



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

FRIDAY, THE 30TH DAY OF JUNE 2023 / 9TH ASHADHA, 1945

OP(CRL.) NO. 508 OF 2021

AGAINST THE ORDER DATED 07.05.2021 IN M.P.No.254A/2020 IN MC

NO.100/2020 OF FAMILY COURT,ERNAKULAM

PETITIONER/RESPONDENT IN M.C.

V.O. MATHEW,
AGED 50 YEARS,
S/O.LATE V.O.OUSEPH, VATHAPPALLY HOUSE,
PALLIPPURAM P.O., CHERTHALA, ALAPPUZHA,
PIN-688541.

BY ADVS.SRI.THOMAS M.JACOB
SRI.H.P.SHABOO

RESPONDENTS/PETITIONERS IN M.C.

- 1 ALIESHA, FORMERLY LAILA,
AGED 45 YEARS,
FATHER'S NAME NOT KNOWN, RESIDING AT SUNRATAN,
PLOT 83, FLAT NO.301, SECTOR 10-A, VASHI,
NAVI MUMBAI, PIN-400709.
- 2 ESHA,
AGED ABOUT 17 YEARS,
D/O.ALIESHA, FORMERLY LAILA, RESIDING AT SUNRATAN, PLOT
83, FLAT NO.301, SECTOR 10-A, VASHI, NAVI MUMBAI,
PIN-400709, REPRESENTED BY HER MOTHER, GUARDIAN AND
NEXT FRIEND, ALIESHA, FORMERLY LAILA, AGED ABOUT 45
YEARS, FATHER'S NAME NOT KNOWN, RESIDING AT SUNRATAN,
PLOT 83, FLAT NO.301, SECTOR 10-A, VASHI, NAVI MUMBAI,
PIN-400709.

BY ADV. SRI.PRADEESH CHACKO

THIS OP (CRIMINAL) HAVING BEEN FINALLY HEARD ON 30.06.2023, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**C.R.****MARY JOSEPH, J.**-----
O.P. (Cr1) No.508 of 2021
-----Dated this the 30th day of June, 2023**JUDGMENT**

This Original Petition is filed by the petitioner under Article 227 of the Constitution of India challenging an order passed by Family Court, Ernakulam on 07.05.2021 in M.P.No.254 A/2020. The above referred M.P. was filed by the petitioners in M.C.No.100/2020 pending on the files of Family Court, Ernakulam seeking for a direction to the respondent to undergo DNA test for proving the paternity of the 2nd petitioner and to get it approved by the court that the former is her father. The parties to this Original Petition will hereinafter be referred to as the petitioners and the respondent in accordance with their status in the M.C. as well as M.P.

2. The 1st petitioner is one Mrs.Aliesha, W/o. V.O.Mathew, residing at Sunratan, Plot 83, Flat No.301, Sector 10-A, Vashi, Navi Mumbai. The 2nd petitioner is her minor



daughter born to the respondent during the long cohabitation of the 1st petitioner with him.

3. 1st petitioner and respondent fell in love and lived together as husband and wife. The respondent visited the 1st petitioner at Bombay and stayed with her as husband and wife. They also resided together in a house taken on rent at Vyttila, Ernakulam and a Flat namely Star Homes at Ernakulam and during the stay together, 1st petitioner got conceived from the respondent. The respondent when informed about, sent the 1st petitioner to her house at Bombay. Respondent contacted the 1st petitioner over telephone and promised her that he will marry her and also look after the child in her womb. Respondent used to send money for her expenses and treatment. Respondent visited the 1st petitioner frequently at Bombay and continue to live as husband and wife. When the time for delivery reached, the respondent insisted the 1st petitioner to come down to Kollam so that he could attend her in the hospital daily from Cherthala.

4. In obedience to the instruction of the respondent, 1st petitioner came to Kollam and started residing in a rented house



at Thanikkamukku, Anchalumoodu, Kollam. The 1st petitioner was admitted at Nani Memorial Nursing Home, Kollam and there she delivered the 2nd petitioner. During her stay at Kollam, the 1st petitioner came to know that the respondent married another lady and started their stay at Cherthala. Then the 1st petitioner contacted the respondent over Telephone and the latter promised her that he will look after herself and the child as earlier and threatened that if anyone comes to know about their relationship, he would not maintain them anymore.

