BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **25.09.2025**

CORAM

THE HONOURABLE **MR.JUSTICE SHAMIM AHMED**

CRL.R.C.(MD)No.842 of 2025
and
CRL MP(MD)No.8958 of 2025

[redacted] ... Petitioner

vs.

1.[redacted]

2.[redacted]

(R-2 is represented by R1 who is her mother and natural guardian)

[redacted] ... Respondents

1/36

PRAYER: Criminal Revision Petition is filed under Section 438 r/w 442 of BNSS, 2023, to call for the records pertains to the impugned order passed by the learned Judicial Magistrate, Palani in Cr.M.P.No.504 of 2025 dated 12.06.2025 in M.C.No.4 of 2021 and to set aside the same.

For Petitioner : Mr.A.K.Manikkam

For Respondent : Ms.Kayal Vizhi
For Mr.T.Thirumurugan

*****

O R D E R

1. This Criminal Revision Case has been filed, to call for the records, relating to the order dated, 12.06.2025, made in Cr.MP.No.504 of 2025 in MC.No.4 of 2021, by the Judicial Magistrate, Palani and to set aside the same.

2. The facts of the case, in a nutshell, as set out in the affidavit filed in support of this Criminal Revision Case, led to filing of this Criminal Revision Case and necessary for disposal of the same, are as follows:-

(a) The marriage between the Revision Petitioner and the 1st Respondent was allegedly solemnized on 25.03.2007, according to Hindu rites and customs. Out of their wedlock, the 2nd Respondent was born to them on 13.12.2009. Due to matrimonial dispute arose between them, they are living separately. The 1st respondent/wife filed a petition under HMOP No. 17 of 2012 against the petitioner before the Palani Divisional Court, seeking a divorce order. Subsequently, they jointly filed a memo and obtained a divorce on 04.03.2012.

(b) Thereafter, the 1st Respondent had filed a maintenance Petition under Section 125 of Cr.PC against the Revision Petitioner in MC.No.4 of 2021 on the file of the Judicial Magistrate, Palani and the Revision Petitioner had also filed a counter affidavit in the said maintenance Petition. In the said maintenance Petition, the Revision Petitioner had filed an application in Cr.MP.No.504 of 2025, seeking for a DNA test to prove that the 2nd Respondent was not born through him and the 1st respondent/wife did not file

any counter affidavit to that application.

(c) By the impugned order, the Trial Court had dismissed the said Petition/Application, seeking DNA Test, stating that there is no need to order DNA test to determine whether the 2nd Respondent is the child of the Petitioner and the 1st Respondent. As against the same, the Revision Petitioner herein, has filed this Criminal Revision Case.

3. This court heard Mr.A.K.Manikkam, the learned counsel for the Revision Petitioner and Mr.T.Thirumurgan, learned counsel for the Respondent and considered his submissions and also perused the entire materials available on record.

4. The learned counsel for the Revision Petitioner has submitted that the issue between the 1st respondent and the petitioner revolves around the 1st respondent's inappropriate behavior with the petitioner's relative, Thirumalaisamy. During the divorce proceedings initiated by

the 1st respondent, it was stated that the 2nd respondent (the child) was never born to the petitioner, and the 1st respondent agreed to the divorce based on this acknowledgment. During cross-examination, when asked if she had any objection to sending the child for a test to confirm that he was not the father, the 1st respondent replied that she had no objection. However, the petitioner alleges that the 1st respondent has now filed a maintenance case with false information. Under such circumstances, the petitioner has filed a petition in Cr.M.P.No.504 of 2025 requesting to appoint a Commissioner to collect blood samples from the petitioner and the respondents and send them to a Government Laboratory for a paternity test. The petitioner's counsel argues that this is necessary to determine the truth and that not doing so would cause him irreparable hardship and loss. Thus, an application, seeking a DNA test of the child in the matrimonial proceedings, is maintainable. The learned counsel has further submitted that the Trial Court erred in passing the impugned order, while rejecting the application of the petition for DNA Test, as it did

not consider the facts of the matter and thus, the learned counsel prays for allowing this Criminal Revision Case.

