2025 INSC 1304

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1013 OF 2021

R. RAJENDRAN **....APPELLANT(S)**

VERSUS

KAMAR NISHA AND OTHERS **....RESPONDENT(S)**

J U D G M E N T

PRASHANT KUMAR MISHRA, J.

1) This Appeal calls in question the impugned judgment dated 10.05.2017 passed by High Court of Madras at Madurai in Writ Appeal (MD) No.521 of 2017, whereby the High Court directed the appellant to appear before the Dean, Government Rajaji Hospital, Madurai on or before 19.05.2017, for collection of blood samples for DNA profiling as ordered by the learned Single Judge in W.P. (MD) No.15208 of 2016.

FACTUAL MATRIX

2) Respondent No.1 married one Abdul Latheef in the year 2001. Abdul Latheef was suffering from a skin ailment and, therefore, he approached the appellant, a doctor, for treatment. The appellant successfully treated Abdul Latheef's condition, which led him to confide in the appellant regarding his lack of progeny. Abdul Latheef requested the appellant to refer his wife,

respondent No.1, to Dr. Indira, the appellant's first wife and a Gynaecologist, for the necessary treatment. However, instead of referring respondent No.1 to Dr. Indira, the appellant developed physical relations with her, resulting in the birth of a child on 08.03.2007**.**

3) When the child was approximately one and a half years old, the appellant continued his extramarital relationship with respondent No.1. Upon learning this, Abdul Latheef allegedly deserted her. Respondent No.1 then approached the appellant for assistance, as her husband had deserted her. The appellant asked respondent No.1 to pay Rs.3,00,000/- to his second wife, Dr. Devi, in return for taking her house on lease. Respondent No.1 complied, taking the house at Door No.1, Thanjavur Road, Pattukkottai Taluk, Pattukkottai, on lease from 20.08.2013.

4) According to respondent No.1, the appellant frequently visited her house and spent time with her. She subsequently asked him to marry her and make their relationship public. Upon his refusal, a quarrel ensued on 09.05.2014. Thereafter, the appellant began avoiding her. Unable to sustain herself, respondent No.1 approached "Z" Tamil T.V. channel and appeared on a programme titled "*Solvathellam Unmai*", publicly narrating her complaint. This led to the registration of F.I.R. No.233/2014 dated 24.06.2014 against the appellant for offences under Sections 417 and 420 of the Indian Penal Code, 1860 and Section 4(1) of the Tamil Nadu Women Harassment Act.

5) Subsequent to the registration of the FIR, the Police moved an application before the Judicial Magistrate, Pattukkottai, seeking directions

to send the appellant, respondent No.1, and the child for DNA profiling. Directions were issued to the appellant to appear before the concerned Medical Officer of the Government Hospital for drawal of blood samples. However, the appellant failed to comply with the said order.

FIRST ROUND OF LITIGATION

6) Respondent No.1, aggrieved by the lack of progress in the investigation, filed W.P. (MD) No.7746 of 2015 seeking transfer of F.I.R. in Crime No.233 of 2014 from respondent No.4/The Inspector of Police, Pattukottai Police Station, Pattukottai, Thanjavur District to the Superintendent of Police, C.B.C.I.D., Chennai. The learned Single Judge *vide* order dated 08.06.2015 disposed of the writ petition directing respondent No.3/Superintendent of Police, Thanjavur District to transfer the pending investigation to any other investigation officer, while directing him to monitor and supervise the investigation.

7) Respondent No.1, finding no appreciable advancement in the investigation despite the judicial intervention, was constrained to prefer another writ petition being W.P. (MD) No.15208 of 2016 seeking transfer of investigation from respondent no.4/The Inspector of Police to the Superintendent of Police, C.B.C.I.D, Chennai. She further sought an interim relief for conducting a DNA test of her child, allegedly born through the appellant. The High Court, *vide* interim order dated 20.10.2016, directed the appellant and respondent No.1 to appear before the Dean, Thanjavur

Medical College Hospital, Thanjavur on 01.11.2016, who in turn was directed to collect blood samples of the parties to obtain a DNA report.

8) Aggrieved by the aforesaid interim order dated 20.10.2016 passed by the learned Single Judge, the appellant filed W.A. (MD) No.1428 of 2016. The Division Bench of the High Court, upon consideration, allowed the said writ appeal, noting that the interim order was passed without affording an opportunity to the appellant. The High Court set aside the order dated 20.10.2016 and remitted the matter back to the Writ Court for fresh consideration.

