



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3396]

**MONDAY, THE THIRTIETH DAY OF MARCH
TWO THOUSAND AND TWENTY SIX**

PRESENT

THE HONOURABLE DR. JUSTICE VENKATA JYOTHIRMAI PRATAPA

CRIMINAL PETITION NO: 10088/2022

Between:

1.

2.

...PETITIONERS

AND

1.

2. THE STATE OF ANDHRA PRADESH, REPRESENTED BY ITS
PUBLIC PROSECUTOR, HIGH COURT OF A.P AT AMARAVATHI.

...RESPONDENTS

Counsel for the Petitioners:

1. T V SRI DEVI

Counsel for the Respondents:

1. PONNADA SREE VYAS

2. PUBLIC PROSECUTOR (AP)

3. LEGAL AID

The Court made the following:

ORDER:

1. The instant petition under Section 482 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C') has been filed by the Petitioners / Wife and Daughter, seeking to quash the order dated 18.10.2019 passed in CrI.M.P.No.03 of 2019 in M.C.No.48 of 2008 on the file of the Court of Additional Junior Civil Judge, Narsipatnam and to allow for the medical examination of the Petitioners as well as Respondent No.1 (DNA Test) to ascertain the biological father of Petitioner No.2.

2. Heard Ms.T.V.Sridevi, learned counsel for the Petitioners. In spite of service of notice, Respondent No.1 did not turn up before this Court. Hence, a Coordinate Bench of this Court appointed Sri Ponnada Sree Vyas, learned counsel to assist the Court on behalf of Respondent No.1.

3. Learned counsel for the Petitioners would submit that the impugned order dismissing the application for DNA test is legally unsustainable and has resulted in grave miscarriage of justice. It is further submitted, in order to grant maintenance to Petitioner No.2, it is essential to decide the paternity of Petitioner No.2, which has been categorically disputed by Respondent No.1. It is further contended that the earlier DNA report relied upon by Respondent No.1 cannot be treated as conclusive, as the Petitioners have consistently expressed serious doubts about the authenticity and integrity of the said report. The previous test was conducted in connection with a criminal case and the Petitioner had no opportunity to challenge procedural irregularities.

4. Learned counsel would further submit that the trial court erred in mechanically relying on the earlier report without considering the Petitioners' plea

for an independent and fair examination by a Central Forensic Laboratory. It is well settled that courts have the power to order DNA testing under Section 45 of the Evidence Act when such examination is necessary to arrive at the truth. In cases involving paternity disputes, especially where the rights and future of a child are involved, courts must adopt a liberal approach in permitting scientific evidence. It is further argued that, Petitioner No.1, being an illiterate and vulnerable woman, was unable to take timely legal steps to challenge the earlier report or pursue remedies against the acquittal judgment. Petitioner No.1 filed Criminal Appeal against the acquittal of Respondent No.1 with a petition to condone the delay in filing the same and the same was also dismissed as Petitioner No.1 could not pursue the same during COVID-19 pandemic. Learned counsel would submit that the refusal to order a fresh DNA test causes serious prejudice to Petitioner No.2, whose legitimacy and social standing are directly affected. On the other hand, no prejudice would be caused to the respondent if a fresh, transparent, and scientifically reliable test is conducted by an independent Central Laboratory. Learned counsel finally prays to issue directions to conduct a fresh DNA test at a reputed Central Forensic Laboratory to conclusively determine the paternity of Petitioner No.2. In support of his contentions, learned counsel has placed reliance on the judgment of a Coordinate Bench of this Court in **Nakka Raja Babu vs. Nakka Prasanna and another**¹.

