



2026:CGHC:4005
NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRMP No. 2862 of 2024

1 - Bharti Sahu And Anr. W/o Vijay Kumar Sahu Aged About 27 Years
R/o Village Joratarai, Shitala Para, P.S. Bhilai Bhatti, Tehsil Durg,
District Durg, C.G.

2 - Naitik Kumar Sahu S/o Vijay Kumar Sahu Aged About 6 Years (Minor
Natural Guardian Mother Bharti Sahu), R/o Village Joratarai, Shitala
Para, P.S. Bhilai Bhatti, Tehsil Durg, District Durg, C.G.

... Petitioners

versus

Vijay Kumar Sahu S/o Jagannath Sahu Aged About 30 Years R/o
Village Kataro P.S. Utai, Chowki Machandur Tehsil Durg, District Durg,
C.G.

... Respondent

(Cause-title taken from Case Information System)

For Petitioners	:	Mr. Virendra Kashyap, Advocate
For Respondent	:	Mr. Punit Ruparel, Advocate

Hon'ble Shri Ramesh Sinha, Chief Justice

Order on Board

22.01.2026

1. Heard Mr. Virendra Kashyap, learned counsel for the petitioners
and Mr. Punit Ruparel, learned counsel appearing on behalf of the
respondent.
2. The present petition has been filed by the petitioners with the
following relief:-

“It is therefore prayed that, this Hon'ble Court may kindly be pleased to allow this Criminal Miscellaneous Petition against the order dated 27/09/2024 wherein the passed by the learned Principal Judge of Family Court Durg (C.G.) in Miscellaneous Criminal Case No.494/2019 in the interest of justice.”

3. Mr. Virendra Kashyap, learned counsel for the petitioners submits that the impugned order dated 27.09.2024, passed by the learned Family Court, Durg, allowing the application of the respondent for conducting a DNA test of applicant No.2, is illegal, arbitrary, and unsustainable in law. It is submitted that the marriage between applicant No.1 and the respondent admittedly took place on 24.04.2018, and applicant No.2 was born on 27.12.2018 during the subsistence of the said lawful wedlock. The respondent has himself admitted both the marriage and the date of birth of applicant No.2 in his reply filed under Section 125 CrPC. He further submits that despite admitted cohabitation of the parties after marriage, the respondent has made reckless and scandalous allegations against the character of applicant No.1, only with a view to evade his statutory obligation of maintenance. The allegations of alleged prior relationship are baseless, vague, and unsubstantiated, and have been raised for the first time only to defeat the object of Section 125 CrPC.
4. It is submitted by Mr. Kashyap that the learned Family Court has completely ignored the statutory presumption under Section 112

of the Indian Evidence Act, 1872, which accords conclusive proof of legitimacy to a child born during a valid marriage. The respondent has neither pleaded nor proved non-access at the time of conception, which is the only legally permissible mode to rebut the presumption under Section 112. In the absence of such pleadings or proof, the direction for DNA test is wholly impermissible. He further submits that the proceedings under Section 125 CrPC are summary in nature, intended to provide immediate succour to destitute wife and child, and issues relating to paternity are essentially civil in nature, which cannot be permitted to derail maintenance proceedings. The respondent was fully aware of the birth of applicant No.2 since 2018 and never disputed paternity until the maintenance proceedings, which clearly demonstrates mala fide intent.

5. Mr. Kashyap contends that the learned Family Court has passed the impugned order in a mechanical manner, without recording any finding of *eminent need* or necessity for conducting DNA test, and without weighing the serious consequences of such an order on the dignity of applicant No.1 and the legitimacy of applicant No.2, contrary to the settled law laid down by the Hon'ble Supreme Court in ***Kantidevi vs. Poshiram (2001) 5 SCC 311*** and ***Banarsi Dass vs. Tiku Dutta (2005) 4 SCC 449***.
6. Lastly, Mr. Kashyap submits that the impugned order suffers from non-application of mind, is contrary to settled legal principles, and

deserves to be quashed and set aside, in order to protect the statutory object of Section 125 CrPC and the legitimacy of the minor child.