SECOND ROUND OF LITIGATION

9) Pursuant to the remand by the Division Bench, the learned Single Judge considered the matter afresh, after affording an opportunity to the appellant, and *vide* order dated 24.04.2017 in W.P. (MD) No.15208 of 2016, held that DNA profiling of the appellant, respondent No.1 and the child, was essential for the investigation in Crime No.233 of 2014. Accordingly, the learned Single Judge directed respondent No.6/Inspector of Police, Sethubavachathiram Police Station, Thanjavur District, to produce the appellant, respondent No.1 and the child before the Dean, Rajaji Government Hospital, Madurai on 10.05.2017 at 10:30 a.m. The Inspector of Police was further directed to collect the F.T.A cards from the Forensic Science Department and submit the same to the Dean, Thanjavur Medical College Hospital on 10.05.2017, whereupon the blood samples of all the three parties were to be collected and forwarded to the Tamil Nadu Forensic

Laboratory. The DNA report was directed to be sent to the learned Judicial Magistrate, Pattukottai. The learned Single Judge disposed of the said writ petition observing that the investigation in Crime No.233 of 2014 would depend upon the result of the DNA test.

10) Aggrieved by the order passed by the learned Single Judge dated 24.04.2017 in W.P. (MD) No.15208/2016, the appellant preferred Writ Appeal (MD) No.521 of 2017. The Division Bench, *vide* the impugned judgment dated 10.05.2017 dismissed the writ appeal, directing the appellant to appear before the Dean, Government Rajaji Hospital, Madurai on or before 19.05.2017 for collection of blood samples as ordered by the learned Single Judge. Hence, this Appeal.

SUBMISSIONS

11) Learned counsel for the appellant submitted that it is settled law that DNA testing can be granted only in exceptional cases and it cannot be permitted for mere roving and fishing inquiries, particularly when such directions may have implications on the right to privacy of the individuals involved.

12) He further contended that Section 112 of the Indian Evidence Act, 1872[1] mandates that any person born during the subsistence of a valid marriage between his mother and father shall be conclusively presumed to be the legitimate child born out of the wedlock.

[1] For short, 'the Evidence Act'

13) Learned counsel also placed reliance on ***Ivan Rathinam vs. Milan Joseph***[2]***; Aparna Ajinkya Firodia vs. Ajinkya Arun Firodia***[3]***;*** and ***Banarsi Dass vs. Teeku Dutta (Mrs) and Another***[4]***.***

14) He further submitted that the child has now attained the age of majority, and therefore, the question arises as to whether she can be compelled to undergo DNA testing without her prior consent. He also drew our attention to the belated registration of the complaint, submitting that the child was born on 08.03.2007 and the FIR came to be lodged only on 24.06.2014 without an explanation for such delay.

15) Lastly, he placed reliance on the birth certificate, the school certificate, and the school admission certificate, all of which record the name of Abdul Latheef as the father and thus contended that there exists no eminent need for directing DNA testing. Accordingly, he prayed for setting aside of the impugned order.

16) *Per contra,* learned counsel for respondent No.1 submitted that the reliance placed by the appellant on ***Goutam Kundu vs. State of West Bengal and Another***[5] and ***Dipanwita Roy vs. Ronobroto Roy***[6] and similar decisions is misplaced. It was contended that those cases arose in the context of matrimonial disputes, where the Court's primary endeavour is to preserve the institution of marriage and protect the legitimacy of children.

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[2] 2025 SCC OnLine SC 175
[3] 2023 INSC 146: [2023] 4 SCR 680
[4] (2005) 4 SCC 449
[5] (1993) 3 SCC 418
[6] (2015) 1 SCC 365

In contrast, the present case arises out of criminal proceedings, where strict proof is essential for establishing the guilt or innocence.

17) It was further submitted that where the woman herself seeks DNA test, there is no element of imputing unchastity. As regards to the apprehension of illegitimization of the child, it is stated that the child's present status is akin to that.

18) Respondent No.1 further relied upon ***Nandlal Wasudeo Badwaik vs. Lata Nandlal Badwaik and Another***[7] to submit that scientific advancement prevails over archaic presumptions.

19) It was also contended that this Court may draw adverse inference under Section 114(g) and (h) of the Evidence Act against the appellant for his refusal to undergo DNA testing. In this regard, strong reliance was placed on ***Dipanwita Roy*** (supra).

20) On the aspect of privacy, it was argued that the right to privacy, though constitutionally protected, can be waived by the individual concerned. Where the person voluntarily seeks the test, plea of privacy cannot be invoked. Reference was made to ***K.S. Puttaswamy (Retired) and Another (AADHAAR) vs. Union of India and Another***[8], to submit that once a person consents, the right stands validly waived, and no breach arises from a judicial order directing such examination.