5. According to the 1st petitioner due to her long cohabitation with the respondent, she gained the status as a wife and the marriage solemnised thereafter with another lady is '*void ab initio*' and that lady cannot obtain the status as wife of the respondent.

6. Even after the above differences respondent cohabited with the 1st petitioner at Thanikkamukku. 1st birth anniversary of the 2nd petitioner was celebrated in the house and the respondent was present and expenses for the celebration were met with by him. Respondent had promised to look after herself and the child till his death.



7. Till the child attained 1½ years, petitioners stayed in a rented house at Kollam and the rent was paid by him. Thereafter as advised, the petitioners went to Bombay and started living there. During that time also the monthly maintenance allowance was either sent to the account of the 1st petitioner or directly paid to her during his visit there by the respondent. 2nd petitioner was admitted in a play school and then at Avelone Height International School at Navi Mumbai and expenses were met with by the respondent himself. During vacation, the petitioners and the respondent stayed together at Ernakulam, Thiruvananthapuram, Goa and other places. 1st petitioner insisted the respondent to make some permanent arrangement to secure the life of the petitioners. Respondent then agreed to buy a flat in the name of the petitioners using his own money and also to take an insurance policy in the name of the 2nd petitioner for her education and marriage. The respondent failed to do as agreed and thereupon the 1st petitioner demanded for compliance and thereafter, the payment of money towards maintenance of petitioners was stopped by the respondent from 2013. 1st petitioner contacted the



respondent over telephone and requested to send money to meet the expenses of the 2nd petitioner. Respondent paid money for maintenance of the petitioners two three times and then stopped it. The lady whom the respondent married later came to the scene and threatened that if any more demand is made, she will make arrangements to finish off the petitioners.

8. Respondent thereafter neglected petitioners in full and thereupon a complaint was filed before the Kerala Women's Commission and the latter ordered the respondent to undergo blood test for DNA examination but it was not materialized due to the respondent's non-co-operation. From 10.12.2013 onwards the petitioners were living separately from the respondent and evaded the request of the 1st petitioner to accompany her and the 2nd petitioner.

9. 1st petitioner was constrained to give a statement before Cherthala Police Station and on its basis the police registered crime No.903/2014. Investigation in the crime culminated in filing of a final report before Judicial First Class Magistrate Court, Cherthala and registration of CC No.1756/2014 on the files of the Court after taking cognizance



on it. Respondent then filed a private complaint raising false allegations against the 1st petitioner before the police alleging trespass into his house and pouring of acid on the face of the lady whom he married later and the child. The case on hand was allegedly a cooked up one for pressurising the 1st petitioner from withdrawing the case and also for abandoning the 1st petitioner's right to get maintenance allowance from the respondent for herself and the 2nd petitioner. The case was investigated and it culminated in laying of a final report and registration of a case as CC No.1480/2014 before Judicial First Class Magistrate Court-I, Cherthala. Respondent later on compromised the matter and that culminated in his acquittal. The 1st petitioner contended that she was not acquainted of the compromise and has not signed it and proposed to take action against the respondent for malicious prosecution and for getting compensation.

10. The 1st petitioner was constrained to file O.P.No.1049/2018 before Family Court, Kollam which got transferred to Family Court, Ernakulam at the instance of the petitioners and numbered as O.P.1290/2020 seeking for the following reliefs:



"A. Pass a decree declaring the status of the 1st petitioner as the legally wedded wife of the 1st respondent.

B. Pass a decree declaring that 2nd petitioner is the daughter born to the 1st respondent in the wedlock of the 1st petitioner and the 1st respondent or in the alternative declare that the 2nd petitioner is the daughter born to the 1st respondent by deciding the paternity of the 2nd petitioner with that of the 1st respondent.

C. Pass a decree allowing the petitioner to realis and amount of Rs.36,00,000/- towards past maintenance for the petitioners as shown in the memo of accounts of this petition together with 12% interest from the date of petition will the date of realisation from the 1st respondent personally and charged on all his assets both movable and immovables.

D. Pass a decree allowing the 1st petitioners to realize an amount of Rs.50,000/- from the date of petition and Rs.50,000/- per month to the 2nd petitioner till she attains the age of majority per month.

E. Pass a decree allowing the petitioners to recover an amount of Rs.1,00,00,000/- from the 1st respondent towards the marriage expenses of the 2nd petitioner from the 1st respondent personally and charged on all his properties both movables and immovables.

F. Allowing the cost of this proceedings."

The said Original Petition is pending consideration.

11. The respondent filed objection in the above Original Petition specifically denying marital relationship of the 1st petitioner with the respondent and cohabitation with her. Maintainability of the Original Petition itself was also challenged



for the reasons that M.C.No.132/2018 was filed by the petitioners before Family Court, Alappuzha seeking for Rs.50,000/- each as monthly maintenance allowance to petitioners 1 and 2. It was contended in the objection that the very same reliefs being sought, the Original Petition is liable to be dismissed as not maintainable.

12. M.C. filed originally before Family Court, Alappuzha was transferred to Family Court, Ernakulam by an order passed by this Court in a Transfer Petition preferred by the petitioners. Objection was filed in the M.C denying marital relationship of the 1st petitioner and the respondent, cohabitation between them and paternity of the 2nd petitioner. In a context of stout denial of the above aspects, an application was preferred by the petitioners as M.P.No.254 A/2020 in M.C.No.100/2020 seeking for a direction to the respondent to undergo blood test at Rajiv Gandhi Centre for Bio-Technology, Thiruvananthapuram or any other center as the court directs to have DNA identification.

13. Respondent filed objection in the above petition contending mainly that the petition is an abuse of process of law, that the respondent being a man married to one



Mrs.Kavithamol on 16.05.2004 at St.Mary's Forane Church, Pallippuram, Cherthala, Alappuzha and with a child born in the said wedlock, that the 1st petitioner is a woman of ill reputation leading a loose life, that the latter was in the habit of blackmailing gentlemen for making illegal and unjust enrichment, that she had been conceived from one Mr.Subhash and later got aborted and married one Mr.Shyne at Sub Registrar Office, Kayamkulam, that a prosecution launched by the 1st petitioner against respondent as CC No.1756/2014 alleging commission of an offence punishable under Section 417 of the Indian Penal Code, 1860 (for short 'the IPC') was dismissed as per judgment dated 11.11.2019 after trial, that the application seeking DNA examination cannot be filed on an experimental basis and as a matter of course, that DNA analysis cannot be used to supplement or supplant the burden to prove long cohabitation alleged by the petitioners, that the respondent has a right to privacy guaranteed under the Constitution of India and he cannot be subjected to the harassment of undergoing such a test, that the intention of the petitioners is to humiliate and embarrass and malign the respondent and to extract his money



that the test if allowed can have far reaching consequences in the family life of the respondent and it would adversely affect the social and family life of the respondent, that on allowing the application, the respondent would be subjected to irreparable injuries, loss and hardships and that the petition is liable only to be dismissed for its filing prematurely. Respondent also sought for not placing reliance on the birth certificate and photographs produced by the petitioners alongwith the application, for reasons projected that those are false ones created for the purpose of blackmailing the respondent.

14. Family Court, Ernakulam considered the rival contentions of the parties in the above petitions and allowed it and directed the DNA examination to be held at Rajiv Gandhi Centre for Bio Technology, Thiruvananthapuram. Respondent was directed by the order to give his blood sample for the purpose of the examination and the 1st petitioner was directed to bear the cost of the examination.

15. Family Court found that the 1st petitioner evidently succeeded in bringing home a *prima facie* case of long cohabitation between herself and the respondent. The Court



therefore, found the case on hand as a fit one for issuance of a direction for conduct of DNA test and accordingly allowed it. The respondent being aggrieved by the directions in the order above, has approached this Court challenging it.

16. According to Sri.Thomas M Jacob, the learned counsel for the petitioners, the petitioners failed even to bring home evidence indicative of a *prima facie* case on her marital relationship with the respondent and long cohabitation with him so as to conceive and give birth to the 2nd petitioner. According to him, the respondent is a man married and living with his legally wedded wife and the child born in that wedlock and the direction issued by the impugned order to subject himself for a blood test for DNA analysis, if maintained would cause wild repercussions on the family as well as the social life of the respondent and intrude into his privacy, which is constitutionally safeguarded. According to him an innocent man like respondent cannot be made to subject to blood test for DNA analysis at the instance of a lady, who is not one maintaining a moral life and having illicit relationships with several men. According to him, the intention of the 1st petitioner is only to obtain some money



by blackmailing the respondent and to get unlawfully enriched at his expense. According to him the courts must have a second thought while allowing application of the nature. He urged this Court to reverse the order directing blood test for DNA analysis and thereby to avoid the social stigma likely to cast on the respondent on being subjected to the test. The learned counsel has also relied on several Rulings of the Apex Court as well as this Court to substantiate the points projected in his arguments.

17. The maintainability of the petition seeking maintenance allowance filed by a minor against a person whom he alleges to be his biological father in a context when a civil suit seeking declaration that the person is his biological father stands dismissed, was considered by the learned Single Judge of this Court in **Ivan Rathinam v. Milan Joseph** [2018 (3) KHC 234] and held it as maintainable after observing that legitimacy and paternity operate in different fields. The court further held that in a petition seeking maintenance under Section 125 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') presumption under Section 112 of the Evidence Act cannot be stretched to bring up a legal bar in the way of enquiry to find out



the true paternity of a child and that legitimacy of birth is totally irrelevant and insignificant while considering the right of a child to get maintenance allowance from his biological father.

18. The learned counsel has cited **Banarsi Dass v. Teeku Dutta** [2005 KHC 703] to bring to the notice of the court on how the law on blood test was evolved. The question came up for consideration of the Apex Court in the case cited was whether the trial court dealing with issuance of succession certificate is justified in holding that documents were not sufficient for the purpose of adjudication and DNA test is conclusive.

The dictum of the court reads:-

“10. The view has been reiterated by this Court in many later cases e.g. *Amarjit Kaur v Harbhajan Singh & Anr*, (2003 (10) SCC 228). We may remember that Section 112 of the Evidence Act was enacted at a time when the modern scientific advancements with deoxyribonucleic acid (DNA) as well as ribonucleic acid (RNA) tests were not even in contemplation of the legislature. The result of a genuine DNA test is said to be scientifically accurate. But even that is not enough to escape from the conclusiveness of Section 112 of the Act e.g. if a



husband and wife were living together during the time of conception but the DNA test revealed that the child was not born to the husband, the conclusiveness in law would remain irrebuttable. This may look hard from the point of view of the husband who would be compelled to bear the fatherhood of a child of which he may be innocent. But even in such a case the law leans in favour of the innocent child from being bastardised if his mother and her spouse were living together during the time of conception. Hence the question regarding the degree of proof of non-access for rebutting the conclusiveness must be answered in the light of what is meant by access or non-access as delineated above. (See Kamti Devi (Smt.) and Anr. v. Poshi Ram (2001 (5) SCC 311). The main object of a Succession Certificate is to facilitate collection of debts on succession and afford protection to parties paying debts to representatives of deceased persons. All that the Succession Certificate purports to do is to facilitate the collection of debts, to regulate the administration of succession and to protect persons who deal with the alleged representatives of the deceased persons. Such a certificate does not give any general power of administration on the estate of the deceased. The grant of a certificate does not establish title of the grantee as the heir of the deceased. A Succession Certificate is intended as noted above to protect the debtors, which means that where a debtor of a deceased person either voluntarily pays his debt to a person holding a Certificate under the Act, or is compelled by



the decree of a Court to pay it to the person, he is lawfully discharged. The grant of a certificate does not establish a title of the grantee as the heir of the deceased, but only furnishes him with authority to collect his debts and allows the debtors to make payments to him without incurring any risk. In order to succeed in the succession application the applicant has to adduce cogent and credible evidence in support of the application. The respondents, if they so chooses, can also adduce evidence to oppose grant of succession certificate. The trial court erroneously held that the documents produced by the respondents were not sufficient or relevant for the purpose of adjudication and DNA test was conclusive. This is not a correct view. It is for the parties to place evidence in support of their respective claims and establish their stands. DNA test is not to be directed as a matter of routine and only in deserving cases such a direction can be given, as was noted in Goutam Kundu's case (supra). Present case does not fall to that category. High Court's judgment does not suffer from any infirmity. We, therefore, uphold it. It is made clear that we have not expressed any opinion on the merits of the case relating to succession application."

19. Trial court erroneously held in the case that documents produced by the respondents in a suit for issuance of succession certificate were not sufficient or relevant for



adjudication and DNA test alone is conclusive. When a challenge is raised against, the High Court held by reversing the order that it is for the parties to place evidence in support of their respective claims and establish their stands. The court held further that DNA test is not to be directed as a matter of routine and only in deserving cases such a direction can be given as was noted in the case **Goutam Kundu v. State of West Bengal and Another [1993 KHC 951]**.

20. In **Bhabani Prasad Jena v. Convenor Secretary, Orissa State Commission for Women and Another [2010 KHC 4528]** cited by the learned counsel, the Apex Court has reiterated its view in **Banarsi Dass** supra that DNA test or paternity test should not be directed by a court as a matter of routine but can only be after considering diverse aspects under Section 112 Evidence Act, 1872.

21. The question considered in the case was "whether the High Court of Orissa was justified in issuing a direction *suo motu* for DNA test of the child and the appellant, who according to the mother of the child, was its father. There was evidence of a valid marriage among the parties and while living together for a



considerable time due to differences of opinion among the parties and torture by family members, she left the matrimonial home. She being devoid of any income finds it difficult to pull on her life. She got conceived then and therefore filed a complaint before the State Commission. It issued notice to both parties. The parties appeared before it on 20.04.2009 and husband submitted written reply to the complaint alleging that the marriage due to exercise of fraud and coercion is null and void and a declaration to that effect is required. While ordering maintenance as compulsory for the petitioner, minimum compensation of 50% of the gross salary amount of Sri. Bhabani Prasad Jena was also ordered. Apart from that actual delivery expenses of Smt.Nayak was also ordered to be borne out by Sri.Bhabani Prasad Jena. DNA test of the lady directed to be conducted through S.P.Nawarangpur and the report to be sent to OSCW for future reference.

22. The order was challenged by the husband by filing a writ petition before the High Court of Orissa. The allegation taken was that he has not fathered the child in the womb of the 2nd respondent and that relationship was not there among them



as husband and wife since August, 7, 2007 (date of filing of the matrimonial case before the District Judge). High Court in the order passed directed that DNA test both of the child and the alleged father shall be conducted in SCB Medical College and Hospital, Cuttack. The order was taken up in challenge before the Apex Court in an appeal by Special Leave and it was held by the Apex Court that the High Court has exceeded its jurisdiction in passing the impugned order. High Court was found overlooked a material aspect that the matrimonial dispute between the parties is pending in a court of competent jurisdiction and that all aspects concerning that raised by the parties in that case shall be adjudicated and determined by that court. The court further held that when an issue arises before the matrimonial court concerning the paternity of the child, obviously that court will be competent to pass an appropriate order at the relevant time in accordance with law. Accordingly the order passed by the High Court was held unsustainable and was set aside. Writ Petition stands disposed of holding so.



23. In **Goutam Kundu** supra the Supreme Court held that in an application seeking monthly maintenance allowance under Section 125 Cr.P.C. for a minor child, a father disputing paternity of the child could seek blood test of the child, only on making a ground whatsoever to have recourse to the test. The court found in the case that the application was filed for DNA test only to avoid payment of maintenance allowance to the child. The stand of the father in the case was that if paternity could not be established, he would not be liable to pay maintenance allowance. That application was dismissed by Chief Judicial Magistrate and in the revision filed, the High Court dismissed the revision on the basis of presumption under Section 112 Evidence Act that if a child is born during continuance of a valid marriage that is conclusive proof about legitimacy and that the Section would constitute a stumbling block in the way of the petitioner getting his paternity disproved by blood group test.

24. After delving on decisions of various High Courts on the point the Apex Court held:



- “(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 test cannot be entertained.
- (3) There must be 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.”

Thus the order passed by the Chief Judicial Magistrate and confirmed by the High Court in revision was upheld.

