HC-KAR
CNR: KAHC010259362026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION NO. 11719 OF 2026 (GM-FC)

BETWEEN:

MR. FILIX MILLER AND FELIX MILLER
S/O JOSEPH MILLER
AGED ABOUT 56 YEARS
R/AT NO. B-3, SNEHA APARTMENT,
1ST MAIN ROAD, KASTURI NAGAR,
KALYAN NAGAR,
BENGALURU -560 043

...PETITIONER

(BY SRI. RAVINSON M., ADVOCATE)

AND:

[redacted]

...RESPONDENT

(BY SRI. MITHUN U., ADVOCATE AND
SMT.SHUBHASRI M.V., ADVOCATE FOR
SMT.USHA REDDY K.P., ADVOCATE)

Digitally signed by SUVARNA T
Location: HIGH COURT OF KARNATAKA

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO

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ISSUE A WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION QUASHING THE ORDER DATED 18.03.2026 PASSED ON I.A. NO.5 IN CRL. MISC. NO. 63/2025 BY THE COURT OF THE PRINCIPAL JUDGE, FAMILY COURT, BENGALURU AS PER ANNEXURE-A.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED ON 28.09.2026, COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CAV ORDER

The present writ petition is filed aggrieved by the order passed on IA No.5 in Crl.Misc.No.63/2025 dated 18.03.2026 by the Principal Judge, Family Court, Bangalore, the father is before this Court.

2. The respondent herein had filed Crl.Misc.No.63/2025 seeking maintenance for her child. In that case, IA.No.5 was filed under Section 45 of the Bharatiya Sakshya Adhiniyam, 2023, praying for directions to conduct a DNA test to determine the biological relationship between the minor son and the father. The Family Court allowed the same by the impugned

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order, directing the minor child and the father to provide their blood samples for a DNA test to determine paternity. Aggrieved thereby, the father is before this Court.

3. Learned counsel appearing for the father submits that the impugned order is arbitrary, illegal, and contrary to the settled principles of law governing the power to direct DNA testing and is liable to be quashed. It is submitted that the Family Court failed to appreciate that directing a DNA test is not a matter of course and can be ordered only when a strong prima facie case is made out, which is conspicuously absent in the present case. The petitioner submits that the court erred in treating an alleged statement in a reply notice as a conclusive admission without subjecting the same to proof in accordance with law, thereby committing a grave error apparent on the face of the record. It is submitted that even assuming, without admitting, that there was any form of acquaintance or interaction, the same cannot be equated with proof of paternity, and the impugned order proceeds on an erroneous presumption. It is submitted that the Family Court failed to consider that an identical application seeking DNA testing had

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already been rejected by a competent civil court, that the said order had attained finality, and that the plaintiff therein has not chosen to challenge the same before any higher forum. It is submitted that permitting the very same relief to be sought and granted in subsequent proceedings on the same set of facts amounts to a clear abuse of the process of law and is impermissible in the eye of the law. It is submitted that the court failed to consider the mother's conduct in initiating multiple proceedings with inconsistent stands, which clearly demonstrates mala fide intent. The impugned order permits a roving and fishing enquiry, which is impermissible in law and has been consistently deprecated by the Hon'ble Supreme Court. Learned counsel had relied on the judgments of the Apex Court in the case of ***Ashok Kumar Vs. Raj Gupta & others***[1]. He relied on para Nos.11.1, 13, 14, 16 and 17 which reads thus:

> ***"11.1 In circumstances where other evidence is available to prove or dispute the relationship, the court should ordinarily refrain from ordering blood tests. This is 3(2015) 1 SCC 365 because such tests impinge upon the right of privacy of an individual and could also have major societal repercussions.***

[1] (2022) 1 SCC 20

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Indian law leans towards legitimacy and frowns upon bastardy. The presumption in law of legitimacy of a child cannot be lightly repelled. This Court, in Kamti Devi v. Poshi Ram4, while determining the question of standard of proof required to displace the presumption in favor of paternity of child born during subsistence of valid marriage held:

"10. 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 favor 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 4 2001(5) SCC 311 answered in the light of what is meant by access or non-access as delineated above."

