

**IN THE COURT OF THE JUDICIAL MAGISTRATE,
SULUR, COMBATORE DISTRICT.**

Present: Thiru.T.Arunkumar,M.A.,M.L.,M.B.A.,

Judicial Magistrate, Sulur

Tuesday the 19th day of May 2026

MP No:2 of 2025

in

MC 7/2025

Mr. Muniyappan (39/2025)

S/o. Murugesan

...Petitioner/Respondent

-Vs-

1. Minor Adithya(3/2025)

S/o. Muniyappan

2. V.Karthika (29/2025)

W/o. Muniyappan

...Respondent/Petitioner

This petition has been filed on 05.08.2025 and came for final hearing on 19.05.2026 in the presence of Tmt.S. Rajarajeswarivanaki ,B.A.,B.L., learned counsel for the petitioner and Thiru. M. Saravanan, counsel for the respondent, and upon perusal of the petition and connected records hearing both side arguments this court passed the following

1. The gist of the petition filed by the petitioner is as follows:

(1.1) The Petitioner/Husband has moved this application under Section 116 of the Bharatiya Sakshya Adhiniyam, 2023, seeking a direction to conduct a scientific DNA test to determine the paternity of the first minor respondent and consequently declare that the child is not his legitimate son. It is the case of the Petitioner that his marriage with the second respondent was solemnized on 17.03.2021 at Murugan Temple, near Bannari Mariyamman Kovil, according to Hindu rites, and a male child was subsequently born during the subsistence of the marriage. The Petitioner strongly disputes the paternity of the child, averring that due to intense marital disputes, he had absolutely no physical access or

conjugal intimacy with the second respondent during the crucial, likely period of conception between 17.09.2021 (LMP) and 10.10.2021. The Petitioner contends that the conclusive presumption of legitimacy under Section 116 of the Bharatiya Sakshya Adhiniyam, 2023, stands successfully rebutted by the factum of non-access, and therefore, a scientific DNA test is highly imperative to establish the truth conclusively.

2. The counter filed by the respondent is as follows:

(2.1) Per contra, the Respondents have vehemently resisted the application by filing a detailed counter statement, praying for its absolute dismissal with exemplary costs. The second respondent/wife submits that the petition is false, frivolous, vexatious, and a gross abuse of the process of the court, filed with the sole malicious intent to harass the respondents, suppress material facts, and evade the statutory liability of paying maintenance in the main case M.C. No. 7/2025. The respondent categorically denies the allegation of non-access, stating that from 17.09.2021 to 10.10.2021, both parties were residing under one roof and enjoying a healthy, normal conjugal and sexual life, which led to her pregnancy being medically confirmed as 45 days on 01.11.2021.

(2.2) It is further submitted that the petitioner is fully potent, that the minor child bears a strong physical resemblance to him, and that the petitioner and his mother had even visited the respondent during her pregnancy. The respondent contends that the present application, raising a dispute three years after the child's birth, is highly belated, legally unsustainable, and amounts to serious character assassination and mud-slinging against an innocent wife, concluding that a husband cannot compel a DNA test under such circumstances.

Heard both sides and perused the materials available on record.

ORDER

3. Points for Consideration:-

(3.1) The core issue that falls for adjudication before this Court is whether the Petitioner has established a strong *prima facie* case of "non-access" sufficient to displace the statutory presumption of legitimacy and warrant an order for a scientific DNA test.

4. Discussion:

(4.1) Section 116 of the Bharatiya Sakshya Adhiniyam, 2023 (which corresponds identically to Section 112 of the erstwhile Indian Evidence Act, 1872) mandates that the birth of a child during

the continuance of a valid marriage is "conclusive proof" of legitimacy. The law firmly closes the door on any speculative inquiries into a child's parentage unless it can be demonstrated that the parties to the marriage had *no access* to each other at the time when the child could have been conceived. The expression "access" means an opportunity for sexual intercourse, not merely the factum of cohabitation.

(4.2) Our Hon'ble Supreme Court of India has consistently governed the threshold for directing a DNA test. In the landmark decision of **Goutam Kundu v. State of West Bengal (1993) 3 SCC 418**, reaffirmed in the recent apex court ruling in **Ivan Rathinam v. Milan Joseph 2025 Live Law SC 118**, it was unequivocally held that

"DNA testing cannot be ordered as a matter of course or as a routine measure. Courts must not encourage roving inquiries or fishing expeditions. The legitimacy of a child born during a valid marriage automatically establishes the paternity of the spouse, unless strict proof of non-access is proven."

(4.3) Furthermore, the Hon'ble Supreme Court in **Aparna Ajinkya Firodia v. Ajinkya Arun Firodia** arising out of SLP(c) No. 9855 of 2025 dated 20.02.2023 laid down in para No.33 "twin blockades" required to allow DNA tests, emphasizing that the welfare and interest of the child are paramount, and a child cannot be used as a "pawn" or collateral tool by the husband to substantiate assertions of unfaithfulness or to evade maintenance obligations. Applying these binding precedents to the present matrix, this Court notes that the Petitioner has merely made a bald, self-serving assertion of "non-access" due to marital disputes. The record indicates that during the crucial conception period, the parties were legally wedded and living in circumstances where access was biologically possible.

(4.4) The Respondent has presented medical timelines indicating a normal pregnancy arising during cohabitation. Crucially, the Petitioner raised no such paternity dispute at the time of the child's birth or during the pregnancy visiting the respondent during that time but has brought forth this plea after a substantial delay of three years, precisely when faced with maintenance claims in M.C. No. 7/2025. The Hon'ble Madras High Court has repeatedly observed that a delayed application for a DNA test, absent any verifiable physical impossibility of access, cannot be entertained simply to help a husband escape his statutory duty to provide financial security to his family. To allow a DNA test on a mere balance of probability or sweeping statements would cause irreparable injury to the status of the child, branding them with the social stigma of illegitimacy and violating their rights under Article 21 of the Constitution of India. Consequently, this Court finds no merit or legal basis in the Petitioner's re

(4.5) Applying these binding precedents to the present matrix, this Court notes that the Petitioner has merely made a bald, self-serving assertion of "non-access" due to marital disputes. The record indicates that during the crucial conception period, the parties were legally wedded and living in circumstances where access was biologically possible. The Respondent has presented medical timelines indicating a normal pregnancy arising during cohabitation. Crucially, the Petitioner raised no such paternity dispute at the time of the child's birth or during the pregnancy visiting the respondent during that time but has brought forth this plea after a substantial delay of three years, precisely when faced with maintenance claims in M.C. No. 7/2025.

5. In the light of the statutory mandates under Section 116 of the Bharatiya Sakshya Adhiniyam, 2023, and the settled legal principles enunciated by the Hon'ble Supreme Court and the Hon'ble Madras High Court, this Court holds that the Petitioner has failed to satisfy the legal threshold of proving non-access. Accordingly, **this petition is dismissed.**

Dictated by me to the Steno typist and typed by her directly in the computer and after effecting necessary corrections pronounced by me in the open Court on this the 19th day of May 2026.

(Sd/-T.Arunkumar)

Judicial Magistrate,

Sulur.