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[7] (2014) 2 SCC 576
[8] (2019) 1 SCC 1

QUESTION FOR CONSIDERATION

21) Having heard the learned counsel appearing for both the parties, the question which arises for our consideration is — whether the High Court was justified in directing the appellant to undergo DNA testing.

ANALYSIS

I. THE STATUTORY FRAMEWORK: SECTION 112 OF THE EVIDENCE ACT

22) This dispute arises from a complaint registered under Sections 417 and 420 of the IPC and Section 4(1) of the Tamil Nadu Women Harassment Act. Respondent No.1 seeks to establish the charges of cheating and harassment by demonstrating that the appellant is the biological father of her child. Consequently, before examining whether a direction for DNA profiling is legally sustainable, it is necessary to evaluate the statutory framework governing the presumption of legitimacy of a child born during the continuance of valid marriage, as enshrined under Section 112 of the Evidence Act. For ease of reference, Section 112 is reproduced below:

> "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."
>
> (emphasis supplied)

23) It is evident from the statutory language of the provision, that it establishes a conclusive presumption in favour of legitimacy of a child born during the subsistence of a valid marriage. Embedded in this presumption is

the legal recognition that the husband is deemed to be the father of the child born to his wife. This presumption also operates as a safeguard against unwarranted intrusion into the legally protected status of legitimacy, thereby ensuring stability in familial relationships and the protection of child's legal and social identity.

24) The presumption under Section 112 of the Evidence Act operates as "Conclusive Proof" of the legitimacy of a child born during the subsistence of a valid marriage, by presuming that the parents had access to each other at the relevant time. Section 4 of the Evidence Act defines "conclusive proof " as follows:

> "**Conclusive proof**".—When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it."

This presumption endures unless it is affirmatively established, by strong and unambiguous evidence, that the parties to the marriage had no access to each other at any time when the child could have been begotten, or following the dissolution of the marriage while the mother remains unmarried. Since the law favours legitimacy and frowns upon the illegitimacy, the burden is cast upon the person who asserts "illegitimacy" to displace the presumption.

25) "Access" or "non-access" under Section 112 of the Evidence Act must be understood in a very narrow and specific sense, referring to possibility of sexual relations between the spouses. Non-access denotes the impossibility, not merely the absence or lack of such opportunity. Even where

cohabitation exists, non-access may arise due to impotency, serious illness, physical incapacity or absence during the relevant period. Conversely, the lack of cohabitation alone does not establish non-access, nor does the existence of extramarital relations, separate residences, or non-communication.

26) Allegations of multiple or simultaneous access by third parties do not negate the access between the spouses or establish non-access. Likewise, infidelity on the wife's part does not, by itself, displace the presumption of legitimacy if the husband had access. The focus remains on the child's birth, while the time of conception is relevant only to determine whether access between the spouses existed.

II. PRINCIPLES GOVERNING DNA PROFILING

27) The next aspect of the matter that requires consideration is whether the appellant can be subjected to DNA profiling to determine whether he is the biological father of the child born to respondent No.1. It becomes imperative for this Court to examine the legal framework governing the DNA testing and its permissible scope, particularly in light of presumption in favour of legitimacy enshrined under Section 112 of the Evidence Act.

28) This Court has consistently held that DNA testing cannot be ordered as a matter of course and must be subject to stringent safeguards to protect the dignity of individuals and the legitimacy of children born during the wedlock. The power to direct such tests must be exercised with utmost circumspection and only when the interests of justice imperatively demand

such an intrusive procedure. Courts must remain vigilant against *fishing inquiries* masquerading as legitimate requests for scientific evidence, ensuring the sanctity of family relationships is not compromised by speculative or exploratory investigations.

29) The foundational parameters governing such directions were established in ***Goutam Kundu*** (supra) wherein this Court laid down the following parameters :

> **"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."

30) Following the principles laid down in ***Goutam Kundu*** (supra), the approach to ordering DNA tests has been further refined in subsequent decisions. In ***Sharda vs. Dharmpal***[9] it was observed:

> "**81.** To sum up, our conclusions are:
>
> 1. A matrimonial court has the power to order a person to undergo medical test.

[9] (2003) 4 SCC 493

2. Passing of such an order by the court would not be in violation of the right to personal liberty under Article 21 of the Indian Constitution.

3. However, the court should exercise such a power if the applicant has a strong prima facie case and there is sufficient material before the court. If despite the order of the court, the respondent refuses to submit himself to medical examination, the court will be entitled to draw an adverse inference against him."

31) This Court in the case of ***Bhabani Prasad Jena vs. Convenor Secretary, Orissa State Commission for Women and Another***[10] held thus:

"**21.** In a matter where paternity of a child is in issue before the Court, the use of DNA test is an extremely delicate and sensitive aspect. One view is that when modern science gives the means of ascertaining the paternity of a child, there should not be any hesitation to use those means whenever the occasion requires. The other view is that 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. 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.

