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**(2008) 05 MP CK 0024**

**Madhya Pradesh High Court (Gwalior Bench)**

**Case No:** None

Amar Sharma

APPELLANT

Vs

Smt. Seema Sharma

RESPONDENT

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**Date of Decision:** May 14, 2008

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 151
- Criminal Procedure Code, 1973 (CrPC) - Section 195, 340
- Family Courts Act, 1984 - Section 10
- Hindu Marriage Act, 1955 - Section 13

**Citation:** (2008) CriLJ 3445 : (2008) ILR (MP) 2008 : (2008) 4 MPHT 526 : (2008) 3 MPJR 218 : (2009) 5 RCR(Criminal) 71

**Hon'ble Judges:** S.C. Sharma, J

**Bench:** Single Bench

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**Judgement**

@JUDGMENTTAG-ORDER

S.C. Sharma, J.

Regard being had to the similitude of the controversy involved in these two writ petitions, they were heard analogously together and disposed of by this singular order.

The petitioner, Smt. Seema Sharma in W.P. No. 1309 of 2008 is aggrieved by an order dated 23rd January, 2008 passed by the Additional Principal Judge, Family Court, Gwalior in case No. 142-A of 2006 by which an application filed by the husband/ respondent u/s 151 of the CPC read with Sections 195 and 340 of the Code of Criminal Procedure for conducting the second DNA (deoxyribo-nucleic acid) test in respect of the petitioner, her husband and her daughter has been ordered.

The grievance of the petitioner is that an application for divorce u/s 13(1)(i)(ia)(ib) of the Hindu Marriage Act, 1955 was filed by the respondent against the petitioner

making various kinds of allegations. It was alleged that the present petitioner/non-applicant was transferred on 19th March, 1996 as District Women and Child Development Officer, Indore and she was posted at Indore till March, 1997. It has been further alleged in the divorce petition that the husband and wife were living separately and no-cohabitation took place between them. It has also been alleged that on 21st December, 1996, the present petitioner (non-applicant) gave birth to a child at Agra. As there was serious dispute in respect of parentage of the minor girl, an application was preferred u/s 10 of the Family Courts Act, 1984 read with Order XXVI, Rule 10(A) of the CPC for conducting the DNA test in respect of the petitioner, respondent and the child. The application was allowed by the Court vide order dated 15th October, 2005 and the Family Court directed for holding a DNA test. The DNA test was conducted at the Centre for DNA Finger Printing and Diagnostics, Hyderabad (hereinafter referred to as the CDFD). However, before the report could be submitted in the matter, allegations were made against the authorities who have conducted the DNA test and it was prayed before the Family Court that a second DNA test be ordered. The Director, CDFD also inquired into the matter and immediately placed one of the officer concerned under suspension. The matter was also reported to the Central Vigilance Commission (hereinafter referred to as the CVC). Smt. V. Naga Sailaja was placed under suspension on 5th July, 2006 on the basis of the complaints made by the present respondent, i.e., husband of the petitioner. The Director, CDFD has also written a letter dated 29th February, 2008 to the Family Court, Gwalior which has been brought on record by the petitioner in W.P. No. 845 of 2008 which reads as under:

Regarding the DNA test report in the case, in order to remove misgivings if any in this matter CDFD had requested the Hon"ble Court vide CDFD letter Ref No. DCDFD/LDFS/2006/1763, dated 28th September, 2006, to direct the concerned individuals namely Smt. Seema Sharma, Kumari Kritika Sharma and Shri Amar Sharma to come once again to the CDFD for collection of blood samples. The undersigned requests once again that the Hon"ble Court may direct that concerned to come to CDFD for collection of their blood samples, and the CDFD will bear the travel expenses of the individuals (by Sleeper Class). Alternatively, with the approval of the Hon"ble Court, a qualified official of CDFD will be deputed on a suitable date to collect the blood samples of the concerned before the Hon"ble Judge.

Thus, it is evident that the Director, CDFD himself has written to the Family Court for conducting second DNA test in the matter.

The prayer made by the petitioner before this Court is that the Family Court has erred in law and facts in ordering the second DNA test from New Delhi. The Family Court vide the impugned order has directed for DNA test from a laboratory which is situated in Delhi and the said laboratory was suggested by the respondent/husband for conducting a second DNA test. Thus, the petitioner/wife is only aggrieved by the direction given by the Family Court for conducting the second DNA test! at New

Delhi and prayed for calling the first DNA report from CDFD.

