2026 LiveLaw (SC) 406

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
SANJAY KAROL; J., NONGMEIKAPAM KOTISWAR SINGH; J.
Special Leave Petition (Crl.) No.15256 of 2023; April 21, 2026
NIKHAT PARVEEN @ KHUSBOO KHATOON *versus* **RAFIQUE@SHILLU**

Indian Evidence Act, 1872 – Section 112 [Bharatiya Sakshya Adhiniyam, 2023 – Section 116] – Paternity – Presumption of Legitimacy vs. Scientific Proof – DNA Test Report Already on Record and Finalized – Effect of – Held - The statutory presumption of conclusive proof of legitimacy under Section 112 of the Evidence Act must yield to scientific proof where an accurate DNA test report is already available on record and has attained finality - While courts must generally exercise extreme caution and hesitation before ordering DNA tests to protect a child from the stigma of illegitimacy, the position changes when the test has already been conducted with the consent of the mother and remains undisputed - In such cases, the scientific fact overrides the legal presumption, and the alleged father cannot be held liable to pay maintenance to a child proven not to be his biological offspring - Held that when a conflict arises between a conclusive proof envisaged under law and a proof based on scientific advancement accepted by the world community to be correct, the latter must prevail over the former - This squarely covers cases where the DNA test report is already on record and contradicts the statutory presumption - Supreme Court upheld the High Court's decision, clarifying that since the DNA test had already been completed with the mother's consent and its findings were never disputed, the scientific truth must override the legal presumption under Section 112 of the Evidence Act - Expressing concern for the minor child's future, the Court additionally directed the Secretary of Women and Child Development, GNCTD, to monitor and ensure the child's well-being regarding education, healthcare, and nutrition - appeal dismissed. *[Relied On: Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik, (2014) 2 SCC 576; Paras 7-10]*

[Arising out of impugned final judgment and order dated 17-10-2023 in CRLMC No.3944/2019 passed by the High Court of Delhi at New Delhi]

For Petitioner(s): Mr. Md. Azam Ansari, AOR Mr. T.R.B. Sivakumar, Adv. Mr. Afjal Ansari, Adv.

For Respondent(s): Mr. Kumar Abhishek, Adv. Mr. P. Venkatraju, Adv. Mr. Rishiraj Vikas, Adv. Mr. Sravan Kumar Karanam, AOR

J U D G M E N T

SANJAY KAROL J.

Leave Granted.

2. In this appeal, a mother (the appellant) challenges the finding of the High Court of Delhi at New Delhi, returned in judgment and order dated 17th October 2023 passed in CRLMC No.3944 of 2019 regarding her daughter not being entitled to maintenance to be paid by the respondent (alleged father) as returned by Metropolitan Magistrate-03 (Mahila Court), South East District, New Delhi, by order dated 1st December 2017[1] and as affirmed by the District and Sessions Judge, South East, Saket Court, New Delhi by order dated 20th March 2019[2].

[1] 'Trial Court'
[2] 'First Appellate Court'

3. The facts in brief are that the appellant was employed as domestic help in the residence of the respondent for a period of three years wherein, as can be understood from the record of the Courts below, the latter established sexual relation with her on the pretext of marriage. The parties to this *lis* eventually did get married on 2nd March 2016. A child was born to the appellant on 1st April 2016. Matrimonial relations soured fairly quickly leading to the institution of a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005[3] on 14th July 2016 seeking interim maintenance to the tune of Rs.25000/- per month; protection order for the appellant and her minor child against the respondent and his family members; an order to restore the custody of *stridhan* articles to the appellant. In response to the said application, the respondent prayed for a direction to conduct a DNA test to establish paternity of the child in question along with denying all allegations of domestic violence as baseless.