5. The case of the Revision Petitioner before the Trial Court in the Petition/Application seeking DNA Test is that the minor child/the 2nd Respondent did not born through him and in order to prove his case, DNA test is necessary. Though no counter was filed by the Respondents herein before the Trial Court, they were represented by an Advocate, whose submissions were considered by the Trial Court, while passing the impugned order.

6. The admitted facts are that the Revision Petitioner and the 1st Respondent are husband and wife, by virtue of the marriage performed between them on 25.03.2007. Out of their wedlock, one daughter viz., Akshya was born to them on 13.12.2009. Due to physical and mental torture given by the Revision Petitioner, in order to protect herself and the child, the 1st Respondent filed a Petition for divorce

in HMOP.No.17 of 2012 in the year 2012. Subsequently, they jointly filed a memo and obtained a divorce on 04.03.2012. The maintenance case in MC.No.4 of 2021 was filed by the 1st Respondent in the year 2021. The Petition in Cr.M.P.No.504 of 2025, seeking for DNA test was filed on March, 2025 and it was rejected, by the impugned order on 12.06.2025.

7. Considering the arguments advanced by the learned counsel for the Revision Petitioner and after perusal of the records, now the legal question involved in the present Criminal Revision Case filed under Sections 438 and 442 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) is relating to examination of certain scientific techniques and principles for adjudication of birth status of the 2nd Respondent herein, namely, DNA (Deoxyribonucleic Acid) Test so that the Courts/Investigating Agencies may arrive at a fair conclusion.

8. To understand this aspect, it is necessary to examine the ratio of

balance between efficient investigation and individual rights. Accordingly, Law, Science and Technology have a great relevance in our lives. Law and Science encounter each other in many ways. When technology intrudes in the ambit of legal rights, it is checked by law, for example, cyber crimes, in the same manner to protect legal rights and strengthening the evidence with the help of science, cannot be denied.

9. At present days, when the legal system has so much advanced, criminals/litigants/individuals take care to erase all the evidences of their involvement, then in such case, scientific and highly sophisticated methods are required to trace the involvement of criminals/litigants/ individuals. Narcoanalysis, Polygraphy and Brain Mapping tests collectively called deception detection tests (DDT) are new kinds of interrogation techniques **including the DNA Test (Deoxyribonuclie Acid),** which are simple and civilized way of conducting investigation. But, at the same time, one has to be

conscious of its limitations also. It infringes fundamental rights under Article 20(3) of the Constitution of India and also right to privacy and right to health, which are guaranteed under Article 21 of the Constitution of India.

10.In spite of the verily limitations, it affirms certain attributes also which includes: "order of court', "pre-consent of subject' "non-manipulated statements by subject' and "secure public interest' Thus, there is a tension between desirability of efficient investigation and preservation of individual rights.

11.Let us understand briefly the Concept Of Investigation:-

In order to study about the investigation, we need to understand the term "investigation'.

- "Investigation" means to examine, study, or inquire into systematically, search or examine into the particulars of; examine in detail, or, to search out and examine the particulars of in an attempt to learn the facts about something hidden, unique, or

complex, especially in an attempt to find a motive, cause, it is about finding things.

12.According to Section 2(1)(*l*) of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)," investigation includes all the proceedings under this Sanhita for the collection of evidence conducted by a police officer or by any person (other than a magistrate) who is authorized by a Magistrate in this behalf. Investigation, under the BNSS includes:-

1. Proceeding to the spot of crime.
2. Ascertaining the facts and circumstances of the case.
3. Discovery and arrest of the suspected offenders.
4. Collection of evidence,

- examination of various persons including the accused and recording their statements in writing.
- Search of places or seizures of things which are considered necessary.

