

Crl.RC(MD) No.17 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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**RESERVED ON : 27-02-2026**

**PRONOUNCED ON : 24.07.2026**

CORAM:

**THE HONOURABLE MR JUSTICE MOHAMMED SHAFFIQ**

**CRL RC(MD).No.17 of 2026  
and  
CRL MP(MD).No.239 of 2026**

... Petitioner

Vs.

Government of Tamil Nadu,  
Rep. By the Inspector of Police,  
All Women Police Station,  
Vallam, Thanjavur District.

... Respondent

**PRAYER :-** This Criminal Revision Case is filed under Section 438 read with Section 442 of BNSS Act, 2023, to call for the records pertaining to the impugned order passed by the Additional Mahila Court, Thanjavur in C.M.P.No.462 of 2025 in C.C.No.14 of 2021 passed on 08.08.2025 and set aside the same.

For petitioner : Mr.M.Mathan Karthick

For Respondent : Mr.A.Thiruvadi Kumar  
Additional Public Prosecutor



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## **ORDER**

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The present Criminal Revision Case has been filed by the Petitioner/Accused challenging the order dated 27.06.2025 passed by the learned Additional Mahila Court, Thanjavur, in C.M.P.No.462 of 2025 in C.C.No.14 of 2021, whereby the Trial Court allowed the petition filed by the prosecution/defacto Complainant seeking a direction to subject the Petitioner, the Second Respondent/Complainant and the minor child to DNA testing.

### 2. Brief facts:

2.1. Petitioner's marriage with (hereinafter referred to as "Complainant") was solemnised on 24.01.2011 in Madurai. Out of the wedlock, a male child viz., , was born on 18.06.2012. Complainant came to know that petitioner suppressed his subsisting first marriage and fraudulently induced her to marry him. Complainant would submit before Trial Court that petitioner dishonestly obtained money and property from her and harassed her.

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2.2. Based on a private complaint and directions issued by the

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for offences under Sections 495, 420 read with 418 and 468 of Indian Penal Code, 1860 (hereinafter referred to as “IPC”). After completion of investigation, Final Report was filed and the case is presently pending trial in C.C.No.14 of 2021 on the file of the learned Additional Mahila Court, Thanjavur.

2.3. During the course of trial, while cross-examining the Complainant, petitioner suggested that he was not the biological father of the minor child and that Complainant had earlier married one Sivaganesh. In response, prosecution filed C.M.P.No.462 of 2025 seeking a direction to conduct DNA testing of Petitioner, Complainant and minor child. Learned Trial Judge allowed the above petition on finding that DNA testing would conclusively determine the issue of paternity and accordingly directed all the parties to undergo DNA testing. Aggrieved by the said order, the present Criminal Revision Case has been filed.



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WEB COPY 3. Case of the Petitioner :

3.1. That the impugned order directing the Petitioner to undergo DNA test/profiling is wholly without jurisdiction and contrary to the settled principles governing the exercise of such power. Learned Trial Judge has mechanically allowed the application solely on the basis of certain suggestions put to the prosecution witnesses during cross-examination, without appreciating that such suggestions, by themselves, cannot constitute sufficient grounds to compel an accused to undergo DNA testing.

3.2. That petitioner is facing trial only for offences under Sections 495 and 420 of IPC, wherein the principal issue for determination is whether the petitioner had concealed his subsisting first marriage and thereby induced the Complainant to marry him. The biological paternity of the child is neither an ingredient of the offences alleged nor a fact in issue necessary for adjudicating the criminal charges. The question of paternity is only a collateral issue and cannot form the basis for directing compulsory DNA profiling.



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3.3. That Trial Court has completely overlooked the constitutional safeguards available to an accused. Compelling the Petitioner to provide his DNA sample, amounts to an invasion of his bodily integrity, privacy and personal autonomy guaranteed under Article 21 of the Constitution of India. Such a direction also infringes the protection against self-incrimination embodied under Article 20(3) and therefore cannot be issued as a matter of routine.