4. It appears from the record that the Trial Court accepted the prayer of the respondent and directed for a DNA test to be conducted. The report thereof is dated 8th May 2017 and records that the respondent is not the biological father of the appellant's child. On this basis, along with the fact that she had apparently concealed her source of income, the Trial Court rejected the application for interim maintenance. The said order was appealed. The First Appellate Court in its judgment records that the prayer for maintenance of the child is no longer pressed. On the aspect of concealment too, the Court agreed with the Trial Court and as such the appeal was dismissed.

5. The High Court in terms of the impugned order elaborately discussed the position in law in so far as the presumption in paternity is concerned, under Section 112 of the Indian Evidence Act, 1872[4] which, we may record, is the main point of challenge raised before this Court as well. Having done so, it was observed that the protection of this Section would have been available to the appellant only if the DNA test (which has attained finality), had not been conducted since the intent of the Section is to grant the presumption of legitimacy to every child. Since the DNA report is on record, the Court while also noting earlier that the question of validity of the marriage *inter-se* the parties, is in question, refused to grant maintenance to the child. *Qua* the appellant it was held that the Trial Court made an error in denying interim maintenance and as such, the matter was remanded to the Trial Court for consideration afresh.

6. As already noted *supra* the main ground of challenge before us is Section 112 of the IEA. Let us proceed to examine the same. The same is reproduced as below along with its current iteration under the Bharatiya Sakshya Adhiniyam, 2023[5].

IEA

"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."

Sakshya Adhiniyam, 2023

"116. 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

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[3] 'DV Act'
[4] 'IEA'
[5] 'BSA'

proof that he is the legitimate child 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."

7. At the outset, it is observed that both the above extracted provisions are exactly the same. The legislative intent is clear. Despite technological advancements by leaps and bounds, this presumption has been retained to save any child from the stigma of illegitimacy. Before proceeding further however, it is important to take note of the evolution of judicial opinion on this presumption.

7.1 In ***Dukhtar Jahan v. Mohd. Farooq***[6]**,** it was observed:

12. …Section 112 lays down that if a 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 and the mother remains unmarried, it shall be taken as 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. This rule of law based on the dictates of justice has always made the courts incline towards upholding the legitimacy of a child unless the facts are so compulsive and clinching as to necessarily warrant a finding that the child could not at all have been begotten to the father and as such a legitimation of the child would result in rank injustice to the father. Courts have always desisted from lightly or hastily rendering a verdict and that too, on the basis of slender materials, which will have the effect of branding a child as a bastard and its mother an unchaste woman. (emphasis supplied)

7.2 ***Goutam Kundu v. State of W.B.***[7] encapsulated the position after considering earlier decisions of this Court as follows:

"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."

7.3 In ***Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik***[8], this Court held**-**

"17. We may remember that Section 112 of the Evidence Act was enacted at a time when the modern scientific advancement and DNA test were not even in contemplation of the legislature. The result of DNA test is said to be scientifically accurate. Although Section 112 raises a presumption of conclusive proof on satisfaction of the conditions enumerated therein but the same is rebuttable. The presumption may afford legitimate means of arriving at an affirmative legal conclusion. While the truth or fact is known, in our opinion, there is no need or room for any presumption. Where there is evidence to the contrary, the presumption is rebuttable and must yield to proof. The interest of justice is best served by ascertaining the truth and the court should be furnished with the best available science and may not be left to bank upon presumptions, unless science has no answer to the facts in issue. In our opinion, when there is a conflict between a conclusive proof envisaged under law and a proof based on scientific advancement accepted by the world community to be correct, the latter must prevail over the former.

[6] (1987) 1 SCC 624

[7] (1993) 3 SCC 418

[8] (2014) 2 SCC 576 :

18. We must understand the distinction between a legal fiction and the presumption of a fact. Legal fiction assumes existence of a fact which may not really exist. However, a presumption of a fact depends on satisfaction of certain circumstances. Those circumstances logically would lead to the fact sought to be presumed. Section 112 of the Evidence Act does not create a legal fiction but provides for presumption."

7.4 In ***Dipanwita Roy v. Ronobroto Roy***[9] the Court observed that:

"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.