25. As rightly pointed out by the learned counsel for the respondent, the decision cited has been rendered in a context when the paternity stands denied during subsistence of a marriage between the alleged parents of the child.

26. In **Rajeeve v. Sarasamma and Others [2021 (4) KHC 87]** relied on by the learned counsel for the petitioner,



Division Bench of this Court held that in a case where there is evidence of long cohabitation of a man with two women simultaneously, begetting children in both relationships, one pursuant to a ceremonial marriage and the other not pursuant to a ceremonial marriage, the presumption of valid marriage must lean in favour of the former even if the latter relationship commenced prior in point of time. Thus it is held that a declaration of legitimacy can be granted only when there is admitted or proved matrimonial relationship and explanation (e) to Section 7(1) of the Family Courts Act cannot be stretched to adjudicate upon legitimacy or illegitimacy of any person born in a casual or live-in-relationship.

27. In **Ashok Kumar V. Raj Gupta and Others** [2022 (1) SCC 20] cited by the learned counsel, the Supreme Court held, in circumstances where other evidence is available to prove or dispute the relationship, the court should ordinarily refrain from ordering blood tests like DNA test, against the will of the party who has to be subjected to such test.

28. The above dictum was laid down in a declaratory suit when plaintiff had already adduced evidence and was not



interested to adduce additional evidence to prove his case and the defendants had sought for blood test for DNA determination that, the defendants cannot compel the plaintiff to adduce further evidence in support of the defendant's case.

29. Sri.Pradeesh Chacko, the learned counsel for the respondents herein has contended that the impugned order was passed by the court below after appreciating the factual scenario in detail and it being legally sustainable is only liable to be confirmed.

30. The learned counsel has placed reliance on **Goutam Kundu** supra where the specific aspects emerged for consideration are dealt with, when the conduct of a blood test is sought by one party. According to him, though the Apex Court had directed consideration of the above aspects in a case demanding for blood test where a presumption could possibly be drawn under Section 112 of Evidence Act, the directions could be followed even in the case on hand also. According to him, courts cannot order blood test as a matter of course but, issuance of direction can be in a case after careful examination as to what would be the consequences of ordering a blood test.



The Court must carefully examine whether the order if refrained would have the impact of branding the child whose paternity is disputed, as a bastard and the mother as an unchaste woman.

31. True that none can be compelled to give sample of his blood for analysis and an order for blood test while the M.C. is pending. According to him, in the order dismissing the application challenging maintainability of M.C., the family Court had found that *prima facie* case is made out by the petitioner from the photographs produced in the M.C. According to him the finding of the Family Court in the said order has become final for want of a challenge raised against that by the respondent. Several photographs were produced by the 1st petitioner during different stages of growth of the 2nd petitioner, where the presence of respondent was also found. According to the learned counsel for the petitioners, 1st petitioner has a *prima facie* case that the respondent had cohabited with her for a long time and in the said cohabitation the 2nd petitioner was born. The learned counsel invited the court's attention to the objection filed by the respondent in the M.C and also the pleadings raised



in an application challenging maintainability of the M.C and submitted that though a specific stand of denial was taken by the respondent, he has stated to have given Rs.60,000/- to the petitioners as allowance for their maintenance. Respondent's mother and relatives were also found in the photographs produced by the petitioner. The respondent has taken a specific stand that the photographs are falsely created by the 1st petitioner. But a perusal of it did not give such an impression to this Court.

32. This Court has no hesitation to hold that the photographs can be considered as *prima facie* evidence justifying the averments of the 1st petitioner about long cohabitation with the respondent and birth of the 2nd petitioner in the said cohabitation. Respondent has a case that Rs.60,000/- alone was paid by him to the 1st petitioner towards maintenance allowance. 2nd petitioner is a girl child claimed by the 1st petitioner as aged 17 years. When a *prima facie* case of cohabitation is made out by the 1st petitioner from the materials produced and relied on and the respondent stands thoroughly failed to establish a *prima facie* case of alleged immoral life led



by the 1st petitioner with other persons named in his objection, the prayer of the 1st petitioner to issue direction to the respondent to subject himself to the blood test for determination of DNA cannot be thrown aside. If an order of the nature is declined that would have the impact of bastardising the minor girl child among the public. Undoubtedly that would caste a social stigma upon the child as well as the mother respectively as 'bastard' and 'immoral'. If the respondent was not in cohabitation with the 1st petitioner and the 2nd petitioner was not born to him in the cohabitation as contended by him, he need not have to pay any money to them as maintenance allowance.