5. *Per contra*, learned counsel for Respondent No.1 would submit that the plea for a fresh DNA test is misconceived and amounts to an abuse of process. The trial court's order is well reasoned, as the issue of paternity already

¹ 2023(5) ALD 39 (AP)

stands concluded by a duly conducted DNA test which clearly excludes Respondent No.1. The Petitioners, having failed to challenge the report at the appropriate stage, cannot now reopen the issue based on mere unsubstantiated doubts. It is contended that the earlier test was conducted under judicial supervision in a criminal proceeding, and the Petitioners had adequate opportunity to raise objections, which they failed to do. The present attempt is nothing but an effort to seek a second opinion to obtain a favourable result, which is impermissible in law and contrary to the principle of finality of litigation. The power to order DNA testing is discretionary and must be exercised sparingly. Permitting repeated tests would lead to endless litigation and subject the respondent to harassment, besides infringing his right to privacy. The claim that no prejudice would be caused is untenable, as reopening a concluded issue would cause serious prejudice to Respondent No.1. It is further submitted that in the absence of credible evidence of paternity, no liability for maintenance can be imposed, and the Petitioners cannot resort to a roving inquiry. The dismissal of the criminal appeal has also attained finality and cannot be indirectly challenged in the present proceedings. In support of his contentions, learned counsel has placed reliance on the judgments of the Hon'ble Supreme Court in **Goutam Kundu vs. State of West Bengal**², Composite High Court of A.P. in **S.Swarnalaxmi vs. State**³, and High Court of Madras in **K.Perumal vs.S.Shakiladevi and another**⁴.

² 1993 CrLJ 3233

³ CrI.P.No.1404 of 2013, dated 22.01.2014

⁴ 2018 SCC OnLine Mad 10140

6. This Court considered the submissions made on both sides and perused the material available on record.

7. Admittedly, the Petitioners have filed M.C. No.48 of 2008 seeking maintenance from Respondent No.1. The maintenance was claimed by the Petitioners on the assertion that Respondent No.1 is the husband of Petitioner No.1 and Petitioner No.2 was born out of their relationship. Respondent No.1 has categorically denied both the marital relationship and the paternity of Petitioner No.2. It is also not in dispute that during the course of criminal proceedings in C.C. No.1123 of 2008, a DNA test was conducted and a report was obtained, according to which Respondent No.1 was excluded as the biological father of Petitioner No.2. Relying upon the said report, Respondent No.1 opposed the claim for maintenance. The Petitioners, however, have consistently questioned the genuineness and reliability of the said report and have alleged that the same was procured under circumstances giving rise to serious doubts regarding its authenticity. It is their specific case that an independent examination by a reputed Central Forensic Laboratory alone would conclusively resolve the controversy.

8. Now, the question that arises for consideration is Whether the trial Court was justified in rejecting the request for a fresh DNA test?

9. There can be no dispute that DNA profiling is one of the most accurate scientific methods available for determination of biological parentage. However, such power is required to be exercised cautiously and only when the interests of justice so demand. When the very foundation of a claim for maintenance depends upon the determination of paternity, and when such

paternity is seriously disputed, the Court cannot shut out the best available scientific evidence if its assistance is necessary for arriving at the truth.

10. In the present case, the earlier DNA report was obtained in connection with a criminal prosecution. Considerably, Petitioner No.2, whose paternity is directly in issue and whose rights are likely to be substantially affected, was not a party litigant capable of independently safeguarding her interests in those proceedings. The consequences of a finding regarding paternity extend far beyond the criminal case. Such determination bears directly upon the child's right to maintenance, identity, status and future welfare. A child cannot be made to suffer on account of procedural lapses, omissions, or inability of a parent to effectively pursue remedies. The record indicates that Petitioner No.1 claims to be an illiterate and vulnerable woman who could not effectively challenge the earlier report or pursue appellate remedies. Without expressing any opinion on the correctness of those explanations, this Court is of the view that the rights of Petitioner No.2 cannot be foreclosed merely because the earlier report remained unchallenged. The trial Court appears to have proceeded on the premise that the existence of the earlier DNA report completely barred any further scientific examination. Such an approach, in the considered opinion of this Court, is too narrow in the peculiar facts of the present case. The Petitioners have specifically sought examination through an independent Central Forensic Laboratory. The request is not for a roving or fishing inquiry but for obtaining the best scientific evidence available on an issue involving the identity and welfare of Petitioner No.2.