17. The question that has to be answered in this case is in respect of the alleged infidelity of the appellant wife. The respondent husband has made clear and categorical assertions in the petition filed by him under Section 13 of the Hindu Marriage Act, alleging infidelity. He has gone to the extent of naming the person who was the father of the male child born to the appellant wife. It is in the process of substantiating his allegation of infidelity that the respondent husband had made an application before the Family Court for conducting a DNA test which would establish whether or not he had fathered the male child born to the appellant wife. The respondent feels that it is only possible for him to substantiate the allegations levelled by him (of the appellant wife's infidelity) through a DNA test. We agree with him. In our view, but for the DNA test, it would be impossible for the respondent husband to establish and confirm the assertions made in the pleadings. We are therefore satisfied that the direction issued by the High Court, as has been extracted hereinabove, was fully justified. DNA testing is the most legitimate and scientifically perfect means, which the husband could use, to establish his assertion of infidelity. This should simultaneously be taken as the most authentic, rightful and correct means also with the wife, for her to rebut the assertions made by the respondent husband, and to establish that she had not been unfaithful, adulterous or disloyal. If the appellant wife is right, she shall be proved to be so."

7.5 Nagarathna J., in ***Aparna Ajinkya Firodia v. Ajinkya Arun Firodia***[10] held:

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25. Section 112 was enacted at a time when modern scientific tests such as DNA tests, as well as ribonucleic acid tests ("RNA tests" for short), were not in contemplation of the legislature. However, even the result of a genuine DNA test cannot escape from the conclusiveness of the presumption under Section 112 of the Evidence Act. If a husband and wife were living together during the time of conception but the DNA test reveals that the child was not born to the husband, the conclusiveness in law would remain irrebuttable. What would be proved, is adultery on the part of the wife, however, the legitimacy of the child would still be conclusive in law. In other words, the conclusive presumption of paternity of a child born during the subsistence of a valid marriage is that the child is that of the husband and it cannot be rebutted by a mere DNA test report. What is necessary to rebut is the proof of non-access at the time when the child could have been begotten, that is, at the time of its conception vide *Kamti Devi* v. *Poshi Ram* [*Kamti Devi* v. *Poshi Ram*, (2001) 5 SCC 311 : 2001 SCC (Cri) 892] .

…

[9] (2015) 1 SCC 365

[10] (2024) 7 SCC 773

62. Further, questions surrounding paternity have a significant impact on the identity of a child. Routinely ordering DNA tests, particularly in cases where the issue of paternity is merely incidental to the controversy at hand, could, in some cases even contribute to a child suffering an identity crisis. It is also necessary to take into account that some children, although born during the subsistence of a marriage and on the desire and consent of the married couple to beget a child, may have been conceived through processes involving sperm donation, such as intrauterine insemination (IUI), invitro fertilisation (IVF). In such cases, a DNA test of the child, could lead to misleading results. The results may also cause a child to develop a sense of mistrust towards the parents, and frustration owing to the inability to search for their biological fathers. Further, a child's quest to locate its biological father may compete with the right to anonymity of the sperm donor. Having regard to such factors, a parent may, in the best interests of the child, choose not to subject a child to a DNA test. It is also, antithetical to the fundamentals of the right to privacy to require a person to disclose, in the course of proceedings *in rem*, the medical procedures resorted to in order to conceive."

7.6 In ***Ivan Rathinam v. Milan Joseph***[11] Surya Kant J, (as the Chief Justice of India presently, then was) writing for the Court observed:

"**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.[33] 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.

…

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."

8. In ***Goutam Kundu*** (*supra*) primacy is clearly given to the presumption under Section 112 of IEA. Subsequently, ***Badwaik*** (supra) recognises the superiority of a conclusion reached by way of a DNA report versus a presumption in law. Then, ***Aparna Ajinkya Firodia*** (supra) held that even on the basis of a DNA report the presumption would not be dislodged in absence of proof of non-access. This has been done in recognition of and to uphold the child's right to privacy. The most recent judgment in ***Rathinam*** (supra) somewhat softens the near absolutist position in ***Aparna Ajinkya Firodia*** (supra) by calling for a balancing of interest-on one end the harm from the possible stamp of illegitimacy and on the other, the interest in knowing the biological father.