13. DNA is unique to an individual (barring twins) and can be used to identify a person's identity, trace familial linkages or even reveal sensitive health information. Whether a person can be compelled to provide a sample for DNA in such matters can also be answered considering the test of proportionality laid down in the unanimous decision of this Court in K.S Puttaswamy v. Union of India5, wherein the

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right to privacy has been declared a constitutionally protected right in India. The Court should therefore examine the proportionality of the legitimate aims being pursued, 52019 (1) SCC 1 i.e whether the same are not arbitrary or discriminatory, whether they may have an adverse impact on the person and that they justify the encroachment upon the privacy and personal autonomy of the person, being subjected to the DNA Test. It cannot be overlooked that in the present case, the application to subject the Plaintiff to a DNA Test is in a declaratory suit and the plaintiff has already adduced evidence and is not interested to produce additional evidence (DNA), to prove his case. It is now the turn of the defendants to adduce their evidence. At this stage, they are asking for subjecting the plaintiff to a DNA test. Questioning the timing of the application the trial Court dismissed the defendants application and we feel that it was the correct order.

14. In the yet to be decided suit, the plaintiff has led evidence through sworn affidavits of the Respondents, his School Leaving Certificates and his Domicile Certificate. Significantly, the respondent No.1, who is one of the 3 siblings (defendants) had declared in her affidavit that the Plaintiff was raised as a son by her parents. Therefore, the nature of further evidence to be adduced by the plaintiff (by providing DNA sample), need not be ordered by the Court at the instance of the other side. In such kind of litigation where the interest will have to be balanced and the test of eminent need is not satisfied our considered opinion is that the protection of the right to privacy of the Plaintiff should get precedence.

16. The respondent cannot compel the plaintiff to adduce further evidence in support of the defendants' case. In any case, it is the burden on a litigating party to prove his case adducing evidence in support of his plea and the court should not

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compel the party to prove his case in the manner, suggested by the contesting party.

17. The appellant (plaintiff) as noted earlier, has brought on record the evidence in his support which in his assessment adequately establishes his case. His suit will succeed or fall with those evidence, subject of course to the evidence adduced by the other side. When the plaintiff is unwilling to subject himself to the DNA test, forcing him to undergo one would impinge on his personal liberty and his right to privacy. Seen from this perspective, the impugned judgment merits interference and is set aside. In consequence thereof, the order passed by the learned Trial Court on 28.11.2017 is restored. The suit is ordered to proceed accordingly."

He relied on the judgment of the Apex Court in the case of ***Aparna Ajinkya Firodia Vs. Ajinkya Arun Firodia***[2], para No.12 (i) to (v), 13 and 15 which reads thus:

"12. Having regard to the aforesaid discussion, the following principles could be culled out as to the circumstances under which a DNA test of a minor child may be directed to be conducted: i. That a DNA test of a minor child is not to be ordered routinely, in matrimonial disputes. Proof by way of 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. ii. DNA tests of children born during the subsistence of a valid marriage may be directed, only when there is sufficient prima-facie material to dislodge the presumption under Section 112 of the Evidence Act. Further, if no plea has been raised as

[2] 2024 7 SCC 773

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to non-access, in order to rebut the presumption under Section 112 of the Evidence Act, a DNA test may not be directed. iii. 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. iv. Merely because either of the parties have disputed a factum of paternity, it does not mean that the Court should direct DNA test or such other test to resolve the controversy. The parties should be directed to lead evidence to prove or disprove the factum of paternity and only if the Court finds it impossible to draw an inference based on such evidence, or the controversy in issue cannot be resolved without DNA test, it may direct DNA test and not otherwise. In other words, only in exceptional and deserving cases, where such a test becomes indispensable to resolve the controversy the Court can direct such test. v. 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.