13.Criminal Investigation is an applied science that involves the study of facts, used to identify, locate and prove the guilt of a criminal. A complete criminal investigation can include searching, interviews, interrogations, evidence collection and preservation and various methods of investigation. Modern day criminal investigations

commonly employ many modern scientific techniques known collectively as forensic science.

14.Application of science and technology in criminal investigation is also an important issue to be considered:-

The search for effective aids to interrogation is probably as old as man's need to obtain information from an uncooperative source and as persistent as his impatience to shortcut any tortuous path. In the annals of police investigation, physical coercion has at times been substituted for painstaking and time consuming inquiry in the belief that direct methods produce quick results. The use of technology in the service of criminal investigations, and the application of scientific techniques to detect and evaluate criminal evidence has advanced the investigation process criminal justice system throughout the country. According to Cowan in his article "Decision Theory in Law, Science, and Technology",

> *"the aim of science, traditionally put, is to search out the ways in which truth may become known. Law aims at the just*

resolution of human conflict. Truth and justice, we might venture to say, having different aims, use different methods to achieve them. Unfortunately, this convenient account of law and science is itself neither true nor just. For law must know what the truth is within the context of the legal situation: and science finds itself ever engaged in resolving the conflicting claims of theorists putting forward their own competing brands of truth."

15.This quote roughly means that the law needs to find the truth to resolve "human conflict" and one method of doing so is to use the field of science. Today's society has improved upon the methods of the past to bring about more precise and accurate techniques. Forensic Science has expanded to Trauma Inducing Drugs and Psychotropic Substances. The application of science to matters of law has made great strides in recent years. Development of new tools of investigation has led to the emergence of scientific tools of interrogation. Before analyzing these techniques it will be necessary and useful to frame and consider the question of law in this case.

16.What is DNA:-

- Here's a look at what DNA is made of, how it works, who discovered it and other interesting DNA facts. As per the writer Rachael Rettner, DNA stands for deoxyribonucleic acid, which is a molecule that contains the instructions an organism needs to develop, live and reproduce. These instructions are found inside every cell and are passed down from parents to their offspring.
- DNA is made up of molecules called nucleotides. Each nucleotide contains a phosphate group, a sugar group and a nitrogen base. The four types of nitrogen bases are adenine (A), thymine (T), guanine (G) and cytosine (C).
- Nucleotides are attached together to form two long strands that spiral to create a structure called a double helix. The double-helix structure as a ladder, the phosphate and sugar molecules would be the sides, while the base pairs would be the rungs. The bases on one strand pair with the bases on another strand: Adenine pairs with thymine (A-T), and guanine pairs with cytosine (G-C).
- Human DNA is made up of around 3 billion base pairs, and more

than 99% of those bases are the same in all people, according to the U.S. National Library of Medicine (NLM).

- Similar to the way the order of letters in the alphabet can be used to form words, the order of nitrogen bases in a DNA sequence forms genes, which, in the language of the cell, cells tell how to make proteins. The shorthand for this process is that genes "encode" proteins. But DNA is not the direct template for protein production. To make a protein, the cell makes a copy of the gene, using not DNA but ribonucleic acid, or RNA. This RNA copy, called messenger RNA, tells the cell's protein-making machinery which amino acids to string together into a protein, according to "Biochemistry" (W. H. Freeman and Company, 2002).
- DNA molecules are long -- so long, in fact, that they can't fit into cells without the right packaging. To fit inside cells, DNA is coiled tightly to form structures called chromosomes. Each chromosome contains a single DNA molecule. Humans have 23 pairs of chromosomes, which are found inside each cell's nucleus.

- Rosalind Elsie Franklin (1920-1958) was a British chemist and crystallographer who is best known for her role in the discovery of the structure of DNA. DNA was first observed by Swiss biochemist Friedrich Miescher in 1869, according to a paper published in 2005 in the journal Developmental Biology. Miescher used biochemical methods to isolate DNA -- which he called nuclein -- from white blood cells and sperm, and determined that it was very different from protein. (The term "nucleic acid" derives from "nuclein.") But for many years, researchers did not realize the importance of this molecule.