22. In our view, when there is apparent conflict between the right to privacy of a person not to submit himself forcibly to medical examination and duty of the Court to reach the truth, the Court must exercise its discretion only after balancing the interests of the parties and on due consideration whether for a just decision in the matter, DNA test is eminently needed. DNA test in a matter relating to paternity of a child should not be directed by the Court as a matter of course or in a routine manner, whenever such a request is made. The Court has to consider diverse aspects including presumption under Section 112 of the Evidence Act; pros and cons of such order and the test of "eminent need" whether it is not possible for the Court to reach the truth without use of such test."

[10] (2010) 8 SCC 633

32) We must now consider whether respondent No.1 has successfully displaced the presumption of legitimacy under Section 112 of the Evidence Act by proving non-access, so as to warrant the ordering of a DNA test.

III. REBUTTAL OF PRESUMPTION AND FAILURE TO ESTABLISH NON-ACCESS

33) In a case where the legitimacy of a child is questioned, the degree of proof, to rebut the presumption under Section 112 of the Evidence Act, is extremely crucial. In ***Kamti Devi (Smt.) and Another vs. Poshi Ram***[11] this Court observed as follows :

> "**11.** Whether the burden on the husband is as hard as the prosecution to prove the guilt of the accused in a trial deserves consideration in the above background. The standard of proof of prosecution to prove the guilt beyond any reasonable doubt belongs to criminal jurisprudence whereas the test of preponderance of probabilities belongs to civil cases. The reason for insisting on proof beyond reasonable doubt in criminal cases is to guard against the innocent being convicted and sent to jail if not to extreme penalty of death. It would be too hard if that standard is imported in a civil case for a husband to prove non-access as the very concept of non-access is negative in nature. But at the same time the test of preponderance of probability is too light as that might expose many children to the peril of being illegitimatized. If a Court declares that the husband is not the father of his wife's child, without tracing out its real father the fallout on the child is ruinous apart from all the ignominy visiting his mother. The bastardised child, when grows up would be socially ostracised and can easily fall into wayward life. Hence, by way of abundant caution and as a matter of public policy, law cannot afford to allow such consequence befalling an innocent child on the strength of a mere tilting of probability. Its corollary is that the burden of the plaintiff husband should be higher than the standard of preponderance of probabilities. The standard of proof in such cases must at least be of a degree in between the two as to ensure that there was no possibility of the child being conceived through the plaintiff husband."

[11] (2001) 5 SCC 311

34) Thus, it is clear that the standard of proof required to displace the presumption under Section 112 of the Evidence Act must be higher than mere preponderance of probabilities, yet need not reach the exacting criminal standard of proof beyond reasonable doubt. The standard must be sufficiently rigorous to ensure that there existed no possibility of child being conceived through the husband. This intermediate threshold serves the twin objectives of preventing the illegitimization of the child on the strength of mere assertions or tilting of probabilities, while simultaneously guarding against weaponization of the statutory presumption to defeat the legitimate claims. The person seeking to rebut this presumption must, therefore, adduce strong, cogent and unambiguous evidence establishing non-access, failing which, the statutory presumption must prevail.

35) In the case at hand, the child was born on 08.03.2007, during the subsistence of a valid marriage between respondent No.1 and Abdul Latheef, solemnized in the year 2001. Following the maxim ***pater est quem nuptiae demonstrant* (*The father is the man whom the marriage indicates)***, the statutory presumption under Section 112 of the Evidence Act operates in favour of Abdul Latheef being the legitimate father of the child. As observed earlier, this presumption can be displaced only by proving non-access between the spouses. It is the case of respondent No.1 that Abdul Latheef deserted her sometime in 2008-2009, well after the child had attained the age of approximately one and half years. No material has been placed on record by respondent No.1 to substantiate her claim of desertion, which remains a bare assertion unsupported by any evidence. It is also not the

case of respondent No.1 that Abdul Latheef was suffering from any physical incapacity or impotency rendering him incapable of procreation nor has any challenge been raised to the validity of the marriage itself. Further, respondent No.1 has not indicated any circumstance even remotely, suggesting that Abdul Latheef was physically absent during the relevant time when the child could have been conceived.

36) The birth certificate dated 14.07.2009, the school transfer certificate dated 01.06.2011, and the school admission record dated 09.06.2011 each record the name of Abdul Latheef as the father of the child. These documents reflect a consistent acknowledgement of his paternity. At its highest, respondent No.1's case is one of simultaneous access, that she had physical relations with the appellant while still married to Abdul Latheef. Mere simultaneous access does not negate the husband's access, nor does it suffice to displace the statutory presumption under Section 112 of the Evidence Act.

