



2026:KER:74554

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

SATURDAY, THE 26TH DAY OF SEPTEMBER 2026 / 4TH ASWINA, 1948

CRL.MC NO. 2332 OF 2026

AGAINST THE ORDER/JUDGMENT DATED 23.08.2025 IN MC NO.22 OF
2021 OF JUDICIAL MAGISTRATE OF FIRST CLASS, VADAKKANCHERRY
PETITIONER/PETITIONER/RESPONDENT:

S

BY ADVS.
SHRI.DILEEP VARGHESE
SMT.TESMY VARGHEESE

RESPONDENT(S) /RESPONDENTS/PETITIONERS AND STATE:

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3 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH
COURT OF KERALA, ERNAKULAM., PIN - 682031

BY ADVS.
SMT.V.M.RUSHDA
SRI.LEGITH T.KOTTAKKAL
SR.PP-SRI.V.R.RAMLAL

THIS CRIMINAL MISC. CASE HAVING COME UP FOR HEARING ON
16.09.2026, THE COURT ON 26.09.2026 PASSED THE FOLLOWING:

**ORDER**

Dated this the 26th day of September, 2026

This petition has been filed by the respondent in M.C. No. 22/2021 on the file of the Judicial First Class Magistrate Court, Wadakkanchery. The said petition was filed by the first and second respondents herein under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, 'the PWDV Act'), seeking maintenance for herself and her minor child, the second respondent herein, and return of gold ornaments.

2. During the pendency of the said proceedings, the respondent filed C.M.P. No. 3773/2025 seeking a direction to subject the minor child of the first respondent to DNA examination, with a view to disprove the paternity of the child. The learned Magistrate, by order dated 23.08.2025, dismissed the said application. Aggrieved by the said order, the present Crl.M.C. has been filed.

3. While considering whether any interference is warranted with the impugned order, it is necessary to note that the petition filed before the learned Magistrate was founded on the contention of the respondent that he is not the biological



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father of the child born to the first petitioner in the said M.C. The petitioner further contended that, during a mediation conducted in the course of the proceedings, the first respondent had agreed to undergo a DNA test in relation to the paternity of the minor child.

4. As regards the contention that there was a consensus between the parties during the mediation process to undergo a DNA examination, it is necessary to bear in mind that the object of proceedings under Section 12 of the PWDV Act is not the determination of biological parentage, but the adjudication of allegations of domestic violence and the grant of statutory reliefs flowing therefrom.

5. In the present case, from the materials available on record, it is discernible that the marital relationship between the parties is not in dispute. As rightly found by the learned Magistrate, in the absence of any material to establish that the respondent had no access to the first petitioner during the relevant period, the presumption under Section 112 of the Indian Evidence Act, 1872 operates in favour of the child's legitimacy.



6. Section 112 of the Indian Evidence Act embodies a rule of public policy intended to protect the legitimacy of children born during the subsistence of a valid marriage. Where a person is born during the continuance of a valid marriage between his or her mother and any man, or within two hundred and eighty days after the dissolution of the marriage, the mother remaining unmarried, such birth is conclusive proof of legitimacy unless it is shown that the parties to the marriage had no access to each other at the time when the child could have been begotten.

7. Therefore, in the absence of specific pleadings and prima facie material demonstrating non-access between the spouses during the relevant period, a direction for DNA profiling cannot be sought as a matter of course merely on the basis of an allegation disputing paternity. A DNA test is not to be directed routinely and may be ordered only in appropriate and deserving cases where the Court finds such examination necessary for the proper adjudication of the dispute. Unless non-access between the spouses during the relevant period is prima facie established, evidence cannot be permitted for the purpose of disproving the paternity of a child born during the subsistence of the marriage.



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8. The contention that the parties had, during mediation, expressed their willingness to undergo a DNA examination does not alter the legal position. A consensual understanding reached during mediation cannot, by itself, compel a court to order a DNA examination unless the court independently finds that such an examination is legally permissible, necessary, and justified in the facts and circumstances of the case. A settlement or understanding reached during mediation is undoubtedly relevant and entitled to due consideration. However, parties cannot, by consent, compel a court to pass an order contrary to law or public policy.

9. In the facts and circumstances of the present case, there is no material on record to prima facie establish non-access between the parties during the relevant period. Consequently, the presumption under Section 112 of the Indian Evidence Act remains operative, and the learned Magistrate was justified in declining to direct DNA examination of the minor child.

10. This Court is, therefore, of the considered view that the order dated 23.08.2025 passed by the learned Magistrate declining to direct DNA test does not call for any interference.



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Resultantly, this petition fails and is accordingly dismissed.

Sd/-
JOBIN SEBASTIAN
JUDGE

vdv

APPENDIX OF CRL.MC NO. 2332 OF 2026

PETITIONER ANNEXURES

- Annexure A1 TRUE COPY OF THE APPLICATION IN M C NO.22/2021 ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE COURT, WADAKKANCHERY FILED BY 1ST AND 2ND RESPONDENTS
- Annexure A2 TRUE COPY OF THE OBJECTION FILED BY PETITIONER IN M C NO.22/2021 ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE COURT, WADAKKANCHERY
- Annexure A3 TRUE COPY OF THE APPLICATION IN M P NO.3773/2025 IN M C NO.22/2021 ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE COURT, WADAKKANCHERY FILED BY THE PETITIONER
- Annexure A4 TRUE COPY OF THE OBJECTION FILED BY PETITIONER IN M P NO.3773/2025 IN M C NO.22/2021 ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE COURT, WADAKKANCHERY FILED BY THE 1ST RESPONDENT
- Annexure A5 TRUE COPY OF A-DIARY PROCEEDINGS OF TRIAL COURT ON 17.08.2024 DOWNLOADED FROM THE ECOURT DASHBOARD
- Annexure A6 CERTIFIED COPY OF THE ORDER IN M P NO.3773/2025 IN M C NO.22/2021 ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE COURT, WADAKKANCHERY