The respondent/husband has filed W.P. No. 845 of 2008 (Amar Sharma v. Smt. Seema Sharma) and he has challenged the same order passed by the Family Court dated 23rd January, 2008. His Contention is that once the Family Court has ordered has ordered for second DNA test, there appears to be no justification in calling the first DNA report which was conducted at CDFD. It has been further stated by him that the Family Court vide order dated 15th October, 2005 directed the parties to appear for DNA test at CDFD and the said order was challenged by the respondent, Smt. Seema Sharma by filing W.P. No. 5544 of 2005, which was affirmed by this Court. The petitioner, however, admitted that all the three parties went to Hyderabad for DNA test and on 15th May, 2006, blood samples of the parties were drawn. The CDFD which was expected to send the report had not forwarded the same and in the meanwhile, one Smt. V.N. Shailaja who was the Technical Officer, Grade-I posted at CDFD has approached the petitioner and demanded Rs. 5.00 lacs for submitting a favourable report of the DNA test. It has also been alleged by the petitioner/husband that Smt. V.N. Shailaja has also threatened that in case the demand is not met, an incorrect DNA test report will be submitted proving that the blood sample of the child was matching with ; that of the petitioner and the respondent.

The petitioner, Amar Sharma further stated in the petition that he has reported the matter to the CVC and also the other competent authorities. It was also stated that the matter was enquired into and the Technical Officer, Grade-I was placed under suspension. However, the Director, CDFD vide letter dated 28th September, 2006 requested the Family Court for collection of blood sample afresh in order to remove all the misgivings in the matter and tendered unconditional apology for the inconvenience caused in the matter. Thereafter, the suspension of the technical officer was revoked and the matter has been closed. A report has also placed on record that the petitioner. Amar Sharma in W.P. No. 845 of 2008 has not forwarded further evidence in the matter and therefore no further action was taken in the matter.

The Family Court by the impugned order dated 23rd January, 2008 has ordered for second DNA test and at the same time directed for taking the first DNA test report on record. This part of the order passed by the Family Court is challenged by the petitioner/husband in this petition. The Family Court ordered for conducting fresh DNA test of the parties in the laboratory situated at Delhi, suggested by the petitioner, Amar Sharma in W.P. No. 845 of 2008.

The controversy involved in the present case is as to whether the second DNA test should be held at a place suggested by Amar Sharma-petitioner/husband and whether the first DNA test report conducted by the CDFD be called or not.

In the present case though both the parties have challenged the impugned order, the husband (petitioner in W.P. No. 845 of 2008) wants the DNA test to be carried out at a laboratory suggested by him at New Delhi and the wife (petitioner in W.P. No. 1309 of 2008) wants the first DNA test report conducted by the CDFD be taken on record.

After hearing learned Counsel for the parties at length and carefully considering the entire material available on record, it is evident that serious allegations were levelled against the technical officer who took the blood sample of the parties at CDFD and she was also placed under suspension for some time. It was only for want of evidence, the matter was dropped and the Director, CDFD has categorically tendered unconditional apology by writing a letter to the family Court. The Director, CDFD has arrived at a conclusion that holding a second DNA test in the matter is inevitable, and therefore, as the parties have made all kinds of wild allegations, the first DNA test conducted in the matter deserves to be ignored.

Sofar as the question of conducting second DNA test is concerned, it cannot be ordered at a choice place of Amar Sharma (petitioner in W.P. No. 845 of 2008). The laboratories are established under the Ministry of Home Affairs, Government of India and its Directorate of Forensic Science under which DNA fingerprinting is done at Forensic Laboratories situated at various places through out the country. Under the Directorate of Forensic Science at national level there are six laboratories which are in existence at various places, which include, Kolkatta, Chandigarh, Hyderabad and Delhi. The laboratory situated at Chandigarh is having national level state-of-the-art forensic facilities for DNA fingerprinting and therefore, this Court is of the opinion that the DNA fingerprinting in respect of the petitioner. Smt. Seema Sharma in W.P. No. 1309 of 2008, her husband/petitioner in W.P. No. 845 of 2008 and the child can safely be done at Chandigarh.

In view of the above, the order passed by the Family Court is modified to the extent that the DNA fingerprinting of the parties involved in the present petition be done at Centre for Forensic Science Laboratory, Chandigarh (hereinafter referred to, as the CFSL, Chandigarh) which is under the Ministry of Home Affairs. It is needless to mention that the Director, CFSL, Chandigarh shall monitor taking of blood samples and shall also draw finger prints so also other tests necessary for submitting the requisite report. The report analysed by the investigating officer shall also be monitored and verified by the Director, CFSL, Chandigarh personally and the said authority shall thereafter forward the report along with a certificate to that effect to the Family Court at Gwalior. It is needless to mention that in case no Director is posted at CSFL, Chandigarh then in that case, the officer who is holding highest rank at the CFSL, Chandigarh will personally monitor the entire DNA fingerprinting exercise in the matter.

Sofar as the grievance of the petitioner, Smt. Seema Sharma (W.P. No. 1309 of 2008) regarding taking on record the first DNA fingerprinting report is concerned, this

Court does not find any good reason for calling the report from CDFD since the Director, CDFD himself has tendered unconditional apology and requested the Family Court for re-sampling of the blood. This Court is of the firm opinion that the first DNA fingerprinting, if any, done in the matter is not at all required to be placed on record as fresh DNA fingerprinting has been ordered in the matter.

The matter relating to DNA fingerprinting and the order for conducting the second DNA test was subjected to judicial scrutiny before the Gujarat High Court in the case of [Vishal Motising Vasava Vs. State of Gujarat](#), and it was observed in paragraphs 6, 7 and 8 as under:

6. Having considered the above and the order, dated 25-11-2003 passed by the learned Session Judge, it appears that the order passed by the learned Sessions Judge for allowing second DNA test to be conducted of the petitioner cannot be said without jurisdiction or illegal which would cause any great injustice to the party. As such, the order can be said to be discretionary order which would not call for interference by this Court. I find it proper not to observe further and leave it at that stage, more particularly, in view of the fair stand taken by the learned advocate for the petitioner that the petitioner has also no objection for second DNA test to be conducted at any hospital in Gujarat State.

Sofar as the insistence of the original complainant for getting the DNA test to be conducted at Hyderabad only and not at any other place and acceptance of such request by the learned Sessions Judge in the impugned order, deserves interference. The complainant may be justified at the most in insisting for second DNA test to be conducted. However, such insistence cannot be stretched to the extent of getting the test conducted at a particular laboratory of the choice of the complainant. If such contentions at the instance of the complainant are accepted, it may leave room to large number of other manipulations and complications. It will be for the State to modulate and regulate such procedure to be undertaken since it will be the duty of the State to ensure that the criminal justice is properly administered in the State. The State for various reasons may decide to get such test to be conducted at the nearest laboratory or in an appropriate case the Court may direct the State to get such test conducted at a particular laboratory, but certainly the complainant cannot be said to have any vested right to get such test conducted at a particular laboratory only. Further, no extraordinary circumstances are recorded by the learned Sessions Judge for accepting the contention of the original complainant to get DNA test conducted at Hyderabad only. It has not come on record that the laboratories for conducting DNA test situated in Gujarat are either not useful or the report may create doubtful situation. In absence of such material on record, in my view, the learned Sessions Judge has committed error in accepting the contention of the original complainant that the DNA test shall and must be conducted at a laboratory situated at Hyderabad only.

In view of the aforesaid discussion, the order dated 25-11-2003 passed by the learned Sessions Judge below, application Exh. 94 in Sessions Case No. 36/02 shall operate to the extent of ordering the second DNA test of the petitioner by comparing the blood of the child - Piyush. However, the order will stand modified to the extent that such DNA test shall be conducted at any laboratory situated in Gujarat State. It will be for the learned Sessions Judge to decide after hearing both sides for the place of the laboratory anywhere in Gujarat. As and when such test will be conducted for the purpose of blood sample or otherwise, the State shall make arrangements for ensuring that the petitioner is kept present personally for such purpose and the petitioner shall be at liberty to keep his advocate present at the time when blood samples are to be conducted. The original complainant shall also be at liberty to remain present either with her parents or advocate of her choice.

This Court is fully in agreement with the judgment delivered by the Gujarat High Court in the case of Vishal Motising Vasava (supra). In the present case, the Family Court having left with no other choice ordered for a second DNA fingerprinting test keeping in view the letter written by the Director, CDFD wherein it was informed to the Court for taking re-sampling of the blood for conducting re-test. However, the Family Court was not justified in ordering for DNA fingerprinting test from a place of choice of the husband of Smt. Seema Sharma, and therefore, the impugned order is set aside to that extent. It is, however, clarified that once the Director, CDFD himself had admitted that fresh DNA fingerprinting has to be done in the matter, the report of first DNA test cannot be taken on record, therefore, the same has to be ignored in toto.

With the aforesaid, both the petitions stand disposed of.