

## News

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### **A child's right to know who his father is cannot be superseded by a man's right to privacy: High Court of P&H**



"This child's right to justice is an important consideration. Instead, when truth must be shown, which it surely can, his claim requires that truth be known," the Court stated.

The Punjab and Haryana High Court ruled recently that a child's right to know his father's identity cannot be superseded by a man's right to privacy.

While rejecting a revision petition that had contested a trial court's judgment to grant a child's appeal for the comparison of his DNA sample with that of a man he believes is his father,

Justice Archana Puri rendered the verdict.

"Justice for this child/plaintiff is an important consideration that should not be overlooked. Instead, his claim requires that truth be known, even if truth may certainly be demonstrated. At the same time, it is necessary to take into account defendant No. 1's [the guy who claimed to be father] right to privacy and dignity. However, the Court stated that the child's right cannot be superseded by the right to privacy, which grants him an interest.

### ***Archana Puri, Justice***

The High Court did, however, add that the trial court's order permitting the use of police force to make sure the defendant does not object when his DNA sample is obtained was superfluous.

The case started when a juvenile, acting via his mother, submitted a maintenance plea under Section 125 of the Code of Criminal Procedure (CrPC). A lawsuit to establish his paternity was filed since the defendant-man denied being the child's father.

According to the boy, his mother had first interacted with the man in 1988 when she was a renter at his home. It was asserted that they had formed a relationship over time. In 1990, the kid was born.

The guy countered that the kid belonged to the lady and her ex-husband, whom she had divorced in 1994, rather than to him. In 2015, the trial court granted the request for a DNA test based on the information available.

The guy (petitioner) subsequently filed a motion in the High Court, claiming that Section 112 of the Indian Evidence Act would apply because the kid was born while his mother's marriage was still in effect.

According to the clause, unless it can be demonstrated that the married pair had no access to one another, a child born when a marriage between the mother and a man is still in existence is definitive evidence that the kid is the father's legal son.

The Court noted that the presumption is intended to protect the child's interests by preventing them from becoming a "bastard." But it also stated that since the current situation is unique, Section 112 would not be relevant.

According to the Court, a number of cases that maintain that DNA testing should not be routinely required are related to situations in which one spouse in an existing marriage disputes parentage to a child.

"When a kid reaches maturity and approaches the court to claim his paternity, the reasoning established in the aforementioned rulings, where one spouse opposed parenting in any way, would not apply. The Indian Evidence Act's Section 112 does not apply in the case, the court decided.

The youngster in this instance has come forward and claimed that the petitioner is his father, the court remarked. The child's mother has also supported his allegation, it was said.

**"When it is implied that the plaintiff's mother had additional access at the relevant time of the plaintiff's begetting at the behest of defendant No. 1, the presumption under Section 112 of the Indian Evidence Act would not arise,"** the Court stated.

The youngster is well aware of the potential negative effects of the DNA test on his and his mother's social standing, it was stated. They nonetheless requested the DNA test, which the court took into consideration when it decided in their favor.

Even if the plaintiff's mother is an adult, she must be well aware of the repercussions of her son's behavior and his claim of paternity. The Court stated that they must be taken into consideration because they came forward without hesitation.

The Court further stated that the father would not suffer any harm from administering the test if the petitioner and the kid are strangers in any way as claimed.

Instead, the tests will establish his paternity beyond a reasonable doubt and determine whether he is the father as claimed. There is no explanation for why there should be any reluctance to take this test. Naturally, all parties must provide their evidence, but the question is whether a decision based on legal assumption or inference-gathering, based on the evidence or any gaps, due to poor judgment, should be maintained in place when the surer test may establish paternity. Taking into account all of these factors, this test will undoubtedly help the Court arrive at the best decision about the parties' relationship. Therefore, it should be done," it continued.

As a result, the Court rejected the man's revision plea but made it clear that his DNA sample could not be obtained by force.

It further said that the trial court need to document its conclusion in line with the man's choice on this matter.

"The trial court shall, at the appropriate stage, appraise the other evidence brought on record in the event of any disinclination on the part of defendant No. 1 and the reason therefor, to be recorded by the trial court," the statement stated.

The petitioner was represented by attorneys **Vijayveer Singh** and **Akshay Jindal**.

The respondents were represented by attorneys *Aniket Singh and Nandan Jindal*.

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