7. On the other hand, Mr. Punit Ruparel, learned counsel appearing for the respondent opposes the submissions advanced by learned counsel for the petitioners and submits that the present petition has been preferred challenging the order dated 27.09.2024, passed by the learned Family Court, Durg, in the proceedings under Section 125 of CrPC, whereby the application filed by the respondent for conducting DNA test of petitioner No.2 has been allowed. It is submitted that the petitioners had instituted the proceedings under Section 125 CrPC seeking maintenance of Rs.10,000/- per month, whereas the respondent has specifically pleaded that he is not the biological father of petitioner No.2.
8. Mr. Ruparel further submits that the learned Family Court, in separate divorce proceedings, has recorded a categorical finding that petitioner No.1 was pregnant for about 36 weeks at the time of marriage with the respondent. On the basis of such finding, the learned Family Court has granted a decree of divorce, thereby dissolving the marriage between petitioner No.1 and the respondent vide judgment and decree dated 09.10.2024. In view of the said judicial determination, the respondent was fully justified in seeking DNA examination to ascertain the paternity of petitioner No.2. It is further submitted that although the maintenance

proceedings under Section 125 CrPC may continue irrespective of the DNA test, the question of paternity is a foundational fact, and conducting DNA test would conclusively determine whether the respondent is the biological father of petitioner No.2. Learned counsel submits that even if petitioner No.2 is ultimately held to be legitimate or illegitimate, the legal consequences would follow, but the DNA report is essential for determining the entitlement of petitioner No.1. If the DNA report establishes that the respondent is not the biological father, the respondent would be entitled to demonstrate that petitioner No.1 was living in adultery, thereby attracting the bar contained under Section 125(4) CrPC, disentitling her from claiming maintenance.

9. It is submitted by Mr. Ruparel that the impugned order has been passed after due consideration of the facts and applicable legal principles. Reliance is placed on the judgment passed by the Co-ordinate Bench of this Court in ***Preeti Miraniya v. Sanjay Miraniya, (2021) 3 CGLJ 430***, wherein a similar issue was raised before this Court. In the said case, the wife had challenged the order directing DNA test, and this Court, after considering the law laid down by the Hon'ble Supreme Court in ***Dipanwita Roy v. Ronobroto Roy, (2015) 1 SCC 365***, dismissed the criminal revision and upheld the order of the Family Court. The contention that a wife cannot be compelled to undergo DNA testing was specifically considered and negated. As such, the order dated 27.09.2024 passed by the learned Family Court does not suffer

from any illegality or perversity and warrants no interference in the present petition.

10. I have heard learned counsel appearing for the parties and perused the documents annexed with the present petition.
11. From perusal of the impugned order, it transpires that the learned Family Court, Durg, while considering the application (IA No. 1/24) filed by the respondent for conducting DNA test in proceedings under Section 125 CrPC, has allowed the said application vide order dated 27.09.2024, primarily on the ground that the paternity of petitioner No.2 is disputed. The learned Family Court relied upon the respondent's plea that petitioner No.1 had admitted a prior physical relationship and pregnancy before marriage, as well as a statement recorded during cross-examination indicating willingness for DNA testing. The Court held that determination of paternity was essential for adjudication of the maintenance claim and, accordingly, directed DNA testing of petitioner No.2, his mother (petitioner No.1), and the respondent at the Centre for DNA Fingerprinting and Diagnostics, Hyderabad, at the respondent's cost.
12. In ***Preeti Miraniya*** (supra), the Co-ordinate Bench of this Court, has held as follows :-

“7. The scope of a Revisional Court is very limited to the extent of determining the legality, propriety and correctness of the order passed. In the present case, the application filed by the

respondent was allowed unopposed by the applicant side. Therefore, there is nothing to make out that the impugned order is illegal, improper or incorrect in any sense. The concern of the applicants with respect to the consequences of the D.N.A. test have come up at a subsequent stage and it is because of that the applicants now do not want to submit to D.N.A. Test. In the case of Dipanwita Roy (Supra) the Supreme Court has made observation in paragraph 18 as follows:-

“18. We would, however, while upholding the order passed by the High Court, consider it just and appropriate to record a caveat, giving the appellant-wife liberty to comply with or disregard the order passed by the High Court, requiring the holding of the DNA test. In case, she accepts the direction issued by the High Court, the DNA test will determine conclusively the veracity of accusation levelled by the respondent-husband against her. In case, she declines to comply with the direction issued by the High Court, the allegation would be determined by the concerned Court, by drawing a presumption of the nature contemplated in Section 114 of the Indian Evidence Act, especially, in terms of illustration (h) thereof. Section 114 as also illustration (h), referred to above, are being extracted hereunder:

“114. Court may presume existence of certain facts – The Court may presume the

existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustration (h) - That if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him.”

