



MAJESTYLEGAL

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‘When can DNA test be ordered to ascertain paternity of child?’

(Aparna Ajinkya Firodia Versus Ajinkya Arun Firodia¹, 2023)

The Hon’ble Supreme Court in the present SLP² on power to order 'DNA Test' held that the Children have the right not to have their legitimacy questioned frivolously before a Court of Law.

HOLDINGS OF HON’BLE COURT:

- DNA testing to be ordered for children born during the continuance of a legitimate marriage, only where there is sufficient prima facie evidence to dislodge the presumption under Section 112³ of the Evidence Act.
- It is also not prudent to draw an adverse inference under section 114⁴ of the Evidence Act, in every case where a parent refuses to subject the child to a DNA test.
- The Court also summarized Principles of DNA Tests as:
 - DNA profiling is to be directed in matrimonial disputes involving allegations of infidelity, only in matters where there is no other mode of proving such assertions.
 - A Court would not be justified in mechanically directing a DNA test of a child, in a case where the paternity of a child is not directly in issue, but is merely collateral to the proceeding.
 - Only in exceptional and deserving cases, where such a test becomes indispensable to resolve the controversy, the Court can direct such test.
 - While directing DNA tests as a means to prove adultery, the Court is to be mindful of the consequences thereof on the children born out of adultery, including inheritance-related consequences, social stigma, etc.

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¹ SLP (C) No. 9855/ 2022

² Special Leave Petition under section 136 of the Constitution

³ Birth during marriage, conclusive proof of legitimacy

⁴ Court may presume existence of certain facts

⁵ Majesty legal is law firm, established in 2013 by Ms. Mahi Yadav. Purpose of this analysis of the judgment is to provide insights on law and statutes, which are distinctive in nature and not to be deemed as legal advice.