37) What is most striking, however, is the complete absence of any specific pleading by respondent No.1 establishing non-access between herself and Abdul Latheef during the period relevant to the conception of the child. This omission is not merely procedural but goes to the root of the matter. The presumption under Section 112 of the Evidence Act operates in favour of legitimacy, and proof of non-access at the relevant period is the only mode of rebuttal recognised by law. In absence of specific plea of non-access, supported by strong and unambiguous evidence, the foundation for displacing the statutory presumption simply does not exist. The

presumption, therefore, remains unrebutted, and Abdul Latheef must be regarded as having had access to respondent No.1 during the relevant period.

38) This Court must nonetheless consider respondent No.1's prayer for DNA testing, with due regard to the interests of all stakeholders. As held in ***Bhabani Prasad Jena*** (supra), when there is an apparent conflict between the right to privacy and bodily integrity on one hand, and the Court's duty to ascertain the truth on the other, judicial discretion must be exercised with utmost care. Such direction can be issued only after a scrupulous balancing of interests of all parties and upon due consideration of whether, for a just decision in the matter, DNA test is eminently necessary.

39) At this juncture, it is apposite to refer to the reliance placed by respondent No.1 on ***Nandlal Wasudeo Badwaik*** (supra) and ***Dipanwita Roy*** (supra) to buttress her claim for a direction of DNA testing. These decisions, however, are clearly distinguishable on facts and do not advance the case of respondent No.1.

40) In ***Nandlal Wasudeo Badwaik*** (supra), the DNA testing had been conducted with the consent of all parties, and without objection from the wife's counsel. The results indicated that the husband was not the biological father, and the re-test at the wife's request yielded the same result. The challenge based on Section 112 of the Evidence Act was only raised after the test was conducted and the results were already part of the record. The question before this Court, therefore, was confined to whether such DNA test results, obtained pursuant to a prior Court direction, could be admitted

into evidence to rebut the presumption of legitimacy. This Court held that where a DNA report is available on record following a Court directed test, it cannot be disregarded merely because it conflicts with the presumption. The decision thus dealt with the admissibility of DNA evidence already obtained, not whether a DNA test may be ordered against an unwilling party at the first instance.

41) In ***Dipanwita Roy*** (supra)**,** this Court directed a DNA test to be conducted on the child. However, the direction was not issued for the purpose of determining the legitimacy of the child. The proceedings were in the context of a petition for divorce on the ground of adultery. The DNA test was sought to establish the wife's infidelity in order to obtain a decree of divorce. The appellant's objective was not to prove that the child was illegitimate, that question arose only incidentally. This Court expressly observed that while the issue of legitimacy was incidentally involved, the DNA test would determine solely the question of infidelity, and would not disturb the presumption under Section 112 of the Evidence Act.

42) In sharp contrast, respondent No.1 in the present case seeks a direction for DNA testing precisely to dislodge the statutory presumption of legitimacy that safeguards the child, and to establish the appellant as the biological father so as to sustain the criminal charges of cheating and harassment. The decision in ***Dipanwita Roy*** (supra) is, therefore, inapplicable to the facts of the present case.

IV. THE TWIN BLOCKADES TO DNA TESTING AND THE RIGHT TO PRIVACY

43) This Court, in ***Ivan Rathinam*** (supra), has elucidated the circumstances under which DNA testing may be directed, while maintaining the balance between interests of the parties. It reads thus:

> "**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."

44) In the present case, we find no insufficiency of evidence to dislodge the presumption of legitimacy. The child was born during the subsistence of a valid marriage and the documents on record consistently record Abdul Latheef as the father. More crucially, there is no pleading whatsoever by respondent No.1 alleging non-access between herself and Abdul Latheef during the period of conception. The existing evidence, therefore, stands sufficient.

45) At this juncture, this Court has to consider whether directing a DNA test would serve the best interests of the parties involved or whether it would occasion undue harm. The balance of interests must account for the rights and welfare of all the stakeholders—the appellant, the child who has now attained majority, and respondent No.1 herself. In the present case, this balance weighs decisively against ordering DNA testing. Such a direction would constitute a significant intrusion into the privacy and

dignity of both, the appellant and the child, implicating the fundamental right to privacy guaranteed under Article 21 of the Constitution of India.

46) The contours of the right to privacy, as an intrinsic facet of Article 21 of the Constitution, were elaborated upon by this Court in ***K.S. Puttaswamy and Another vs. Union of India and Others***[12]:

> "**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."

Forcefully subjecting an individual to DNA testing constitutes a grave intrusion upon privacy and personal liberty. Such an encroachment can be justified only if it satisfies the threefold test of legality, legitimate State aim, and proportionality.