3.4. That Hon'ble Supreme Court has consistently held that DNA testing is an extraordinary measure and not one to be ordered for mere asking. Court must record its satisfaction that there exists a strong prima facie case, an eminent necessity and that the truth cannot otherwise be discovered through ordinary evidence. The impugned order, according to petitioner, does not disclose any such satisfaction and is therefore liable to be interfered with.

3.5. That prosecution had sought DNA profiling only after trial had substantially progressed and the matter had reached the stage of final hearing. The application, filed at such a belated stage, is nothing but an attempt to collect fresh evidence and fill up the lacunae in the



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prosecution case. Instead of appreciating the delay and prejudice likely to be caused to Petitioner, Trial Court erroneously proceeded to allow the application, thereby unnecessarily prolonging the criminal proceedings.

3.6. That Trial Judge failed to consider the statutory presumption under Section 112 of the Indian Evidence Act, 1872 (corresponding to Section 116 of the Bharatiya Sakshya Adhiniyam, 2023), which recognises a strong presumption regarding legitimacy of a child born during the subsistence of a valid marriage. Such a presumption can be displaced only on strict proof of the contrary. Without first examining whether the statutory requirements for rebutting the presumption had been satisfied, Trial Court ought not to have ordered DNA test/profiling.

3.7. That impugned order suffers from patent illegality, non-application of mind and material irregularity. The learned Trial Judge has failed to balance the competing interests of the prosecution and constitutional rights of the accused, while overlooking the settled law governing DNA profiling in criminal proceedings.



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4. Case of the Respondent :

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4.1. Learned Additional Public Prosecutor, on the other hand, would submit that impugned order does not warrant interference, inasmuch as the DNA test has become necessary in view of the issues which arose during the course of cross-examination.

5. Heard both sides.

6. It is common ground that during the course of trial, while cross-examining the complainant, petitioner suggested that he was not the biological father of the minor child and further suggested that the complainant had earlier married one Sivaganesh. In response, prosecution filed a miscellaneous petition seeking direction to conduct DNA testing of the petitioner, complainant, and minor child. Trial Judge also permitted DNA testing. It is in such circumstances that the present Criminal Revision Petition has been filed.



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7. The short question that arises for consideration is whether the Trial Court was right in allowing the petition seeking DNA testing in a case where the allegations were under Sections 495 and 420 of the IPC. For the purposes of the present revision petition, it may not be necessary to go into the allegations made under Section 420 of the IPC, inasmuch as the Trial Court has primarily proceeded to direct DNA test only on the premise that it may be necessary to resolve the allegation made under Section 495 of the IPC.

8. To answer the above question, it may be relevant, rather necessary, to refer to Sections 494 and 495 of the IPC and also the essential ingredients thereof. Section 494 of IPC reads as under:

*“494. Marrying again during life-time of husband or wife.*

*Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with*



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*imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*

*Exception.—This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.”*

9. Section 494 of IPC *inter alia*, requires the following ingredients to be satisfied, namely:

(i) the accused must have contracted first marriage;

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- (ii) he must have married again;
- (iii) the first marriage must be subsisting;
- (iv) the spouse must be living.<sup>1</sup>

10. For conviction under Section 494 of IPC the following must be proved: (a) that the complainant had been validly married to the accused; (b) that the accused contracted a second marriage during the subsistence of the first; (c) that both the marriages were valid and strictly according to law governing the parties.<sup>2</sup>

11. Section 495 of IPC reads as follows,

*“s. 495 - Same offence with concealment of former marriage from person with whom subsequent marriage is contracted. - Whoever commits the offence defined in the last preceding section having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with*

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<sup>1</sup> Pashaura Singh v. State of Punjab, AIR 2010 SC 922

<sup>2</sup> L. Obulamma v L. Venkata Reddy, (1979) 3 SCC 80, Amaliammal v Rayarswami, 1983 Mad LW (Cr) 224

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*imprisonment of either of either description for a term which may extend to ten years, and shall also be liable to fine.”*

12. The offence under this section is an aggravated form of the offence defined in Section 494 of IPC. In other words, offence under Section 495 of IPC is extension of Section 494 of IPC.

13. Following are the essential ingredients to constitute an offence under Section 495 of IPC :

(i) That the accused committed an offence of bigamy (as given under Section 494 of IPC);

(ii) That the accused concealed the fact of former marriage from the person with whom the subsequent marriage was contracted.