13. Further, in Nandlal Wasudeo Badwaik, the facts of the case were that due to non-opposition of the counsel for the wife, this Court directed that the serological test be conducted. The report was brought on record, which stated that the appellant-husband was not the biological father of the minor child. At the request of the respondent-wife, a re-test was ordered, which also revealed the same result. The plea with regard to the applicability of section 112 of the Evidence Act was taken only after the DNA test was conducted on the direction of this Court and the report was brought on record. This Court held that when a report of a DNA test conducted on the direction of a Court, was available on record and was in conflict with the presumption of conclusive proof of the legitimacy of the child, the DNA test report cannot be ignored. Hence, this

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Court relied on the DNA test report and held that the appellant-husband would not be liable to pay maintenance. The said case would be of no assistance to the case of the respondent herein. This is because, in the said case, this Court was confronted with a situation in which DNA test report, in fact, was available and was in conflict with the presumption of conclusive proof of legitimacy of the child, under Section 112 of the Evidence Act. However, in the present case, no DNA test is available till date, which was conducted on the direction of a competent Court. Therefore, the respondent-husband would first need to dislodge the presumption under Section 112 of the Evidence Act and thereafter seek a direction to conduct a DNA test of Master 'X".

15. It is trite that the burden is on a litigating party to prove his case by adducing evidence in support of his plea. The Court is not to compel one party to the dispute to assist the other contesting party, vide Ashok Kumar. Therefore, DNA tests are not to be directed on a routine basis, merely to enable a party to prove his case of adultery."

He has also relied on ***Bhabani Prasad Jena Vs. Convenor Secretary, Orissa State Commission for Women and another***[3] para No. 13 which reads thus:

"13. In a matter where paternity of a child is in issue before the court, the use of DNA is an extremely delicate and sensitive aspect. One view is that when modern science gives means of ascertaining the paternity of a child, there should not be any hesitation to use those means whenever the occasion requires. The other view is that the

[3] 2010 8 SCC 633

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court must be reluctant in use of such scientific advances and tools which result in invasion of right to privacy of an individual and may not only be prejudicial to the rights of the parties but may have devastating effect on the child. Sometimes the result of such scientific test may bastardise an innocent child even though his mother and her spouse were living together during the time of conception. In our view, when there is apparent conflict between the right to privacy of a person not to submit himself forcibly to medical examination and duty of the court to reach the truth, the court must exercise its discretion only after balancing the interests of the parties and on due consideration whether for a just decision in the matter, DNA is eminently needed. DNA in a matter relating to paternity of a child should not be directed by the court as a matter of course or in a routine manner, whenever such a request is made. The court has to consider diverse aspects including presumption under Section 112 of the Evidence Act; pros and cons of such order and the test of 'eminent need' whether it is not possible for the court to reach the truth without use of such test."

Then he also relied on the case of ***Ivan Rathinam Vs. Milan Joseph***[4], para no.47 and 49 which reads thus:

"47. First and foremost, the courts must, therefore, consider the existing evidence to assess the presumption of legitimacy. If that evidence is insufficient to come to a finding, only then should the court consider ordering a DNA test. Once the insufficiency of evidence is established, the court must consider whether ordering a DNA test is in the best interests of the parties involved and must

[4] 2025 INSC 115

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ensure that it does not cause undue harm to the parties. There are thus, two blockades to ordering a DNA test: (i) insufficiency of evidence; and (ii) a positive finding regarding the balance of interests.

49. In Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik (supra), all the parties concerned consented to undergo a DNA test. It was solely on this basis that the High Court permitted such testing. The question before this Court was only whether the results of such a test could be admitted into evidence to rebut the presumption of legitimacy. This Court held that since none of the parties contested the DNA test, the Court had to proceed with the assumption that the order for it was validly passed. Thus, the issue before this Court was solely concerning the admissibility of the results of the test, not whether a DNA test could be ordered in the first instance."

He also relied on Judgment of the Hon'ble Supreme Court in the case of ***R. Rajendran Vs. Kamar Nisha and others***[5], para no.28, 38, 40, 43, 44 and 49 which reads thus:

"28) This Court has consistently held that DNA testing cannot be ordered as a matter of course and must be subject to stringent safeguards to protect the dignity of individuals and the legitimacy of children born during the wedlock. The power to direct such tests must be exercised with utmost circumspection and only when the interests of justice imperatively demand Criminal Appeal No.1013/2021 Page 11 of 28 such an intrusive procedure. Courts must remain vigilant against fishing inquiries masquerading as legitimate requests for scientific evidence, ensuring the

[5] 2025 INSC 1304

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sanctity of family relationships is not compromised by speculative or exploratory investigations.