47) On behalf of respondent No.1, it is contended that she has voluntarily relinquished her privacy and is willing to subject herself to DNA testing. It is further asserted that the DNA testing would remove the child's stigma of illegitimacy by establishing the true parentage. These contentions cannot override the legitimate privacy interests of the other parties involved. Respondent No.1 is not the sole party whose rights are implicated by the proposed DNA test. The appellant and the child, who has now attained

[12] (2017) 10 SCC 1 (Privacy-9J.)

majority, possess independent and equally inviolable rights to privacy and dignity. Respondent No.1's willingness to waive her own privacy does not extend to waiving the privacy of others. The appellant has consistently refused to submit to DNA testing, a refusal that is protected by the principles articulated in ***Goutam Kundu*** (supra).

48) Furthermore, the assertion that the child is living as illegitimate is legally untenable. In the eyes of the law, the child is the legitimate offspring of Abdul Latheef through respondent No.1, as the statutory presumption under Section 112 of the Evidence Act remains unrebutted. The legal status of the child cannot be altered by mere assertions or by subjective perception of respondent No.1. Turning to the requirements enunciated in ***K.S. Puttaswamy (Privacy-9J.)*** (supra), we find that the proposed DNA test fails to satisfy the constitutional requisites. There exists no legitimate aim that necessitates such an intrusive procedure, since the criminal allegations of cheating and harassment can be investigated and adjudicated on the strength of other evidence, without delving into the question of biological paternity. The test of proportionality is also manifestly not met; the invasion of privacy and dignity of the appellant and the child far outweigh any conceivable investigative benefit.

49) In view of the foregoing discussion, this Court is of the opinion that neither the element of eminent need, contemplated in ***Bhabani Prasad Jena*** (supra), nor the positive finding on the balance of interests as articulated in ***Ivan Rathinam*** (supra), can be said to have been satisfied in the facts of the present case.

V. ADVERSE INFERENCE

50) Further, this Court deems it necessary to address the contention advanced by respondent No.1 that an adverse inference ought to be drawn against the appellant under Section 114(g) and (h) of the Evidence Act, on account of his refusal to undergo DNA testing. This contention, however, is fundamentally misconceived. Without first displacing the statutory presumption of legitimacy under Section 112 of the Evidence Act by leading positive and cogent evidence of non-access, respondent No.1 cannot seek refuge in the drawing of an adverse inference against the appellant under Section 114 of the Evidence Act. Unless the presumption under Section 112 is first rebutted, no occasion arises for directing a DNA test. Conversely, where the prerequisites for ordering such a test are not satisfied, the question of drawing any adverse inference from the appellant's refusal to undergo it does not arise at all. A similar issue arose for consideration before this Court in ***Aparna Ajinkya Firodia*** (supra) wherein V. Ramasubramanian, J. in a concurring opinion observed as under:

> "26. There is another fallacy in the argument of the respondent. It is the contention of the respondent that he is seeking an adverse inference to be drawn only as against the wife under Section 114(h), upon the refusal of the wife to subject the child to DNA test. But the stage at which the wife may refuse to subject the child to DNA, would arise only after the Court comes to the conclusion that a DNA test should be ordered. To put in simple terms, there are three stages in the process, *namely*, *(i)* consideration by the Court, of the question whether to order DNA test or not; *(ii)* passing an order directing DNA test, after such consideration; and *(iii)* the decision of the wife to comply or not, with the order so passed. The respondent should first cross the outer fence namely whether a DNA test can be ordered or not. It is only after he convinces the Court to order DNA test and successfully secures an order that he can move to the inner fence, regarding the willingness of the wife to abide by the order. It is only at that stage that the respondent can, if at all, seek refuge under Section 114(h).

> 27. But today, we are actually at the outer fence in this case, adjudicating as to whether DNA test can be ordered at all. Therefore, the respondent cannot jump to the inner fence by-passing the outer fence."

As it is abundantly clear from the foregoing, and the exposition in ***Aparna Ajinkya Firodia*** (supra), no occasion arises to draw an adverse inference at the stage of considering whether a DNA test ought to be directed.

51) Beyond the legal framework, it is also imperative to recognise the ethical and psychological dimensions of directing DNA testing. The process though scientific, is not without profound ethical and emotional implications. The act of extracting and analysing one's genetic material intrudes into the innermost sphere of personal identity, autonomy, and privacy. It can have lasting emotional and social ramifications not only for children but also for adults, as such testing often brings to surface intimate aspects of familial and personal relationships. In the present case, it must be borne in mind that the child has now attained majority. At the time when the FIR was registered and the direction for DNA profiling was issued by the High Court, the child was still a minor. In such circumstances, the best interests of the child ought to have been a paramount consideration before any intrusive forensic procedure was contemplated. Judicial and ethical prudence both require that autonomy, dignity and emotional well-being of the individual, especially of a minor, be safeguarded. A direction for DNA testing without considering the ramifications causes risks inflicting an irreversible psychological and social harm.

