing what the individual himself may have chosen to create. To contend that permitting a DNA test would cause grave injustice to the petitioner and his legally wedded wife is, in essence, to argue that the judicial process should refrain from uncovering facts merely because the truth may cause embarrassment.

34. On this aspect, this Court is conscious that the first wife may herself be an innocent victim of the circumstances created by her husband's conduct and cannot be blamed for the same. Any consequences that may cause her suffering are indeed deeply

unfortunate. However, sympathy for her situation cannot become a justification to deny justice to three other innocent children. A perceived hardship cannot be remedied by inflicting hardship upon innocent children who had no role in creating the situation in which they now find themselves.

35. The rights and interests of children (respondent nos. 2 to 4) cannot be subordinate to the considerations of social stigma or reputational concerns of the adults involved, inasmuch as the issue of parentage of the children also concerns their identity and has a bearing on their legal rights, including their claim for maintenance. Further, this Court is not dealing merely with an issue of maintenance. It is also dealing with the issue of identity of respondent nos. 2 to 4, which carries profound emotional, psychological and legal significance for them. Needless to say, financial support may sustain the body, but the knowledge of one's parentage and identity sustains the individual as a person. The dignity, sense of belonging and emotional security associated with such identity are beyond measure. The present case, therefore, is one where the law must approach the adjudication from the standpoint of the innocent children and not merely through the prism of an adult seeking to avoid embarrassment or reputational discomfort.

Children Cannot Become Casualties of Adult Choices

36. Before parting with this case, since the present case raises a proposition which is more relevant in today's world, where

constitutional jurisprudence in many recent judgments has recognized the autonomy of adults to choose their partners even outside their marriage and has not interfered with such choice, holding that choosing a partner and the manner in which a person lives is his personal choice, this Court observes that while the right to choose one's private life and the manner in which it is lived is recognized as a right, in appropriate cases the Courts have to hold that such exercise of freedom carries with it a corresponding obligation, depending on the facts of a case brought for adjudication before a Court of law. The Courts and the law cannot permit a citizen to invoke the right to personal liberty while, at the same time, rejecting the corresponding obligation of accountability.

37. This Court cannot lose sight of the fact that the children born from the alleged union are entirely innocent and had no choice as to the circumstances of their birth or the union from which they were born. They were not aware that their parents may not have been legally married. Their school records, identity documents and the social recognition, as is *prima facie* reflected from the record, depict the petitioner as their father. These records were not created by the children themselves but by the adults from whose union they were born. The decision to bring them into this world, as also to confer upon them an identity of parentage, was that of the two adults, one of whom now seeks to distance himself from and deny those very decisions in order to protect his own and his legally wedded wife's social identity and reputation. The burden of such conduct of the

adults cannot be permitted to fall upon the innocent children born from such union. The children in the present case are neither the authors of the circumstances of their birth nor of what transpired before or after their birth between the two adults whose relationship brought them into the world. If one of the alleged parents now seeks to avoid the consequences of his own choices, the law cannot permit the burden thereof to be shifted onto the children. The consequences of such conduct must be borne by the adults themselves and not by the innocent children.

38. Needless to state, when two adults choose to enter into a relationship and, from such association, children are born, the choices made by two adults cannot defeat or eclipse the rights of those children to know their biological parentage. The rights and interests of the children cannot be rendered subservient to the conduct of the adults from whose relationship they were born. Moreover, if a contrary view is to be adopted, it would lead to a situation where a person, whether a man or a woman, could, after having lived in a relationship outside a legally subsisting marriage or in a live-in relationship and having brought children into the world, subsequently deny parentage and leave the children to spend their entire lives in uncertainty regarding their identity and lineage. Such an approach would deprive the children of an answer to a question that goes to the root of their identity, i.e. who their biological parents are.

39. This issue is even more significant in the current times, where relationships outside marriage and/or live-in relationships are not

unknown to society. In such situations, if one of the parties were permitted to deny parentage despite the existence of *prima facie* material pointing to the contrary, and the children were denied access to scientific means capable of establishing the truth, the consequences would fall not upon the adults but upon the children, who had no role in the circumstances of their birth.

40. The right of a child to know his or her biological origins and parentage is also intrinsically connected with the child's identity and dignity. Therefore, where a serious and bona fide dispute regarding paternity arises and there exists *prima facie* material ordering such a DNA test, the Court cannot altogether foreclose a scientific examination solely because the relationship between the adults may not constitute a valid marriage in the eyes of law.

Conclusion

41. While deciding this case, this Court has no hesitation in holding that it is ultimately not about the private choices of adults. As observed in the preceding paragraphs, the law in recent times has ordinarily left such choices to the individual conscience of two adults who choose to live with each other, even outside marriage. The law and Courts cannot indulge in moral policing; however, they must become concerned when those choices produce human consequences involving innocent children, which cannot be ignored.

42. This Court also considers it necessary to observe that in recent times, the law has increasingly recognised the autonomy of adults to

make personal choices concerning their relationships. It has also become common to hear the argument that Courts have no right to judge such choices. This Court agrees that it is not the function of Courts to sit in moral judgment over the private lives of consenting adults. However, while this Court will not hold individuals responsible for the personal choices they make, it cannot permit them to avoid responsibility for the legal and human consequences of those choices.

43. The law respects freedom of choice, but it equally insists upon accountability where those choices affect the rights of others, particularly innocent children. Personal liberty and personal responsibility are inseparable; one cannot be claimed while the other is disowned.

44. This Court is also of the opinion that the personal liberty to lead a life of one's choice and personal responsibility are not opposing ideas but are, rather, inseparable companions. This Court has also observed in several judgments authored earlier that a citizen who chooses to exercise his right to freedom by making conscious choices and thereby creating relationships must also accept and fulfil the obligations that arise from such relationships. In this Court's opinion, a citizen cannot consciously and voluntarily enter into a relationship, bring three children into the world, and later reject parenthood. The law cannot permit adults to enjoy the privileges of choice while transferring its burdens to the childhood of those born from such choices. If the right to personal freedom is to retain its

constitutional sanctity, it must be accompanied by personal accountability.

45. To conclude, the law respects the freedom of choices through which innocent lives are created, however, it will never permit responsibility for those lives to be abandoned.

46. Considering the overall facts and circumstances of the case and the principles laid down by the Hon'ble Supreme Court in ***Chaturbhuj Pradhan*** (*supra*), this Court is of the opinion that the question of paternity of respondent nos. 2 to 4 is directly in issue in the proceedings pending before the learned Family Court and cannot be said to be merely incidental thereto. The respondents have placed on record *prima* facie material indicating a relationship between the petitioner and respondent no. 1 and reflecting the petitioner as the father of respondent nos. 2 to 4. At this stage, when petitioner has consistently denied paternity, there is no other evidence on record to answer the question – whether or not respondent nos. 2 to 4 are biological children of the petitioner. In such peculiar facts and circumstances, the direction for DNA testing cannot be termed as a mechanical exercise of jurisdiction.

47. The impugned order, therefore, does not suffer from any illegality or perversity, and the same is accordingly upheld.

48. Accordingly, the present petition, alongwith pending application, is dismissed.

49. Nothing expressed hereinabove shall tantamount to an

expression of opinion on the merits of the case.

50. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

JULY 03, 2026/ns
T.D./T.S.