HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal From Order No. 25 of 2026

02 April, 2026

Sunil Singh --Appellant

Versus

Anju Gupta Singh and Another --Respondents

Presence:

Mr. Shashi Kant Shandilya and Mr. Vishwaketu Vaidya, learned counsel for appellant.

Coram: Hon'ble Manoj Kumar Tiwari, J.
Hon'ble Pankaj Purohit, J.

Per: Hon'ble Pankaj Purohit, J. (Oral)

This appeal from order has been preferred under Section 19 of the Family Courts Act, 1984 against judgment and order dated 16.12.2025 passed by learned Principal Judge, Family Court, Nainital in Civil Suit No.208 of 2022 *Sunil Singh vs. Anju Gupta Singh*, whereby, application filed by appellant seeking permission for conducting DNA examination has been rejected.

2. The facts, in brief, giving rise to the present appeal are that appellant–husband instituted a matrimonial proceeding under Section 13 of the Hindu Marriage Act before learned Principal Judge, Family Court, Nainital against respondent no.1–wife, inter alia alleging matrimonial misconduct including adultery. During the pendency of said proceedings, appellant moved an application (paper No.78-C dated 29.09.2025) before learned Family Court seeking direction for conducting DNA examination of the minor child. The said application was filed with object of substantiating allegation of adultery levelled by appellant against

respondent no.1. Learned Family Court, upon consideration of the said application, rejected the same vide order dated 16.12.2025. While doing so, learned court below appears to have proceeded on the premise that permitting DNA examination would amount to determining the paternity of child and may adversely affect the rights, dignity and future of minor. Aggrieved by rejection of his application for DNA examination, appellant has preferred the present appeal from order before this Court.

3. Learned counsel for appellant has assailed the impugned order as being illegal, arbitrary and contrary to settled principles of law. It is submitted that learned Family Court has failed to properly appreciate the scope and purpose of application filed by appellant. It is argued by learned counsel for appellant that appellant had never sought any declaration regarding the paternity of child, nor did he intend to disturb the legal status or rights of minor. The limited prayer of appellant was only to obtain scientific evidence by way of DNA examination for the purpose of substantiating his plea of adultery against respondent no.1. He further submits that learned court below has gravely erred in misdirecting itself by treating application for DNA testing as an attempt to attribute parentage of child to respondent no.2, whereas no such case was pleaded by appellant. According to him, the entire reasoning of impugned order rests on an assumption which does not arise from the pleadings on record.

4. It is further submitted by him that in matrimonial disputes, particularly those involving allegations of adultery, direct evidence is seldom available and parties are often required to rely upon circumstantial

or scientific evidence. In such circumstances, DNA examination constitutes a crucial and effective mode of proof, especially when no other cogent evidence is available to appellant.

5. Learned counsel for appellant has also argued that learned Family Court has erroneously conflated the issue of adultery with that of determination of paternity. It is submitted that seeking DNA examination for evidentiary purposes cannot be equated with questioning the legitimacy or status of child. It is further argued by him that appellant has no intention to cause any prejudice, stigma or harm to minor child, and adequate safeguards can always be imposed by the Court to protect the privacy, dignity and interests of child while permitting such examination.

6. Reliance has also been placed by learned counsel for appellant on judicial precedents in the cases of **Dipawita Roy vs ronobroto Roy, (2015) 1 SCC 365**, and **Ivan Rathinam vs Milan Joseph, 2025 SCC online SC 175**, wherein, it has been held by Hon'ble Apex Court that direction for DNA examination may be issued in appropriate and exceptional circumstances, particularly where such scientific evidence becomes necessary to arrive at the truth and to render complete justice between the parties.

7. We have heard learned counsel for appellant and perused the record. The core issue which arises for consideration is whether, in the facts of present case, appellant is entitled to a direction for conducting DNA examination of minor child. At the outset, it is pertinent to note that Section 112 of the Indian Evidence Act is based upon the principle of *pater est uem nuptiae demonstrant* meaning that “the father is he whom the

marriage points out", which seeks to protect children from the social consequences of destitution, bastardy and vagrancy. The provision creates a conclusive presumption of legitimacy when a child is born during the continuance of a valid marriage. Law in this regard is well settled that such presumption can be displaced only by establishing non-access between spouses at the relevant time. The burden to prove non-access lies heavily upon a person who seeks to dislodge the statutory presumption. Judicial pronouncements interpreting Section 112 of the Evidence Act read with Article 21 of the Constitution of India have consistently held that Courts must undertake a careful balancing exercise between the rights of parties, particularly keeping in view the welfare, dignity and privacy of child, before directing DNA examination.

8. It is equally well settled that DNA testing cannot be ordered as a matter of routine or merely on the asking of a party. Such a direction can be issued only in exceptional circumstances where strong *prima facie* material is available to show non-access or where the interests of justice so demand. A direction for DNA examination, if granted, may have the effect of bastardising the child by conclusively determining non-paternity. Therefore, Courts are required to exercise utmost caution and restraint while dealing with such requests. In the present case, having perused the record, it is evident that appellant has neither specifically pleaded nor attempted to establish non-access between himself and respondent no.1 during the relevant period. In absence of such foundational pleading and material, statutory presumption under Section 112 of the Evidence Act remains intact.

9. The attempt of appellant to seek DNA examination directly, without first discharging the burden of rebutting presumption of legitimacy, cannot be countenanced in law. Permitting such a course would render the protection under Section 112 invalid. Further, allowing the prayer for DNA examination in the facts of present case would amount to an unwarranted intrusion into the privacy and dignity of minor child, which are facets of the fundamental right guaranteed under Article 21 of the Constitution of India.

10. In the considered opinion of this Court, the balance of interest, in the facts of case, clearly tilts in favour of protecting the legitimacy and rights of the child rather than permitting a roving inquiry through DNA examination. Learned Family Court has, therefore, committed no illegality or perversity in rejecting the application filed by the appellant.

11. In view of the aforesaid discussion, the present appeal from order, being devoid of merit, is hereby dismissed.

12. Pending application(s), if any, stands disposed of.

(Pankaj Purohit, J.) **(Manoj Kumar Tiwari, J.)**

02.04.2026

PN/-