VI. PATERNITY AS A COLLATERAL FACTOR TO CRIMINAL CHARGES

52) The significance of safeguarding individual autonomy, particularly of children, in the context of DNA testing, was considered by this Court in ***Inayath Ali and Another vs. State of Telangana and Another***[13]. In this case, it was examined whether a Court could direct DNA testing of two minor children to facilitate the proof of offences under Sections 498A, 323, 354, 506 and 509 of the Indian Penal Code, 1860. The dispute primarily concerned dowry-related offences, and the paternity of the children was not directly in issue. The complainant sought DNA testing to establish that the children were born out of a forced relationship with her brother-in-law. Rejecting this plea, this Court held as follows:

> "**7.** In the present proceeding, we are taking two factors into account which have been ignored by the trial Court as also the Revisional Court. The trial Court allowed the application of Respondent 2 mechanically, on the premise that the DNA fingerprint test is permissible under the law. The High Court has also proceeded on that basis, referring to different authorities including *Dipanwita Roy* v. *Ronobroto Roy* [*Dipanwita Roy* v. *Ronobroto Roy*, (2015) 1 SCC 365 : (2015) 1 SCC (Civ) 495 : (2015) 1 SCC (Cri) 683] . The ratio of this case was also examined by the coordinate Bench in the decision of *Ashok Kumar* [*Ashok Kumar* v. *Raj Gupta*, (2022) 1 SCC 20 : (2022) 1 SCC (Civ) 303] .
>
> **8.** The first factor, which, in our opinion, is of significance, is that in the judgment under appeal, blood sampling of the children was directed, who were not parties to the proceeding nor was their status required to be examined in the complaint of Respondent 2. This raised doubt on their legitimacy of being born to legally wedded parents and such directions, if carried out, have the potential of exposing them to inheritance related complication.
>
> **9.** Section 112 of the Evidence Act, also gives a protective cover from allegations of this nature. The said provision stipulates:

[13] (2024) 7 SCC 822

> "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."
>
> **10.** In our opinion, the trial Court as also the Revisional Court had completely ignored the said factor and proceeded as if the children were material objects who could be sent for forensic analysis. The other factor, in our opinion, which was ignored by the said two Courts is that the paternity of the children was not in question in the subject proceeding.
>
> **11.** The substance of the complaint was not related to paternity of the children of Respondent 2 but the question was whether the offences under the aforesaid provisions of the 1860 Code were committed against her or not. The paternity of the two daughters of Respondent 2 is a collateral factor to the allegations on which the criminal case is otherwise founded. On the basis of the available materials, in our opinion, the case out of which this proceeding arises could be decided without considering the DNA test report. This was the reasoning which was considered by the coordinate Bench in *Ashok Kumar* [*Ashok Kumar* v. *Raj Gupta*, (2022) 1 SCC 20 : (2022) 1 SCC (Civ) 303] , though that was a civil suit. Merely because something is permissible under the law cannot be directed as a matter of course to be performed particularly when a direction to that effect would be invasive to the physical autonomy of a person. The consequence thereof would not be confined to the question as to whether such an order would result in testimonial compulsion, but encompasses right to privacy as well. Such direction would violate the privacy right of the persons subjected to such tests and could be prejudicial to the future of the two children who were also sought to be brought within the ambit of the trial Court's direction."

53) In the case at hand, the paternity of the child is collateral to the primary allegations of cheating and harassment. The FIR itself reveals that the gravamen of the allegations bears no nexus to the paternity of the child. The child is neither a party to the proceedings nor is the child's status required to be ascertained to determine the commission of the offences alleged. Directing DNA testing in such circumstances would thus be wholly

extraneous to the scope of the investigation and disproportionate to the object sought to be achieved.

54) A direction for DNA testing must have a direct and demonstrable nexus with the offences under investigation. In the absence of such nexus, compelling a person to undergo DNA profiling, amounts to unwarranted intrusion into bodily autonomy and privacy, contrary to the safeguards implicit in Articles 20(3) and 21 of Constitution of India.