17.How does DNA function?

- Genes encode proteins that perform all sorts of functions for humans (and other living beings). The human gene HBA1, for example, contains instructions for building the protein alpha globin, which is a component of haemoglobin, the oxygen-carrying protein in red blood cells.
- DNA sequencing involves technology that allows researchers to

determine the order of bases in a DNA sequence. **The technology can be used to determine the order of bases in genes, chromosomes or an entire genome.**

18.The question is whether the DNA Test infringes the fundamental rights under Article 20(3) and also right to privacy and right to health, which are guaranteed under Article 21 of the Constitution of India.

19.A person's DNA contains information about their heritage, and it can sometimes reveal whether they are at an elevated risk for certain diseases. DNA tests, or genetic tests, are used for a variety of reasons, including to diagnose genetic disorders, to determine whether a person is a carrier of a genetic mutation that they could pass on to their children and to examine whether a person is at risk for a genetic disease.

20.Genetic test results can have implications for a person's health, and

the tests are often provided along with genetic counseling to help individuals understand the results and consequences. People also use the results of genetic testing to find relatives and learn about their family trees.

21.The Constitution of India guarantees every person right against self incrimination under Article 20(3) of the Indian Constitution "No person accused of any offence shall be compelled to be a witness against himself."

22.Thus, Right to Privacy is implicit in the Right to life and liberty guaranteed to the citizens of India by Article 21 of the Constitution of India. None can publish anything covering the above matters without his consent whether truthful or otherwise and whether laudatory or critical. If done so, it will be violating right to privacy of person concerned and would be liable in an action for damages.

23.In reference to the above findings, reliance is being placed on paragraph nos.6,7,8,9,10 and 11 of the judgement passed by Kerala High Court in **Crl.Rev.Pet.No.2329 of 2012, Abdurahiman vs. State of Kerala (decided on 10th July, 2013)**, wherein the Court was pleased to observe as under:-

> *"6. Learned Public Prosecutor contended that the question of paternity does not arise for consideration in an allegation of rape. It is not the paternity of the child that is in issue, but the question is whether the victim has been sexually assaulted. Even assuming that the DNA test goes against the victim, it does not mean that no sexual assault has been committed by the accused. Viewed from any angle, according to the learned Public Prosecutor, there is no scope for DNA test in a trial of a case of rape.*
>
> *7. The learned Public Prosecutor relied on the decision reported in Babu v. State of Kerala [2013 (2) KHC 526] and pointed out that this Court has elaborately considered the necessity to conduct the DNA test in a case of rape and has come to the conclusion that even assuming that the DNA test is against the accused, that by itself is not a clinching evidence and that has no relevance in determining whether the act committed amounts to a rape or not. In the light of the principle laid down in the said decisions, according to the learned Public Prosecutor, claim made for DNA test has no basis.*
>
> *8. True, normally, the court will not, as a matter of fact, shut out the evidence which enables the court to determine the*

truth. But to say that a DNA test is the necessity in a case of rape cannot be accepted. True, in the case on hand, from the deposition produced along with the Petition of the defacto complainant, it is seen that she has a case of only a solitary instance of sexual intercourse with the accused as a result of which she claims to have been conceived. This aspect is highlighted by the learned counsel for the Petitioner that the DNA test is the issue and that should have been allowed.

9. As already noticed, it is not the paternity that is in issue, but whether the act was committed by the accused, and if the act was committed by the accused, whether there was any consent on the part of the victim. Even assuming that the DNA test goes against the defacto complainant, that by itself may not be a ground to hold that the incident has not taken place as alleged by the victim. Sections 7 and 11 on which considerable reliance is placed by the learned counsel for the Petitioner, have no application to the facts of the case. They deal with different circumstances and situations altogether. The learned counsel try to contend that the effect of sexual assault is impregnation and therefore, DNA test is relevant. It is not such an act which is contemplated by Sections 7 and 11 as could be clear from the illustrations provided by these Sections. The argument based on Sections 7 and 11 is misconceived.

