

ITEM NO.40

COURT NO.8

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 5554/2020

(Arising out of impugned final judgment and order dated 29-11-2019 in WP No. 7776/2017 passed by the High Court Of Judicature At Bombay)

PRIYANKA JANARDHAN PATIL

Petitioner(s)

VERSUS

JANARDHAN RAGHUNATH PATIL

Respondent(s)

(FOR ADMISSION and I.R. and IA No.38913/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 04-04-2022 These matters were called on for hearing today.

CORAM : HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE A.S. BOPANNA

For Petitioner(s) Ms. Sangeeta Bharti, Adv.
Ms. Sujeeta Srivastava, AOR
Ms. Kamna Vohra, Adv.

For Respondent(s) Mr. Vinay Navare, Sr. Adv.
Ms. Rashmi Singhania, AOR

UPON hearing the counsel the Court made the following
O R D E R

This special leave petition is against an order dated 29.11.2019 passed by the High Court of Judicature at Bombay dismissing the civil revisional application being Writ Petition No. 7776 of 2017. The relevant part of the impugned order is extracted hereinbelow :

"7. The aforestated chronology of events have been pleaded by the respondent in his written statement, so also in his application filed below Exhibit - 19 before the Trial Court and repetition of the same is hereby avoided for the sake of brevity.

8. As noted earlier, there is a strong suspicion in the mind of the respondent-husband about the paternity of the child which has been from the wedlock of the petitioner and therefore the respondent had filed the aforesaid application below Exhibit 19 for conducting DNA test of the child and the parties herein. By now, it is well settled position of law that, the result of a genuine DNA test is said to be scientifically accurate. That, due to advanced scientific technology, conducting of DNA test would certainly throw light on the paternity of the child, which the respondent is seriously disputing and/or having serious doubt about it. The respondent cannot be foisted with paternity of child, if it is prove by a scientific method that he is not the biological father of the said child, though, he was having access to the petitioner at the relevant time. Reliance is placed on the decisions of the Hon'ble Supreme Court in the case of *Shri Banarasi Dass Vs. Mrs. Teeku Dutta and Anr.* Reported in (2005) 4 SCC 449 and *Dipanwita Roy Vs. Ronobroto Roy* reported in (2005) 1 SCC 365.

9. In view of the above and after perusing entire record, this Court is of the considered view that, the Trial Court has not committed any error either in law or on facts while passing the impugned Order.

10. The Petition being de hors of merits, is accordingly dismissed."

The Family Court at Bandra, Mumbai had passed an order on 18.03.2017 directing :

- "1. Application below Exh. 19 is allowed.
2. The forensic Lab at Kalina, Mumbai, is appointed as a Court Commissioner for collecting the sample and conducting the DNA Test.
3. Parties are directed to give appropriate samples before the Forensic Lab Kalina, Mumbai, on or before next date.
4. The respondent is liable to pay entire expenses for conducting the DNA Test."

Prima facie, it appears to this Court that the application of the respondent-husband for DNA Test of the child has been prompted by suspicion of the respondent-husband. Learned counsel appearing on behalf of the petitioner points out that the petitioner and the respondent got married on 05.02.2014 and the marriage was consummated on 09.02.2014. She became pregnant. On 27-28th June, 2014, the petitioner underwent medical tests in Singapore after which the doctor opined that the foetus carried by the petitioner was about 21 weeks old. The time gap between 09.02.2014 and 27-28.06.2014 is about 20 weeks, whereas the doctor opined that the foetus was about 21 weeks old. The difference, if any, is only of one week. The opinion is based on estimation which can never be absolutely accurate. The child was born on 28.10.2014 after 261 days, i.e., after almost 9 months from 09.02.2014. In other words, the child was born about 17 days earlier. There was no reason to presume that the petitioner was pregnant when she married the respondent.

Be that as it may, to resolve the dispute once and for all, this Court refrains from interfering with the direction for paternity/DNA Test. The paternity/DNA test may be conducted at the All India Institute of Medical Sciences, New Delhi, for which the petitioner and the respondent shall give samples as required. It is made absolutely clear that if on testing, it is found that the allegations are based on suspicion and the respondent is, in fact, the father of the child, the respondent shall pay compensation of Rs.30,00,000/- (Rupees thirty lakhs only) to the petitioner, in

addition to usual maintenance and other costs and charges as the respondent may be directed to pay for the petitioner and for the child.

Expenses of the petitioner and the child for travel to Delhi and back and for accommodation in Delhi shall be borne by the respondent.

The special leave petition is, accordingly, disposed of.

Pending applications, if any, shall stand disposed of.

(GULSHAN KUMAR ARORA)
AR-CUM-PS

(MATHEW ABRAHAM)
COURT MASTER (NSH)