The common thread that has run through all these judgments is a well-placed hesitation to order or to give an *imprimatur* to orders directing DNA test to be conducted. We entirely agree with this position. The court in ***Rathinam*** also sounded caution in the following terms:

"**43.** That apart, the courts must also remain abreast with the effects such a probe would have on other relevant stakeholders, especially women. Casting aspersions on a married woman's fidelity

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[11] 2025 SCC OnLine SC 175

would ruin her reputation, status, and dignity; such that she would be castigated in society. Though in this case, the Respondent's mother is actively associated in propagating this vexatious litigation, one can only imagine the repercussions in other cases where a child, in utter disregard to the sentiments and selfrespect of their mother, initiates proceedings seeking a declaration of paternity? The conferment of such a right can lead to its potential misuse against vulnerable women. They would be put to trial in a court of law and the court of public opinion, causing them significant mental distress, among other issues. It is in this sphere that their right to dignity and privacy deserve special consideration."

9. It has to be noted that the present case is distinguishable from the prevailing position in ***Aparna Ajinkya Firodia*** (supra) since in that case the question before the Court was whether conducting a DNA test was in the best interest of the child or not. In this case the DNA test has been conducted, the appellant consented to the same and has, not even once disputed the conclusion thereof. It has, in other words attained finality. As such, the position in ***Badwaik (supra)*** would cover this case. In the aforesaid case, ***Badwaik*** was discussed as follows:

"44. Further, in *Nandlal Wasudeo Badwaik* [*Nandlal Wasudeo Badwaik* v. *Lata Nandlal Badwaik*, (2014) 2 SCC 576 : (2014) 2 SCC (Civ) 145 : (2014) 4 SCC (Cri) 65] , the facts of the case were that due to non-opposition of the counsel for the wife, this Court directed that the serological test be conducted. The report was brought on record, which stated that the appellant husband was not the biological father of the minor child. At the request of the respondent wife, a re-test was ordered, which also revealed the same result. The plea with regard to the applicability of Section 112 of the Evidence Act was taken only *after* the DNA test was conducted on the direction of this Court and the report was brought on record. This Court held that when a report of a DNA test conducted on the direction of a court, was available on record and was in conflict with the presumption of conclusive proof of the legitimacy of the child, the DNA test report cannot be ignored. Hence, this Court relied on the DNA test report and held that the appellant husband would not be liable to pay maintenance. The said case would be of no assistance to the case of the respondent herein. This is because, in the said case, this Court was confronted with a situation in which DNA test report, in fact, was available and was in conflict with the presumption of conclusive proof of legitimacy of the child, under Section 112 of the Evidence Act. …"

10. In view of the above discussion and particular the position in ***Badwaik,*** we are of the considered view that no error could be pointed out by the appellant in the High Court's decision denying the grant of maintenance to her daughter. The appeal is bereft of merit and, therefore, dismissed.

11. This Court expresses concern about the child whose dispute of parentage had made its way up to us. Even though the High Court has correctly remanded the matter of the appellant's maintenance to be decided afresh by the Trial Court, we acknowledge that even if a revised amount is awarded as per law, the difficulties for the child will persist. As such, in the interest of wanting to ensure the security and well-being of the child in question, we direct the Secretary, Women and Child Development, Government of the NCT of Delhi, to depute a person of considerable experience to ascertain details of the residence of the appellant and visit the same to determine the wellbeing of the child including in terms of education, nutrition, health, as also the availability of basic material goods required to maintain a minimum standard of living. It would be expected that wherever the said child's situation is found to be lacking the Department would step in to take remedial measures.

Pending application(s), if any, shall stand disposed of.

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