10. True, in the decisions reported in State of Kerala v. Ayoob [2005 (2) KLT 441], the court has indicated the relevance of the DNA test. In the decision reported in Krishan Kumar Malik v. State of Haryana [2011 (7) SCC 130], in paragraph 45, it is held as follows:

"45. We have also gone through the orders of dismissal passed by this Court in Crl MP No. 9646 on 15.06.2009 as also of the review Petition dated 5.11.2009 filed by Smt. Hardevi.

Admittedly, the said orders passed in the SLP and the review Petition by this Court did not assign any reasons for the dismissal, thus it would not be proper and safe for us to place reliance thereon."

11. Apart from the fact that in relation to the new provision of Section 53 (A) in Cr.P.C., that decision cannot be taken to lay down principle that in case of rape, DNA test is a must. This Court in the decision referred to by the learned Public Prosecutor has considered the issue elaborately and has held that it is not necessary to go for a DNA test nor can that the result of DNA test is conclusive either way. If that be so, there is no merit in the contention that if the DNA test goes in favour of the Petitioner, he would be exonerated. As rightly pointed out by the learned Public Prosecutor, the issue is one whether the act is alleged to have been committed by the Petitioner is with consent or not and not whether the child is that of the Petitioner. Following the principles laid down in the decision rendered by the Division Bench of this Court referred to by the learned Public Prosecutor, it is held that the court below was justified in declining to grant relief to the Petitioner for DNA test though for different reasons."

24.The DNA evidence, no doubt has the ability to increase the accuracy of verdicts in trials. But this does not mean that we should be complacent about its use and presentation. DNA will create a comprehensive database eventually resulting in a human data bank of DNA publicly accessible and tremendously utilized in investigations.

25.In the present case, the marriage between the parties took place on 25.03.2007, and the 2nd respondent/child was born on 13.12.2009. Due to physical and mental torture, the 1st respondent filed a divorce petition in HMOP No. 17 of 2012 against the petitioner before the Palani Divisional Court. Subsequently, the petitioner and the 1st respondent jointly filed a memo and obtained a divorce on 04.03.2012. Thereafter, the 1st respondent filed a maintenance case, MC No. 4 of 2021, in the year 2021. However, the application for a DNA test in Cr.M.P. No. 504 of 2025 was filed in 2025, more than 12 years after the divorce order and 3 years after filing the maintenance case. The revision petitioner should have approached the court at the initial stage or at least filed the DNA test application immediately after the maintenance case was filed. The significant delay of over 12 years from the date of the divorce order and 3 years from the filing of the maintenance case remains unexplained. No satisfactory explanation has been given by the Revision Petitioner for such an inordinate delay.

26.As per Section 116 of the Bharatiya Sakshya Adhiniyam, 2023, any person born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate child of that man, unless it is shown that the parties to the marriage had no access to each other at any time when he could have been begotton.

27.The language of the said provision makes it clear that there exists a strong presumption that the husband is the father of the child borne by his wife during the subsistence of their marriage. The object of this principle is to prevent any unwarranted enquiry into the paternity of a child.

28. In the present case, the Revision Petitioner has failed to establish non-access. No material has been placed before this Court to disprove access between them in the relevant period before the birth of 2nd

Respondent.