55) Having regard to the above legal position, reliance placed by the High Court on Sections 53 and 53A of the Code of Criminal Procedure, 1973 appears to be misplaced. In the present case, the learned Single Judge of the High Court in the order dated 24.04.2017, invoked these provisions to justify the direction for DNA testing, observing that there was an eminent need to ascertain the paternity of the child in order to unearth the truth. The Division Bench, in the impugned judgment, while affirming the order of the learned Single Judge, did not independently analyse their scope and applicability. The said provisions are reproduced for ready reference:

> "**53. Examination of accused by medical practitioner at the request of police officer.**—(1) When a person is arrested on a charge of committing an offence of such a nature and alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence, it shall be lawful for a registered medical practitioner, acting at the request of a police officer not below the rank of sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the person arrested as is reasonably necessary in order to ascertain the facts which may afford such evidence, and to use such force as is reasonably necessary for that purpose.
>
> (2) Whenever the person of a female is to be examined under this section, the examination shall be made only by, or under the supervision of, a female registered medical practitioner.

Explanation.—In this section and in sections 53A and 54,—

(a) "examination" shall include the examination of blood, blood stains, semen, swabs in case of sexual offences, sputum and sweat, hair samples and finger nail clippings by the use of modern and scientific techniques including DNA profiling and such other tests which the registered medical practitioner thinks necessary in a particular case;

(b) "registered medical practitioner" means a medical practitioner who possesses any medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956 (102 of 1956) and whose name has been entered in a State Medical Register.

53A. Examination of person accused of rape by medical practitioner.— (1) When a person is arrested on a charge of committing an offence of rape or an attempt to commit rape and there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of such offence, it shall be lawful for a registered medical practitioner employed in a hospital run by the Government or by a local authority and in the absence of such a practitioner within the radius of sixteen kilometres from the place where the offence has been committed, by any other registered medical practitioner, acting at the request of a police officer not below the rank of a sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the arrested person and to use such force as is reasonably necessary for that purpose.

(2) The registered medical practitioner conducting such examination shall, without delay, examine such person and prepare a report of his examination giving the following particulars, namely:—

(i) the name and address of the accused and of the person by whom he was brought,

(ii) the age of the accused,

(iii) marks of injury, if any, on the person of the accused,

(iv) the description of material taken from the person of the accused for DNA profiling, and

(v) other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The exact time of commencement and completion of the examination shall also be noted in the report.

(5) The registered medical practitioner shall, without delay, forward the report to the investigating officer, who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section."

(emphasis supplied)

56) These provisions are intended to be invoked in the cases involving offences where medical examination of the accused, including the collection of blood, semen, hair samples, or nail clippings, may furnish material evidence directly bearing upon the commission of the offence. While these provisions contemplate the use of modern scientific techniques such as DNA profiling, their application is conditioned upon the existence of a clear and proximate nexus between the examination sought and the alleged offence.

57) In the present case, no such nexus is discernible. The offences alleged do not, by their nature, necessitate ascertainment of paternity or any forensic determination through DNA analysis. Merely because such testing is legally permissible in certain contexts does not justify its use as a matter of course.

CONCLUSION

58) In view of the foregoing analysis, we are constrained to hold that the impugned judgment dated 10.05.2017 cannot be sustained. The statutory presumption under Section 112 of the Evidence Act remains unrebutted, and the child continues to be, in the eyes of the law, the legitimate offspring of Abdul Latheef. Section 112 embodies a legislative policy of profound significance, it stands as a bulwark against the casual illegitimization of children on the strength of unsubstantiated allegations or mere suspicion. The presumption it creates is not a procedural formality to be lightly displaced but a substantive safeguard intended to protect the dignity, social legitimacy, and the legal rights of children born within wedlock.

59) In summation, the direction for DNA testing, as affirmed by the Division Bench, rests upon the fundamental misapprehension of both statutory framework and constitutional safeguards. The offences alleged, falling under Sections 417 and 420 of the Indian Penal Code, 1860 and Section 4(1) of the Tamil Nadu Women Harassment Act, are neither of nature nor of a circumstance that warrant recourse to DNA analysis. The High Court's invocation of Sections 53 and 53A of the Code of Criminal Procedure, 1973, rests on a misconstruction of their contextual ambit; these provisions contemplate medical examination only where such an examination may directly yield evidence relating to commission of the alleged offence. Absent that nexus, compulsion of a DNA test transforms a lawful investigative power into an intrusive measure devoid of necessity, trenching upon the individual's bodily autonomy, privacy. Scientific procedures, however advanced, cannot be employed as instruments of speculation; they must be anchored in demonstrable relevance to the charge and justified by compelling investigative need.

60) Accordingly, the impugned judgment dated 10.05.2017 passed by the High Court in Writ Appeal (MD) No.521 of 2017 is set aside.

61) The Appeal is, accordingly, allowed.

.....J.
(PRASHANT KUMAR MISHRA)

.....J.
(VIPUL M. PANCHOLI)

NEW DELHI;
NOVEMBER 10, 2025.