11. While dealing with a similar issue, the Hon'ble Supreme Court in a recent judgment in **Chaturbhuj Pradhan vs. Amar Pradhan and another**⁵ by referring to its earlier judgments, had categorically held as follows:

*5.3 Having considered extensively the previous judgments, the following principles were enunciated in **Aparna Ajinkya Firodia v. Ajinkya Arun Firodia**⁶:*

"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

⁵ 2026 SCC OnLine SC 994

⁶ (2024) 7 SCC 773

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**⁷,

“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.

...

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.

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)

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

⁷ 2025 SCC OnLine SC 175

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."

12. The decision in **Nakka Raja Babu's** case referred to *supra*, is more supportive of the Petitioners. In that case, despite an earlier DNA report obtained during criminal proceedings, the Court upheld the direction for a fresh DNA test in subsequent civil proceedings, having regard to the rights and interests of the child and the doubts raised regarding the earlier report. The Court observed that the rights of a child cannot be ignored merely because a DNA report had earlier

been obtained in another proceeding. The factual matrix bears substantial similarity to the present case because, an earlier DNA report was obtained during criminal proceedings. The child's paternity was directly in issue in subsequent proceedings. The child's rights and welfare were considered paramount. Doubts were raised regarding the earlier report. Accordingly, ***Nakka Raja Babu's case (supra)*** supports the proposition that where the rights of a child are involved and the earlier report is questioned, a fresh DNA test may be ordered to ascertain the truth.

13. In ***Goutam Kundu's*** case referred to *supra*, the Hon'ble Supreme Court held that blood/DNA tests cannot be ordered as a matter of course and that courts must exercise caution while directing such tests, particularly where the effect may be to bastardize a child or where the request is made as a fishing or roving inquiry. In the said case, the alleged father sought scientific testing primarily to disown paternity and avoid legal consequences, whereas in the present case the Petitioners seek a fresh DNA examination to establish the paternity of Petitioner No.2 and secure her right to maintenance. The controversy in the said case concerned the initial ordering of a blood test, whereas in the present case the dispute relates to the reliability of an earlier DNA report and the necessity of an independent examination by a Central Forensic Laboratory. The present case directly concerns the welfare, identity, status, and maintenance rights of Petitioner No.2, a child whose interests require paramount consideration. The request herein cannot be characterized as a roving or fishing inquiry, since the issue of paternity constitutes the very foundation of the maintenance proceedings. Therefore, the principles laid down in ***Goutam Kundu's case***

(supra) do not operate as a bar against directing a fresh DNA examination in the peculiar facts of the present case.

14. In **S.Swarnalaxmi's case refererd to *supra***, the Court held that a second DNA test should not be ordered merely because a party is dissatisfied with the earlier result and seeks another opportunity without demonstrating any reasonable basis for doubting the first examination. Whereas, the present case stands on a different footing. In the instant case, the Petitioners have not sought a fresh examination merely because the earlier result is unfavourable. Specific doubts have been raised regarding the genuineness, reliability, and circumstances under which the earlier report was obtained. The rights of Petitioner No.2, who was not in a position to independently protect her interests in the earlier criminal proceedings, are directly affected. The proposed examination is sought through an independent Central Forensic Laboratory to ensure transparency and credibility. Thus, the facts giving rise to the present request disclose exceptional circumstances which were absent in *S. Swarnalaxmi*.

15. In **K. Perumal's case refererd to *supra***, the Madras High Court declined to order a second DNA test because an earlier DNA examination had been conducted under judicial supervision, through a duly appointed Advocate Commissioner, and the applicant failed to point out any specific defect, mala fides, procedural irregularity, or reasonable suspicion regarding the earlier report. The Court found that the application was intended only to prolong the proceedings. Whereas, in the present case, the Petitioners have consistently challenged the authenticity and reliability of the earlier DNA report. The request is

founded on concerns regarding the integrity of the earlier examination and not on mere dissatisfaction with the result. The maintenance claim of Petitioner No.2 substantially depends upon the determination of paternity. Unlike the said case, the present case involves a child's independent right to maintenance and recognition of paternity, which necessitates a more liberal approach. The fresh examination sought is before a reputed Central Forensic Laboratory and under court supervision, thereby minimizing any possibility of prejudice. Therefore, the ratio in ***K. Perumal's case (supra)*** cannot be mechanically applied to the facts of the present case.