29.The Honourable Supreme Court, in its judgement, dated 28.01.2025, made in **Crl.A.No.413 of 2024 (Ivan Rathinam Vs Milan Joseph) (2025 INSC 115) ,** has clearly held that DNA tests cannot be directed, unless a strong prima facie case is made out and that such tests should not be ordered as a matter of routine. Courts must be cautious in directing DNA tests, as such orders can have far reaching effects on the dignity and privacy of individuals. For better appreciation, it is necessary to mention the relevant portion of the judgement as under:-

> *"30. It is only when such an assertion is made, that the court can consider the question of ordering a DNA test to establish paternity. In Goutam Kundu v. State of W.B. 1993 (3) SCC 418. (supra), this Court laid down the following parameters to decide whether a court can order a DNA test for the purposes of Section 112:-*
>
> *(1) that courts in India cannot order blood test as a matter of course;*
>
> *(2) wherever applications are made for such prayers in order to have roving inquiry, the prayer for blood cannot be entertained.*

(3) There must be a strong prima facie case in that the husband must establish non- access in order to dispel the presumption arising under Section 112 of the Evidence Act.

(4) The court must carefully examine as to what would be the consequence of ordering the blood test; whether it will have the effect of branding a child as a bastard and the mother as an unchaste woman.

(5) No one can be compelled to give sample of blood for analysis.

.....

"70. Accordingly, we deem it appropriate to allow this appeal and set aside the Impugned Judgment of the High Court dated 21.05.2018 and of the Family Court dated 09.11.2015, with the following directions and conclusions:-

i. Legitimacy determines paternity under Section 112 of the Indian Evidence Act, 1872, until the presumption is successfully rebutted by proving 'non-access';

ii. The Munsiff Court and the Sub-Judge Court possessed jurisdiction to entertain the Original Suit, which dealt with the question of the legitimacy of the Respondent;

iii. The Family Court, Alappuzha erred in reopening the Maintenance Petition when the self-imposed condition was not satisfied; iv. The impugned proceedings, initiated by the Respondent, are barred by the principle of res judicata;

v. The proceedings in MC No. No. 224/2007 before the Family Court, Alappuzha stand quashed;

vi. Any claim by the Respondent based upon the perceived relationship of paternity qua the Appellant, stands negated; and vii. The Respondent is presumed to be the legitimate son of Mr. Raju Kurian.

71. The instant appeal is allowed in the above terms."

30.The Hon'ble Supreme Court, in **Criminal Appeal No.1267 of 2004, Smt. Selvi and others vs. State of Karnataka (decided on 5th May, 2010)** was pleased to observe in paragraph nos. 221, 222 and 223 of the judgement, as under:-

"221. In our considered opinion, the compulsory administration of the impugned techniques violates the `right against self- incrimination'. This is because the underlying rationale of the said right is to ensure the reliability as well as voluntariness of statements that are admitted as evidence. This Court has recognised that the protective scope of Article 20(3) extends to the investigative stage in criminal cases and when read with Section 161(2) of Cr.PC, 1973 it protects accused persons, suspects as well as witnesses who are examined during an investigation. The test results cannot be admitted in evidence if they have been obtained through the use of compulsion. Article 20(3) protects an individual's choice between speaking and remaining silent, irrespective of whether the subsequent testimony proves to be inculpatory or exculpatory. Article 20(3) aims to prevent the forcible `conveyance of personal knowledge that is relevant to the facts in issue'. The results obtained from each of the impugned

tests bear a `testimonial' character and they cannot be categorised as material evidence.

222. We are also of the view that forcing an individual to undergo any of the impugned techniques violates the standard of `substantive due process' which is required for restraining personal liberty. Such a violation will occur irrespective of whether these techniques are forcibly administered during the course of an investigation or for any other purpose since the test results could also expose a person to adverse consequences of a non-penal nature. The impugned techniques cannot be read into the statutory provisions which enable medical examination during investigation in criminal cases, i.e. the Explanation to Sections 53, 53A and 54 of Cr.PC, 1973. Such an expansive interpretation is not feasible in light of the rule of `ejusdem generis' and the considerations which govern the interpretation of statutes in relation to scientific advancements. We have also elaborated how the compulsory administration of any of these techniques is an unjustified intrusion into the mental privacy of an individual. It would also amount to `cruel, inhuman or degrading treatment' with regard to the language of evolving international human rights norms. Furthermore, placing reliance on the results gathered from these techniques comes into conflict with the `right to fair trial'. Invocations of a compelling public interest cannot justify the dilution of constitutional rights such as the `right against self-incrimination'.

