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FAMILY LAW

Husband Cannot Use Child as a Pawn to Prove Wife’s Adultery – DNA Test Plea Dismissed

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Introduction

In a landmark decision that reinforces the sanctity of privacy, dignity, and the rights of a child, the Madurai Bench of the Madras High Court in Kandhasamy v. Magudeeshwari & Anr. ruled that a husband cannot use his child as a pawn to prove allegations of adultery against his estranged wife. The Court dismissed a criminal revision petition challenging the lower court's refusal to order a DNA test to determine the paternity of a minor child. This judgment goes beyond the factual matrix of a matrimonial dispute and reaffirms constitutional safeguards under Articles 20(3) and 21, the evidentiary presumption of legitimacy, and the jurisprudence limiting the use of DNA testing as an intrusive tool in litigation.

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Factual Background

The petitioner, Kandhasamy, and the first respondent, Magudeeshwari, were married on 25 March 2007. From their marriage, a daughter, Akshya, was born on 13 December 2009. Subsequently, matrimonial disputes arose, and the wife initiated divorce proceedings in H.M.O.P. No. 17 of 2012 before the Sub-Court, Palani. The parties later filed a joint memo of compromise, and the marriage was dissolved by decree on 4 March 2012. Several years later, the wife filed a maintenance petition under Section 125 of the Cr.P.C. (now Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023) before the Judicial Magistrate, Palani, registered as M.C. No. 4 of 2021. During the pendency of that petition, the husband moved Crl.M.P. No. 504 of 2025, seeking a direction for conducting a DNA test to determine whether the child Akshya was indeed his biological daughter. He claimed that his ex-wife had allegedly admitted during their divorce proceedings that the child was not his and that a DNA test would establish the truth. The Judicial Magistrate dismissed this application on 12 June 2025, holding that there was no prima facie case or justification for directing such a test. Aggrieved, the husband approached the Madurai Bench of the Madras High Court by way of Criminal Revision Case (MD) No. 842 of 2025, invoking Sections 438 and 442 of the BNSS, 2023.

Arguments Advanced

The petitioner contended that the maintenance proceedings were founded on false premises since the child was not biologically his. He argued that he had no objection to scientific testing and that ordering a DNA test would reveal the truth. According to him, the wife had earlier expressed her willingness for such a test during their divorce proceedings, and hence the lower court's refusal to permit the test was erroneous. On the other hand, the respondents, represented by counsel, strongly opposed the application. They argued that the petition was filed with mala fide intentions to humiliate the wife and to delay the maintenance case. They also stressed that the application came after an inordinate delay of over a decade since the divorce decree, which clearly demonstrated the husband's ulterior motives rather than any genuine attempt to ascertain the truth.

Issues Before the Court

The primary issue before the Court was whether the trial court erred in dismissing the husband's request for a DNA test to determine the paternity of the minor child and whether such an order could be justified under law considering the child's constitutional and statutory protections.

Court's Analysis

Justice Shamim Ahmed began by examining the intersection of law, science, and privacy in the context of forensic techniques. The Court acknowledged that while scientific advancements are central to uncovering truth, their application must not infringe

upon fundamental rights or be misused to cause harm. The judgment underscored that forensic methods, though valuable, should never become instruments of intrusion or humiliation.

The Court then addressed the constitutional dimensions of the issue, emphasizing Article 20(3), which protects individuals from self-incrimination, and Article 21, which guarantees the right to life, dignity, and privacy. Referring to the Supreme Court's ruling in Selvi v. State of Karnataka[1], it reiterated that compelling an individual to undergo intrusive tests like polygraphy, narcoanalysis, or DNA testing without consent violates fundamental rights. Even when conducted voluntarily, such tests require informed consent and strict judicial scrutiny to ensure necessity and proportionality.

Turning to the evidentiary aspect, the Court relied on Section 116 of the Bharatiya Sakshya Adhiniyam, 2023 (previously Section 112 of the Evidence Act), which conclusively presumes the legitimacy of a child born during a valid marriage unless non-access is proved. The Court noted that this presumption exists to protect children and mothers from stigma, and that mere suspicion cannot rebut it.

The Court drew strength from precedents such as Ivan Rathinam v. Milan Joseph (2025) and Aparna Ajinkya Firodia v. Ajinkya Arun Firodia (2023), which held that DNA tests must not be ordered routinely and should only follow a strong prima facie case. It also cited Abdurahiman v. State of Kerala (2012) to reinforce that such intrusive tests must be balanced against the right to privacy and bodily autonomy.

Applying these principles, the Court found the husband's plea devoid of merit. The request for a DNA test came twelve years after the divorce and three years after the maintenance proceedings began, with no explanation for the delay. The husband had produced no credible evidence and had not proved non-access during the period of conception. Consequently, the statutory presumption of legitimacy under Section 116 remained intact.

The Court emphasized that the child's welfare and dignity must take precedence. Ordering a DNA test in this case would violate the child's right to privacy and expose her to lifelong stigma. The Court concluded that a child cannot be used as a pawn in marital disputes and warned that allowing such tests without compelling justification would endanger personal privacy and misuse genetic information, contrary to the principles enshrined in Article 21.

Findings of the Court

After an extensive evaluation of the evidence and the governing law, Justice Shamim Ahmed held that the husband's application was neither genuine nor supported by any credible material. The Court found that the attempt to conduct a DNA test was made primarily to humiliate the wife and prolong the litigation rather than to resolve a legitimate issue of paternity. The Court maintained that directing a DNA test in the absence of strong prima facie evidence would amount to a serious violation of constitutional protections. Accordingly, the Court upheld the order of the Judicial Magistrate, Palani, dated 12 June 2025, and dismissed the criminal revision petition. The Court did not award costs and directed that the order be communicated to the trial court and the Additional Public Prosecutor, Madurai Bench.

Conclusion and Author's Opinion

The Kandhasamy judgment stands as a progressive reaffirmation of the Indian judiciary's commitment to the principles of privacy, dignity, and the best interests of the child. It powerfully illustrates that while scientific advances such as DNA testing have great evidentiary value, they cannot be permitted to override fundamental human rights or be used as instruments of personal vengeance. The decision harmonizes the provisions of the Bharatiya Sakshya Adhiniyam, 2023 with the constitutional ethos of personal liberty and privacy as articulated in K.S. Puttaswamy v. Union of India[2]

In the author's view, this ruling represents a vital step in ensuring that family litigation does not degenerate into a means of character assassination or psychological harm to children. The judgment's insistence on a strong prima facie foundation before ordering intrusive tests upholds the integrity of both the legal process and human dignity. It reinforces that the "best interest of the child" remains critical and that a parent's suspicion cannot outweigh a child's right to identity and self-respect. The decision is a reminder that justice must be pursued with compassion and that the courts will not permit technology to be weaponized to inflict emotional harm. The ruling reflects the judiciary's role in balancing the quest for truth with the preservation of humanity and constitutional morality.

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[1] (2010) 7 SCC 263

[2] (2017) 10 SCC 1

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