This course has been adopted to preserve the right of individual privacy to the extent possible. Of course, without sacrificing the cause of justice. By adopting the above course, the issue of infidelity alone would be determined, without expressly disturbing the presumption contemplated under Section 112 of the Indian Evidence Act. Even though, as already stated above, undoubtedly the issue of legitimacy would also be incidentally involved.”

8. Therefore, it has been expressed by the Supreme Court that even after the passing of an order for conducting D.N.A. Test, one of the parties which is the applicant in this case, has option either to submit or to decline the same. Therefore, in case, the applicants refuse to submit in D.N.A. Test, they cannot be compelled to do so, of course there shall be consequences of such non submission.

9. Consent has been defined in the Section 13 of the Contract Act that “Two or more persons

are said to consent when they agree upon the same thing in the same sense.” Any consent given can be revoked at any later stage and it is same case present her. Hence, on the basis of the discussions made hereinabove, it is held that there is no ground present under Section 397 of Cr.P.C. to entertain this revision for setting aside the impugned order. Hence, the petition is dismissed, however, according to the observations made hereinbefore, the applicants are at liberty to exercise any option and in case of their refusal, there shall be no compulsion on them in any manner.”

13. It is not in dispute that the respondent has specifically disputed the paternity of petitioner No.2 in the proceedings under Section 125 CrPC, and such dispute is not a vague or bald assertion but is founded upon pleadings, evidence led during cross-examination, and a judicial finding already recorded in the connected matrimonial proceedings. The learned Family Court, while granting a decree of divorce vide judgment dated 09.10.2024, has recorded a categorical finding that petitioner No.1 was carrying an advanced pregnancy of about 36 weeks at the time of marriage. Such finding, though rendered in separate proceedings, undoubtedly has a bearing on the issue of paternity raised in the maintenance proceedings.
14. This Court is mindful of the statutory presumption enshrined under Section 112 of the Indian Evidence Act and the salutary object sought to be achieved by proceedings under Section 125 CrPC

However, it is equally well settled that the presumption under Section 112 of the Indian Evidence Act, is not absolute in all circumstances, and where compelling facts exist giving rise to a serious and bona fide dispute regarding paternity, the Court is not powerless to permit scientific examination for arriving at the truth, particularly when such determination goes to the root of the matter.

15. The impugned order does not reflect any mechanical exercise of jurisdiction. Rather, the learned Family Court has considered the pleadings of the parties, the admissions attributed to petitioner No.1 during evidence, and the necessity of determining paternity for the just adjudication of the maintenance claim. The direction for DNA testing has been issued after due application of mind and by placing reliance on settled legal principles.
16. This Court also finds merit in the submission that the direction to undergo DNA testing does not amount to compelling the petitioners to submit to the test. The law, as authoritatively laid down by the Hon'ble Supreme Court in ***Dipanwita Roy*** (supra) and followed by the Co-ordinate Bench of this Court in ***Preeti Miraniya*** (supra), clearly preserves the autonomy of the concerned party either to comply with or decline such direction, subject to the legal consequences flowing therefrom. Therefore, the contention that the impugned order per se violates the dignity, privacy, or statutory rights of petitioners, is devoid of substance.

- 17.** In the considered view of this Court, the impugned order neither suffers from illegality, perversity, nor non-application of mind so as to warrant interference in exercise of the limited supervisory jurisdiction of this Court. The learned Family Court has acted well within the bounds of its jurisdiction, and the order impugned represents a judicious exercise of discretion aimed at discovering the truth and securing the ends of justice.
- 18.** Accordingly, the Criminal Miscellaneous Petition being devoid of merit is hereby **dismissed**. It is, however, clarified that the petitioners shall be at liberty to exercise their option in accordance with law in respect of the direction for DNA testing, and the learned Family Court shall proceed further strictly in consonance with settled legal principles, without being influenced by any observations made herein, which are confined only to the adjudication of the present petition.
- 19.** There shall be no order as to costs.

Sd/-
(Ramesh Sinha)
Chief Justice