223. In light of these conclusions, we hold that no individual should be forcibly subjected to any of the techniques in question, whether in the context of investigation in criminal cases or otherwise. Doing so would amount to an unwarranted intrusion into personal liberty. However, we do

leave room for the voluntary administration of the impugned techniques in the context of criminal justice, provided that certain safeguards are in place. Even when the subject has given consent to undergo any of these tests, the test results by themselves cannot be admitted as evidence because the subject does not exercise conscious control over the responses during the administration of the test. However, any information or material that is subsequently discovered with the help of voluntary administered test results can be admitted, in accordance with Section 27 of the Evidence Act, 1872."

31.The Honourable Supreme Court, in its judgement, dated 20.02.2023, made in **SLP(C)No.9855 of 2022 (Aparna Ajinkya Firodia Vs. Ajinkya Arun Firodia)**, was pleased to observe as under:-

26.The case of the Respondent-husband is that if a DNA test is allowed and the same reveals that he is not the biological father of Arjun, as a corollary, it would be proved that the Appellant-wife committed adultery. We do not find favour with the approach suggested by the Respondenthusband to prove adultery, for the following reasons:-

i. It is not in dispute that Master Arjun, the son stated to be born to the Appellant-wife from the wedlock, was born in the year 2013. DNA testing, cannot be used as a short cut to establish infidelity that might have occurred over a decade ago or subsequently after the birth of Master Arjun.

ii. In the circumstances of the present case, we are unable to accept that a DNA test would be the only way in which the truth of the matter can be established. The respondent-

husband has categorically claimed that he is in possession of call recordings/transcripts and the daily diary of the appellant, which may be summoned in accordance with law to prove the infidelity of the appellant. Therefore, it seems to us that the respondent is in a position to attempt to make out a case based on such evidence, as to adultery/infidelity on the part of the appellant.

iii. No plea has been raised by the respondent-husband herein as to non-access in order to dislodge the presumption under Section 112 of the Evidence Act. Therefore, no prima-facie case has been made out by the respondent which would justify a direction to conduct a DNA test of Master Arjun.

iv. No adverse inference can be raised in the instant case regarding the legitimacy or paternity of Master Arjun vis-à-vis the appellant herein, on her declining to subject Master Arjun to a paternity test. Further, on the appellant declining to subject Master Arjun to a paternity test, no adverse inference can be drawn as regards the alleged adultery on the part of the appellant herein can be raised. In our view, the allegation of adultery has to be proved by the respondent herein de hors the issue of paternity of Master Arjun.

27. In the result, the present appeal is allowed. Consequently, the impugned judgment of the High Court of Judicature at Bombay dated 22 nd November, 2021 and the order of the Family Court, Pune dated 12 th August, 2021, are set aside."

32.By applying the above said principles, laid down by the Honourable Supreme Court and the High Court, in the present case, this Court does

not find any strong prima facie case to allow the request for DNA testing. Further, the Revision Petitioner has not produced a single piece of documentary evidence before this Court to even prima facie support his claim that he is not the biological father of the 2nd Respondent. In the absence of any such evidence, this Court finds it difficult to even presume that a prima facie case exists. As held by the Honourable Supreme Court, DNA tests cannot be ordered merely on vague allegations unless a strong prima facie case is established.

33.It is further observed that these psycho-medicl tests are violative in character, but, at the same time, individual interest cannot be placed above collective interest. Let us fulfill the dream of having crime free society and the maxim ***"Jura publica anteferendaprivatis juribus"*** should be followed meaning thereby ***"public rights are to be preferred to private rights whenever there being a dilemma between individual liberties and security of public interest.*** The Forensic science is defined as the application of science in answering questions

that are of legal interest. More specifically, forensic scientists employ techniques and tools to interpret crime scene evidence, and use that information in investigations.

34.In the present case, it is also seen that Revision Petitioner has remained completely silent from the year he obtained divorce order ie., 04.03.2012 and filing of maintenance petition ie., in the year 2021 until 2025, the year in which the Revision Petitioner filed the present DNA application. No reasonable or acceptable explanation has been provided as to why the Revision Petitioner remained silent for nearly 12 years after getting divorce order dated 04.03.2012 in HMOP No. 17 of 2012 before the Palani Divisional Court Sub-Court, Palani, by filing joint memo. His complete silence for the said period only raises further doubts on the genuineness of claim of the Revision Petitioner that he is not the father of the minor female child/the 2nd Respondent.

35.Moreover, it is well settled by the Honourable Supreme Court and the

High Court that a DNA test, though a scientific tool, intrudes into the personal domain and has the potential to violate the right to privacy guaranteed under Article 21 of the Constitution. In sensitive matters involving allegations of paternity, such tests cannot be ordered as a matter of course. Unless the Revision Petitioner satisfies the initial burden of proof and establishes a strong prima facie case, such an intrusive test cannot be permitted. In the present case, this initial requirement has not been met.

36.In the circumstances of the present case, this Court is unable to accept that a DNA test would be the only way, in which the truth of the matter can be established. The DNA Testing cannot be used as a short cut method to establish infidelity that might have occurred over a decade ago or subsequently after the birth of the minor child/the 2nd Respondent. The question whether a DNA Test should be permitted on the child is to be analysed through the prism of the child and not through the prism of the parents. The child cannot be used as a pawn

to show that the mother of the child was living in adultery. It is always open to the husband to prove by other evidence the adulterious conduct of the wife, but the child's right to identity should not be allowed to be sacrificed. Further, in the context of the present case, this Court is of the view that the DNA Test, as prayed for by the Revision Petitioner, will infringe the fundamental rights of the Respondents.

37.Therefore, this Court is of the firm view that the Revision Petitioner has not made out any sufficient cause or legal justification to allow the prayer sought for under Section 39 of the Bharatiya Sakshya Adhiniyam. The delay in filing, failure to prove non-access and the legal presumption under Section 116 of the Bharatiya Sakshya Adhiniyam, 2023, all weigh heavily against the Revision Petitioner.

38.In the present case, this Court finds that the Revision Petitioner, only with a view to humiliate his wife and to defame her name and to

protract the maintenance case filed by his wife, has come forward with this frivolous Criminal Revision Case. This Court is of the view that the Revision Petitioner has failed to establish a prima facie case for directing a DNA test. The long and unexplained delay of nearly 12 years, absence of any documentary or supporting material, the legal presumption of legitimacy under Section 116 of the Bharatiya Sakshya Adhiniyam, 2023, and the privacy concerns involved all weigh heavily against the claim of the Revision Petitioner. Therefore, no case is made out by the Revision Petitioner for interference by this Court exercising power under Sections 438 and 442 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) for the relief claimed. The Trial Court had rightly dismissed the case of the Revision Petitioner by the impugned order, dated 12.06.2025, by a reasoned and speaking order.

39.In view of the above said discussions and in the light of the decisions referred to above, the prayer in the present case for quashing of the impugned order dated, 12.06.2025 made in Crl.MP.No.504 of 2025 in

MC.No.4 of 2021, by the Judicial Magistrate, Palani, refusing to give a direction to conduct the DNA Test, as prayed for by the Revision Petitioner, is liable to be rejected, as there is no merit in this Criminal Revision Case filed by the Revision Petitioner.

40.In the result, this Criminal Revision Case is **dismissed**. There is no order as to costs. Consequently, the connected Criminal Miscellaneous Petition is closed.

Index :Yes / No **25.09.2025**
Internet :Yes / No
NCC :Yes / No
Nsr

To:

1.The Judicial Magistrate, Palani.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

SHAMIM AHMED, J.

Nsr

Order made in
Crl.R.C(MD)No.842 of 2025

25.09.2025