

Reserved On : 16/07/2026**Pronounced On : 23/07/2026****IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 8340 of 2012****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE J. C. DOSHI**

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Approved for Reporting	Yes	No

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YESHWANTSINH SHANKARSINH CHAUHAN**Versus****MADHUKANTA @ YESHMITA D/O LATE MADHAVSINH RAISINGH JADAV &
ANR.**

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Appearance:**MR RD DAVE(264) for the Petitioner****MR NIRAV THAKKAR for MR BHAVIN J SATWARA(3718) for the
Respondents**

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CORAM: HONOURABLE MR. JUSTICE J. C. DOSHI**CAV JUDGMENT**

1. The petitioner calls in question legality and validity of impugned order dated 11.5.2012 passed by the learned Family Court, Vadodara below application Exh.217 in Family (HMP) Suit No.1532 of 2010 (Old Special Civil Suit No.485 of 1994), whereby the learned Family Court allowed said application filed by the respondent wife.

2. For the sake of convenience and brevity, parties are

referred to as per their original status before the learned trial Court.

3. Brief facts of the case are as under:-

3.1 Special Civil Suit No. 485 of 1994 was filed by the plaintiff No.1 under the provisions of the Hindu Adoption and Maintenance Act, 1956 seeking maintenance for herself and for her minor daughter – respondent No.2 from the defendant. The suit was subsequently transferred to the Family Court and re-registered as Family Suit No. 1532 of 2010.

3.2 In the course of the suit proceedings, plaintiff No.1 filed an application below Exh.217 seeking a direction to the defendant to undergo a blood test for the purpose of a DNA examination, so as to determine the paternity of Respondent No. 2, and further seeking a direction that the defendant remain present at the Forensic Science Laboratory, Gandhinagar to facilitate the DNA test. The application was stated to have been filed under O 26 R 9 & 10 read with Section 151 of the Code of Civil Procedure, 1908, along with Section 45 of the Indian Evidence Act.

3.3 The learned Family Court directed the defendant to appear before one of any branch of Toprani Laboratory, Vadodara on 25.5.2012 at 10:00 hours, or at such time as may be intimated by the laboratory to provide a blood sample for the DNA test. The laboratory was directed to forward the sample to the Forensic Science Laboratory, Gandhinagar, for

DNA examination. The learned Family Court further directed that, in the event the defendant failed to remain present before the laboratory and provide the blood sample, an adverse inference would be drawn against him.

3.4 By filing the suit, plaintiff No.1 has claimed to be the legally wedded wife of the defendant. Respondent No. 2 was barely fifteen months old at the time of filing of the suit, and is stated to have been born out of the conjugal relationship between plaintiff No.1 and the defendant. In the course of the suit, plaintiff No.1 also filed an application for interim maintenance, which was granted by the learned Family Court. This order of granting interim maintenance was challenged before this Court by the defendant by way of filing CRA Nos.1232 of 1995 and 1946 of 1996, whereby the coordinate Bench of this Court dismissed those proceedings and directed the learned Civil Judge to expeditiously decide the suit and further directed that the suit be disposed of by the end of December 1998.

3.5 It is against this background that, on 6.1.2010, plaintiff No.1 filed the application below Exh.217, seeking the relief in the aforesaid terms.

3.6 The learned Family Court as stated above by impugned order, allowed the application below Exh.217

3.7 Hence, present petition.

4. Heard learned advocate Mr. RD Dave for the petitioner - defendant and learned advocate Mr. Nirav Thakkar with learned advocate Mr. Bhavin J. Satwara for the respondents plaintiffs.

5. Learned advocate Mr RD Dave for the defendant would submit that at the time of filing of Special Civil Suit No. 485 of 1994, Respondent No. 2 was barely fifteen months old and as of now, she is more than 30 years of age and settled in USA. In view of such subsequent development, learned advocate Mr. Dave would submit that in view of Section 20 of the Hindu Adoption and Maintenance Act, a major daughter is not entitled to claim maintenance from her father, even if it is to be accepted that Respondent No. 2 is the defendant's daughter. It was accordingly submitted that the relief claimed on behalf of Respondent No. 2 in the suit has become infructuous on subsequent development, and that there is consequently no imminent need to determine her paternity. He would further submit that the Coordinate Bench of this Court vide order dated 11.9.2012, stayed the impugned order.