16. This Court is conscious of the contention raised by Respondent No.1 that repeated DNA testing may result in harassment and uncertainty. Though, such concern deserves weight, the present case stands on a different footing. The issue involved is not merely a dispute between Petitioner No.1 and Respondent No.1. The rights of Petitioner No.2, a child claiming maintenance and recognition of paternity, are directly implicated. Since a new scientific test would cause only minor inconvenience, it is better to allow an independent examination so that the dispute can be settled finally and conclusively. A fresh DNA examination conducted by a reputed Central Forensic Laboratory under the supervision of the trial Court would enhance confidence in the process and eliminate any lingering doubts entertained by either side. If the earlier report is indeed correct, the fresh examination would only reaffirm the same. Conversely, if any discrepancy exists, the Court would be equipped with reliable scientific evidence to render a just decision. Therefore, no prejudice would be caused to

Respondent No.1 by directing such examination. Furthermore, Respondent No.1 did not choose to submit his objections in this matter.

17. In view of the foregoing discussion and the principles law laid down in the judgments referred to *supra*, this Court having regard to the rights and welfare of Petitioner No.2, is satisfied that the interests of justice require a fresh DNA test to be conducted by an independent Central Forensic Laboratory.

18. Accordingly, the Criminal Petition is allowed and the order impugned herein is set aside. The learned trial Judge is directed to refer the parties for DNA profiling to an appropriate authority, complete the process and dispose of the matter as expeditiously as possible preferably within a period of two (02) months from the date of receipt of copy of this order.

Pending miscellaneous applications, if any, shall stand closed.

Dr.JUSTICE VENKATA JYOTHIRMAI PRATAPA

Date: 30.03.2026

Note: L.R.Copy to be marked

B/o.

Dinesh

HON'BLE DR. JUSTICE VENKATA JYOTHIRMAI PRATAPA

Crl.P.No.10088 of 2022

Dt.30.03.2026

Dinesh

IN THE HIGH COURT OF ANDHRA PRADESH, AMARAVATI
CRIMINAL PETITION No.10088 of 2022

Between:

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2. THE STATE OF ANDHRA PRADESH, REPRESENTED BY ITS
PUBLIC PROSECUTOR, HIGH COURT OF A.P AT AMARAVATHI.

...RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: 30.03.2026

SUBMITTED FOR APPROVAL:

THE HON'BLE DR. JUSTICE VENKATA JYOTHIRMAI PRATAPA

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|----|--|--------|
| 1. | Whether Reporters of Local Newspapers
may be allowed to see the judgment? | Yes/No |
| 2. | Whether the copies of judgment may be
marked to Law Reporters / Journals? | Yes/No |
| 3. | Whether Her Lordship wish to
see the fair copy of the Judgment? | Yes/No |

DR.JUSTICE VENKATA JYOTHIRMAI PRATAPA

*** THE HON'BLE DR.JUSTICE VENKATA JYOTHIRMAI PRATAPA**
+ CRIMINAL PETITION No.10088 of 2022

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2.THE STATE OF ANDHRA PRADESH, REPRESENTED BY ITS
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...RESPONDENTS

! Counsel for Petitioner : Ms.T.V.Sridevi

^ Counsel for Respondents : Ponnada Sree Vyas

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> Head Note:

? Cases referred:

1. 2023 (5) ALD 39 (AP)
2. 1993 CrLJ 3233
3. CrI.P.No.1404 of 2013, dated 22.01.2014
4. 2018 SCC OnLine Mad 10140
5. 2026 SCC OnLine SC 994
6. (2024) 7 SCC 773
7. 2025 SCC OnLine SC 175

This Court made the following: