

Kartick Chandra Das Vs Sabita Das

Court: Calcutta High Court

Date of Decision: Feb. 18, 1986

Acts Referred: Evidence Act, 1872 " Section 45
Hindu Marriage Act, 1955 " Section 11, 12, 13, 13, 14

Citation: 90 CWN 984

Hon'ble Judges: Susanta Chatterji, J; Mookerjee, J

Bench: Division Bench

Advocate: Tapan Kumar Dutt, for the Appellant; Haradhan Banerjee, for the Respondent

Judgement

Mookerjee, J.

The petitioner husband's suit u/s 12 of the Hindu Marriage Act, 1955 for declaring as nullity his marriage with the opposite

party no. 1 and alternatively u/s 13 of the said Act for decree of divorce is now pending in the Court of the 2nd Additional District Judge, Howrah.

The petitioner has inter-alia alleged that his consent to his marriage with the opposite party no. 1 was obtained by force and fraud and that the

respondent no. 1 was at the time of the marriage pregnant by some person other than the petitioner. He has also denied that he was the father of

the minor child born to the opposite party no. 1. By the order complained of, the learned Additional District Judge, 2nd Court, Howrah, has

rejected the application of the petition husband for appointment of Pathologist for the purpose of examination and test of his blood as also the

blood of the said minor child. The learned Additional District Judge was of the view that it was for the petitioner to prove his allegations in his

petition under sections 12 and 13 of the Hindu Marriage Act, 1955 and he was not inclined to allow the prayer of the petitioner for taking blood

sample to determine the paternity of the minor child.

2. In our view, the learned Additional District Judge acted illegally and with material irregularity in rejecting the aforesaid application of the

petitioner. The learned Additional District Judge was not quite correct when he had observed that sections 11 to 28 of the Hindu Marriage Act,

1955 formed a complete code by themselves and that no external evidence like blood test ought to be allowed to interfere with the opinion of the

court. The Hindu Marriage Act is not exhaustive in the- matter of procedure to be followed by the court in adjudicating petitions under sections 12

and 13 of the said Act. Section 21 of the said Act has laid down:

Subject to the other provisions contained in this Act and to the said Rules as the High Court may make in this behalf, all proceedings under this Act

shall be regulated as far as may be by the CPC 1908.

The matrimonial proceedings before the district courts are thus to be regulated by ordinary rules of procedure including procedure including those

relating to the provisions for recording evidence contained in the Evidence Act. In the above view, in accepting or rejecting a prayer for obtaining

expert opinion regarding blood test, the court would be generally guided by the principles embodied in section 45 of the Evidence Act.

3. When the court has to form an opinion as to the paternity of a child, expert opinions regarding blood grouping tests are not totally irrelevant and

inadmissible in law. Sarkar on Evidence, 13th Edition, at page 530 under the heading "Blood Grouping Test" has inter alia indicated that in cases

of disputed paternity blood grouping tests are resorted to in some countries by grouping the blood of the child, the mother and the alleged father.

Sarkar on Evidence has referred to Wigmore, 3rd Edition, Vol. I page 610 and has observed:

In the present state of science these tests have only a negative value in as much as they may exclude a certain person as the possible father but it

cannot be said that a particular man is the father.

4. Mr. Dutt, learned advocate appearing on behalf of the petitioner has referred to some of the reported cases in which the court had permitted

evidence about blood grouping tests to be adduced in order to consider whether or not a person could be excluded from being possibly the father

of a child whose legitimacy is in dispute while it is true that there is no express provision in Indian law for admissibility of blood grouping tests, there

is nothing in the Evidence Act which makes totally inadmissible evidence about blood grouping tests. We may, however, add that such evidence

about blood test being is in the nature of expert opinion, evidence even when admitted would be subject to same qualifications, would be subject

to a same qualifications, limitations and infirmities which attach to other kinds of expert opinion evidence adduced before courts of law. We have

already mentioned that such blood grouping tests have only a negative value. Secondly, even when evidence of blood grouping test is allowed to

be adduced, it is for the court to decide about the weight to attached to such evidence regarding blood grouping test.

5. Sarkar on Evidence, 13th Edition, Vol. I page 530 in the above quoted passage has also pointed out that judicial opinion in England was that a

person of full age and capacity cannot be ordered to undergo a blood test against his will. In case blood test is prayed for in respect of a child,

judicial view is- not uniform as to whether or not the court could inspite of objection of the guardian order such blood test.

6. While it is true that in case of a person who is sui juris, the court cannot compel him to give sample of his or her blood for ascertaining his blood

group. But when inspite of being ordered by the court, a person declines to undergo such blood test the court may at the appropriate stage of the

case consider whether or not any adverse presumption ought to be drawn for such refusal to undergo blood test. We must add a word of caution

by observing that there could be no inflexible rule that in every case of such refusal to allow blood sample to be, taken an adverse presumption

ought to be invariably drawn against, such person. Same would depend upon the facts and circumstances of each particular case. In case a prayer

is made for taking blood sample of a minor, consent of the guardian or the person having custody of such minor would be taken. Secondly, in

making any order for blood sample to be taken of a minor child, the Court would be always guided by the paramount consideration of the welfare

of the child.

7. In view of the fact that some of the observations of the court below ought to convey a wrong impression about the admissibility of blood test we

have briefly clarified the legal position. The Division Bench in the case of Nishit Kumar Biswas Vs. Sm. Anjali Biswas, , did not lay down any

general principle relating to admissibility of report of blood test in paternity or matrimonial cases, in paragraph 13 of the judgment in the case of

Nisith Kumar Biswas v. Sm. Anjali Biswas (Supra), Laik, J. has really emphasised the necessity of obtaining consent of a person whose blood is

proposed to be drawn for testing.

8. It is unnecessary to remit the instant matter back to the trial court because Mr. Banerjee, appearing on behalf of the respondent wife, has

submitted that his client is not willing to place herself under any blood test or to allow such blood test of her minor child. Therefore, the court below

will proceed with the case on the basis that the respondent wife has declined such test of herself or her minor child. Even without appointment of an

expert it is open to the petitioner husband to adduce evidence of an expert about his own blood group. We need not however express any opinion

whether in the facts of this case any inference ought to be drawn against the respondent wife for her aforesaid refusal. In the above view, we

dispose of the Rule in the above terms. There will be no order as to costs.

Let the matrimonial proceeding which is pending for a long time be disposed of as early as possible in accordance with law.

Susanta Chatterji, J.

I Agree.