33. True that an illegitimate child is also eligible for maintenance allowance but, for that paternity is a very relevant aspect to be established so as to enable the court to direct payment from the respondent who was alleged as his father.

34. Therefore, the 4th circumstance as directed by the Apex Court in **Goutam Kundu** supra is very much available in the case on hand and the court below has correctly issued a direction for the conduct of the blood test of the respondent for DNA analysis by the order under challenge. Order under



OP(Cr1.) No.508 of 2021

27

challenge does not require interference and is maintained.

Original Petition fails and is dismissed.

Sd/-

MARY JOSEPH

JUDGE

MJL

APPENDIX OF OP (CRL.) 508/2021PETITIONER'S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF CERTIFICATE OF MARRIAGE BETWEEN THE PETITIONER AND HIS WIFE KAVITHAMOL ISSUED BY SECRETARY, CHENNAM PALLIPPURAM GRAMA PANCHAYATH.
- EXHIBIT P2 TRUE COPY OF BIRTH CERTIFICATE OF PETITIONER'S SON ISSUED BY SECRETARY, ETTUMANOOR GRAMA PANCHAYATH.
- EXHIBIT P3 TRUE COPY OF JUDGMENT DATED 11.11.2019 IN CC.NO.1756/2014 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, CHERTHALA.
- EXHIBIT P4 TRUE COPY OF O.P.1290/2020 OF FAMILY COURT ERNAKULAM, FILED BY 1ST AND 2ND RESPONDENTS.
- EXHIBIT P5 TRUE COPY OF THE OBJECTION FILED IN O.P.1290/2020 OF FAMILY COURT, ERNAKULAM.
- EXHIBIT P6 TRUE COPY OF M.C.NO.100/2020 OF FAMILY COURT, ERNAKULAM FILED BY THE 1ST AND 2ND RESPONDENTS.
- EXHIBIT P7 TRUE COPY OF THE OBJECTION FILED IN M.C.NO.100/2020 OF FAMILY COURT, ERNAKULAM.
- EXHIBIT P8 TRUE COPY OF M.P.254A/2020 IN M.C.NO.100/2020 OF FAMILY COURT, ERNAKULAM.
- EXHIBIT P9 TRUE COPY OF THE OBJECTION FILED IN M.P.NO.254A/2020 IN M.C. 100/2020 OF FAMILY COURT, ERNAKULAM.
- EXHIBIT P10 TRUE COPY OF THE LIST OF DOCUMENTS DATED 15.04.2021 FILED BY THE PETITIONER HEREIN (RESPONDENT IN M.C) IN M.C 100/2020 OF FAMILY COURT, ERNAKULAM.
- EXHIBIT P11 TRUE COPY OF ORDER DATED 07.05.2021 IN M.P. 254A/2020 IN M.C. 100/2020 OF FAMILY COURT, ERNAKULAM.
- EXHIBIT P12 TRUE COPY OF THE FINAL REPORT IN CRIME NO.903/2014 FILED BEFORE JFCM CHERTHALA.
- EXHIBIT P13 TRUE COPY OF THE FIR IN CRIME NO.984/2014 OF CHERTHALA POLICE STATION.



EXHIBIT P14 TRUE COPY OF THE PROCEEDINGS DATED
10.05.2018 IN CC 1480/2014 OF THE
JUDICIAL FIRST CLASS MAGISTRATE-I,
CHERTHALA.

EXHIBIT P15 TRUE CERTIFIED COPY OF THE PHOTOGRAPHS
PRODUCED BY THE RESPONDENTS.

EXHIBIT P16 TRUE COPY OF B DIARY PROCEEDINGS IN
CRL.M.P. 254(a)/2020 AND IN MC 100/2020
OF FAMILY COURT, ERNAKULAM FROM
08.04.2021 TO 07.05.2021.

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

PA TO JUDGE