5.1 Learned advocate Mr. RD Dave would submit that in the reply to the suit, the defendant had raised the contention that Plaintiff is not his legally wedded wife, and that Respondent No. 2 was not born out of any relationship between the parties. He would further submit that the suit filed in the year 1994 was directed to be concluded before December, 1998, however, instead of cooperating to the learned trial Court in the expeditious disposal of the suit, plaintiff No.1 filed an

application to prolong the proceedings. He would further submit that since the defendant had contended that Plaintiff is not his legally wedded wife and that Respondent No. 2 was not born of any relationship between the parties, plaintiff No.1 was first required to prove that she is the defendant's legally wedded wife before any other question including that of the paternity of Respondent No. 2 could arise. It was further submitted that plaintiff No.1 did not participate in the proceedings till filing of Exh.217 application, after which the proceedings were restarted, whereby, she could not straightaway seek the relief of a DNA test to establish that Respondent No. 2 is a child born of a marital relationship between herself and the defendant. The plaintiff No.1 was required to lead evidence to establish factum of marriage first. Issue of paternity of respondent No.2 comes only thereafter. Reliance in this regard was placed on the judgment of the Hon'ble Apex Court in case of **Ashok Kumar v. Raj Gupta, (2022) 1 SCC 20** on the question of the weight to be given to the timing of filing of such an application, more particularly, para 13 thereof, which reads as under:-

“13. DNA is unique to an individual (barring twins) and can be used to identify a person's identity, trace familial linkages or even reveal sensitive health information. Whether a person can be compelled to provide a sample for DNA in such matters can also be answered considering the test of proportionality laid down in the unanimous decision of this Court in K.S Puttaswamy v. Union of India, 2019 (1) SCC 1 wherein the right to privacy has been declared a constitutionally protected right in India. The Court should therefore examine the proportionality of the legitimate aims being pursued, i.e whether the same

are not arbitrary or discriminatory, whether they may have an adverse impact on the person and that they justify the encroachment upon the privacy and personal autonomy of the person, being subjected to the DNA Test. It cannot be overlooked that in the present case, the application to subject the Plaintiff to a DNA Test is in a declaratory suit and the plaintiff has already adduced evidence and is not interested to produce additional evidence (DNA), to prove his case. It is now the turn of the defendants to adduce their evidence. At this stage, they are asking for subjecting the plaintiff to a DNA test. Questioning the timing of the application the trial Court dismissed the defendants application and we feel that it was the correct order."

5.2 Reliance was further placed on **Rahul v. State of Delhi, (2023) 1 SCC 83**, more particularly para 36 to 40, for the submission that the evidentiary value of DNA evidence is akin to any other evidence, and that its probative value varies from case to case. Lastly, reliance was placed on a medical certificate issued by Dr. Vijay Thakore of Aadicura Superspeciality Hospital to submit that as of now, the defendant is 78 years old and suffers from left lower-limb critical limb CLI with foot gangrene, hypotension, diabetes mellitus type 2, and COPD etc. and that he has undergone surgical amputation of the left leg below the knee with a long myocutaneous flap. It was submitted that, in these circumstances, directing the defendant to undergo a DNA test would be atrocious to his physical condition, particularly since the relief claimed on behalf of Respondent No. 2 has, in any event, become infructuous.

5.3 Upon above submissions, learned advocate Mr. RD Dave prays to allow this petition by quashing and setting aside the impugned order.

6. On the other hand, learned advocate Mr. Nirav Thakkar along with learned advocate Mr. Bhavin J. Satwara for the plaintiff No.1, refers to Section 112 of the Indian Evidence Act and submits that the birth of a person 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), is conclusive proof that he is the legitimate son of that man, unless it is shown that the parties to the marriage had no access to each other at the time when he could have been begotten. He would further submit that a DNA test, being a scientifically proven method, prevails over the presumption of conclusive proof under Section 112 of the Evidence Act, since that provision was enacted at a time when modern scientific advancements, including DNA testing, were not within the contemplation of the legislature, and that the result of a DNA test is scientifically accurate. He would further submit that while ordinarily a wife may be reluctant to subject herself or her child to a DNA test, the present case has diagonally opposite situation, in which plaintiff No.1 herself seeks the DNA test to establish that Respondent No. 2 is born of her relationship with the defendant, and that the defendant's refusal to undergo the test, and the filing of the present petition, indicate that he is seeking to avoid a test that would expose the true position. It was further submitted that, if necessary,

the sample need not be collected by private laboratory and that any government hospital may instead collect the samples from the defendant and Respondent No. 2 to ascertain paternity.

6.1 Learned advocate Mr. Nirav Thakkar would further submit that with the advancement of technology, a blood sample is no longer necessary, and that even a single hair strand could suffice to produce a DNA result; it was accordingly submitted that the order of the learned Family Court is just, correct, and appropriate. It was further submitted that, while a direction to undergo a DNA test ordinarily impinges upon the privacy of a person, where the issue of paternity is squarely raised, a DNA test constitutes conclusive evidence and ought to be ordered. Thus, the order passed by the learned Family Court is proper and correct and requires no interference.

6.2 In support of his submissions, learned advocate Mr. Nirav Thakkar pressed into service following authorities of the Hon'ble Apex Court.