14. In other words, all the elements required to prove an offence under Section 494 of IPC must be proved, and in addition it is to be

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proved that the accused concealed from the person with whom the subsequent marriage was contracted the fact of former marriage.

15. Now, having examined the essential ingredients of Sections 494 and 495 of the IPC, it may now be relevant to examine the law laid down by the Supreme Court relating to how and when DNA testing is permitted. Though there is a long line of judgments, this Court would think that the following judgments are relevant in deciding the above question:

(i) *Aparna Ajinkya Firodia v. Ajinkya Arun Firodia*, reported in (2024) 7 SCC 773;

15.1. After referring to various decisions<sup>3</sup>, following principles as to when DNA Test must be resorted/directed were found to emerge:

*“43. Having regard to the aforesaid discussion, the following principles could be culled out as to the circumstances*

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3. *Goutam Kundu v. State of W.B.*, (1993) 3 SCC 418; *Bhabani Prasad Jena v. Orissa State Commission for Women*, (2010) 8 SCC 633; *Inayath Ali v. State of Telangana*, (2024) 7 SCC 822; *Ashok Kumar v. Raj Gupta*, (2022) 1 SCC 20



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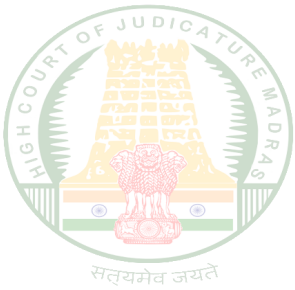
*under which a DNA test of a minor child may be directed to be conducted:*

*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*



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*not otherwise. In other words, only in exceptional and deserving cases, where such a test becomes indispensable to resolve the controversy the court can direct such test.*

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

.....

*67. Another aspect that needs to be considered in the instant case is whether, for a just decision in the divorce proceedings, a DNA test is eminently necessary. This is not a case where a DNA test is the only route to the truth regarding the adultery of the mother. If the paternity of the children is the issue in a proceeding, DNA test may be the only route to establish the truth. However, in our view, it is not so in the present case...*

*(emphasis supplied)*

15.2. It thus appears that even where DNA is one of the modes of establishing an essential element to a lis, the same must be directed only after exhausting other modes of proof as a last resort. A fortiori where the issue in the present case relates to allegation of bigamy, paternity is



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not even remotely an issue, thereby direction for DNA Test to determine paternity suffers from misdirection in law.

(ii) Ivan Rathinam v. Milan Joseph, reported in 2025 SCC OnLine SC 175:

15.3. The Supreme Court reiterated that DNA Test is not to be directed unless there is an “eminent need”, to resolve the controversy before the Court.

*“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.”*

*(emphasis supplied)*

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(iii) Recently, in Chaturbhuj Pradhan v. Amar Pradhan & Anr.,

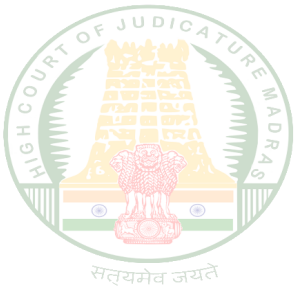
2026 INSC 600, the Hon'ble Supreme Court, after considering the principles laid down in the aforesaid judgments, held DNA Test must be resorted to only if DNA Test result is directly an issue, the relevant portion is extracted hereunder:

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

*(emphasis supplied)*

iv) R. Rajendran v. Kamar Nisha, reported in 2025 SCC OnLine SC 2372 :

*“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*



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*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.*

.....