- (1) Dipanwita Roy Vs. Ronobroto Roy, (2015) 1 SCC 365
- (2) Nandlal Wasudeo Badwaik Vs. Lata Nandlal Badwaik and another, (2014) 2 SCC 576
- (3) Sharda Vs. Dharmpal, (2003) 4 SCC 493

6.3 Upon above submissions, learned advocate Mr. Nirav Thakkar prays to dismiss the petition.

7. I have heard learned advocates for both the parties and considered the issue in dispute.

8. Firstly, let me observe that it is a case where the plaintiff No.1 had sought only maintenance from the defendant for herself and for Respondent No. 2. The suit was filed in the year 1994, at which time Respondent No. 2 was barely fifteen months old. A coordinate Bench of this Court, while disposing of the earlier civil revision applications directed that the suit be disposed of by the end of December 1998. Admittedly, until the filing of the application below Exh.217, the plaintiff No.1 did not enter the witness box to prove the contentions raised in the suit. As of the present date, Respondent No. 2 is stated to be 32 years old and is informed that she is married and residing in the USA. Having received information from unverified source, a further submission that she has also had a child is made.

9. At this juncture, this Court notes that at the time of issuance of direction for the DNA test was passed, Respondent No. 2 was a minor, and that her consent to the test was never obtained. It was plaintiff No.1, her mother, who approached the Court seeking a determination of Respondent No. 2's paternity; Respondent No. 2, now a major, has at no stage herself appeared before the Court to seek that her paternity be determined by way of a DNA test.

10. As per the judgment of **Ashok Kumar (supra)**, DNA is

unique to an individual and can be used to establish identity, trace familial linkage, and reveal sensitive health information, and that whether a person may be compelled to provide a DNA sample must be examined applying the test of proportionality laid down by the Hon'ble Apex Court in case of *K.S Puttaswamy v. Union of India*, 2019 (1) SCC 1, in which the right to privacy was declared to be a constitutionally protected right in India. It was observed that the Court must examine the proportionality of the legitimate aim being pursued, whether the direction is arbitrary or discriminatory, whether it would have an adverse impact on the person concerned, and whether the encroachment upon the privacy and personal autonomy of the person directed to undergo the test is justified.

11. In the present case, it cannot be overlooked that the application to subject the parties, including the minor (now major) Respondent No. 2, to a DNA test arises in a suit for maintenance under the Hindu Adoption and Maintenance Act, in which Respondent No. 2 has since become a major and has married, lost her right to get maintenance.

12. The plaintiff No.1 had not adduced any evidence of her marriage to the defendant prior to filing the application. Apt to note that the direction for the DNA test was made without obtaining the consent of Respondent No. 2. In view of that, her right to privacy is accordingly under threat, having been ordered without her consent. It is thus, observed that such a direction infringes the right to privacy of the individual

concerned (respondent No.2) and may carry significant societal consequences.

13. Worthy reliance is placed upon the judgment of the Hon'ble Apex Court in case of **R. Rajendran Vs. Kamar Nisha and others, 2025 LiveLaw (SC) 1086** in which the Hon'ble Apex Court laid down the principles governing DNA profiling, including that a court should not direct parties to undergo a DNA test as a matter of course or in a routine manner. Para 27 to 32 are relevant, which reads as under:-

"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.

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."

[9] (2003) 4 SCC 493

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."

14. Let me observe that the learned Family Court, instead of

applying aforesaid principles, had directed the parties to undergo the DNA test in a routine manner, thereby placing Respondent No. 2's right to privacy at stake, that too without taking her consent.

15. On the question of timing, apposite to observe that plaintiff No.1 was first required to prove her marriage with the defendant before raising the issue of the paternity of Respondent No. 2. Further that the suit proceedings were required to have concluded by December 1998. Instead, the application concerning paternity was filed only in 2010 without plaintiff No.1 having entered into the witness box or to lead any other evidence. Nonetheless, the exercise to decide paterntiy of respondent No.2 became redundant as she is now major and married daughter and she now cannot claim maintenance from her father. Moreover, now practically, no DNA test can be ordered without taking consent of respondent No.2, as result of DNA test practically has direct bearing upon the respondent No.2 to societal status.

16. As far as judgments relied upon by learned advocate for the plaintiff No.1 is concerned, they are factually distinguishable and rendered no assistance to the case of the plaintiffs.

17. For the foregoing reasons, present petition is hereby allowed. Impugned order dated 11.5.2012 passed by the learned Family Court, Vadodara below application Exh.217 in Family (HMP) Suit No.1532 of 2010 (Old Special Civil Suit

No.485 of 1994) is hereby quashed and set aside. Consequently, application Exh.217 is hereby dismissed.

18. The learned Family Court is directed to go through the orders passed in the CRAs and to complete the suit proceedings.

19. Needless to state that this Court has not expressed any opinion on merits and demerits of the case between the parties and has not expressed anything on the issue of paternity of respondent No.2.

SHEKHAR P. BARVE

(J. C. DOSHI,J)