*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.*

*(emphasis supplied)*



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16. It may also be relevant to take note of the following judgments

of this Court relating to DNA Test rendered in the context of bigamy:

(a) K. Neelaveni v. S.K. Sivakumar, Crl.R.C.No.1117 of 2008 (Madras High Court) CDJ 2008 MHC 3971:

*“4. I have carefully considered the submissions made on either side. To maintain the charge under section 494 IPC, there should be evidence to show that essential ceremonies were performed at the time of alleged second marriage and such ceremonies and other requirements for a valid marriage have to be established by adducing evidence in the course of trial and a valid marriage between a man and woman cannot be presumed from the fact that a child was born out of their relationship. Unmarried man and woman may have sexual relationship and out of that a child may be born and from that it cannot be presumed that there was a valid marriage between them. Therefore, as rightly pointed out by the learned Judicial Magistrate, if there was a valid second marriage between the first and 15th accused, that has to be proved only by evidence and not by subjecting them and the child for DNA test. The aforesaid reasoning of the learned Judicial Magistrate is in accordance with settled principles of law and no exception can be taken to that. The decision reported in 2005(5) CTC 182 relied upon by the learned counsel for the petitioner has no relevance to the facts of this case. In that case, paternity of the child was denied*



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*by the male and it was a case of maintenance and hence, the learned judge came to the conclusion that DNA test is a must. But that is not the case here. Hence, the above said decision is not applicable to the facts of this case.”*

*(emphasis supplied)*

(b) Vijayavelu v. V. Sujatha, Order of this Court in CRL.R.C.No.1345 of 2017 after relying on the decision in K.Neelaveni v. S.K.Sivakumar and others, reported in CDJ 2008 MHC 3971:

*“14.The Judgment reported in CDJ 2008 MHC 3971 squarely applies to the facts of this case. As rightly pointed by the learned counsel for the petitioner, the offence of bigamy has to be proved by independent evidence and not by the alleged birth of a child between the alleged bigamous relationship. Therefore, in view of the direct ruling on the issue involved in this petition, negating the prayer for DNA for proving the bigamy and also the fact the bigamous marriage has to be independently proved, this Court is of the considered view that the order passed by the learned Judicial Magistrate in allowing the petition for conducting DNA test to the petitioner; Nithyakalyani and Magathi is not correct and not in accordance with law. Moreover it is seen from the order passed by the learned Judicial Magistrate, no valid reasons have*



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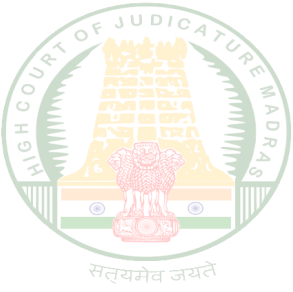


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*been given to allow the petition. It was just said that the DNA report will be an additional evidence to the case of the respondent. That could not be the reason for allowing the petition. In this view of the order, the order of the Learned Judicial Magistrate is liable to be set aside and set aside accordingly.”*

17. From a reading of the above judgment, it is clear that before a Court directs or orders a DNA test, it must be shown that the result of the DNA test is directly in issue and, more importantly, that there is an “eminent need” to order such a test. If the above test is applied to the case on hand, keeping in view the essential ingredients of Sections 494 and 495 of IPC, there is no doubt in my mind that the DNA test or the paternity of the child would have no bearing in determining the alleged offences under Sections 494 and 495 of IPC. Direction for DNA testing, by the Trial Courts rests upon the fundamental misapprehension of both statutory framework and constitutional safeguards. The offence alleged, falling under Sections 495 of IPC is neither of nature nor of a circumstance that warrant recourse to DNA analysis.

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18. In that view of the matter, this Court finds that the order of the

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above observations, the Criminal Revision Petition stands disposed of.

No costs. Consequently, the connected miscellaneous petition is closed.

**24.07.2026**

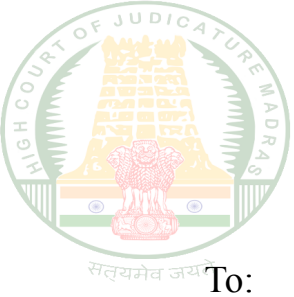
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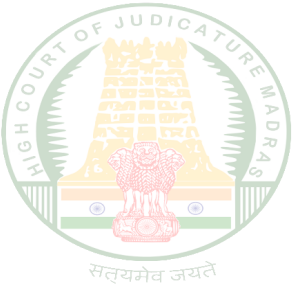
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To:

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- 1.The Additional Mahila Court,  
Thanjavur
- 2.Inspector of Police,  
All Women Police Station,  
Vallam, Thanjavur District.
- 3.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

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**MOHAMMED SHAFFIQ, J**

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