38) This Court must nonetheless consider respondent No.1's prayer for DNA testing, with due regard to the interests of all stakeholders. As held in Bhabani Prasad Jena (supra), when there is an apparent conflict between the right to privacy and bodily integrity on one hand, and the Court's duty to ascertain the truth on the other, judicial discretion must be exercised with utmost care. Such direction can be issued only after a scrupulous balancing of interests of all parties and upon due consideration of whether, for a just decision in the matter, DNA test is eminently necessary.

40) In Nandlal Wasudeo Badwaik (supra), the DNA testing had been conducted with the consent of all parties, and without objection from the wife's counsel. The results indicated that the husband was not the biological father, and the re-test at the wife's request yielded the same result. The challenge based on Section 112 of the Evidence Act was only raised after the test was conducted and the results were already part of the record. The question before this Court, therefore, was confined to whether such DNA test results, obtained pursuant to a prior Court direction, could be admitted Criminal Appeal No.1013/2021 Page 17 of 28 into evidence to rebut the presumption of legitimacy. This Court held that where a DNA report is available on record following a Court directed test, it cannot be disregarded merely because it conflicts with the presumption. The decision thus dealt with the admissibility of DNA evidence already obtained, not whether a DNA test may be ordered against an unwilling party at the first instance.

43) This Court, in Ivan Rathinam (supra), has elucidated the circumstances under which DNA testing may be directed, while maintaining the

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balance between interests of the parties. It reads thus: "47. First and foremost, the courts must, therefore, consider the existing evidence to assess the presumption of legitimacy. If that evidence is insufficient to come to a finding, only then should the court consider ordering a DNA test. Once the insufficiency of evidence is established, the court must consider whether ordering a DNA test is in the best interests of the parties involved and must ensure that it does not cause undue harm to the parties. There are thus, two blockades to ordering a DNA test : (i) insufficiency of evidence; and (ii) a positive finding regarding the balance of interests."

44) In the present case, we find no insufficiency of evidence to dislodge the presumption of legitimacy. The child was born during the subsistence of a valid marriage and the documents on record consistently record Abdul Latheef as the father. More crucially, there is no pleading whatsoever by respondent No.1 alleging non-access between herself and Abdul Latheef during the period of conception. The existing evidence, therefore, stands sufficient.

49) In view of the foregoing discussion, this Court is of the opinion that neither the element of eminent need, contemplated in Bhabani Prasad Jena (supra), nor the positive finding on the balance of interests as articulated in Ivan Rathinam (supra), can be said to have been satisfied in the facts of the present case."

He also relied on the order passed by the Co-ordinate Bench of this Court in the case of ***Chalapathi Vs. Sri. Chandrappa and Ors,*** arising out of WP No.18607/2022 dated 20.08.2026, para Nos.8,9 and 10 which reads thus:

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"8. It is further to be noticed that the petitioner himself has relied upon the fact that he was brought up by his grandparents, namely, Narayanappa and Beeramma. Even after such an assertion, the fact that these persons had knowledge of the circumstances surrounding his birth which would undoubtedly make them material witnesses to establish the factual foundation of his claim, the petitioner has not chosen to examine either Narayanappa or Beeramma before the Trial Court. Such material evidence is vital to be proven by the petitioner when he seeks to displace an existing presumption of legitimacy by resorting directly to a DNA test. It is necessary to bear in mind that on the facts and material available on record, DNA test cannot be allowed to be conducted as the petitioner has failed to establish the basic factual foundation of his claim.

9. An equally important consideration is whether, there exists an "eminent need" for directing a DNA examination? The Hon'ble Supreme Court has held that while considering such a prayer, the Court is required to balance the interests of the person asserting a right to know his biological parentage against the privacy, dignity and familial interests of the persons who would be subjected to the test. The expression 'eminent need' cannot be understood to mean that a DNA test would merely be useful or convenient for determining the biological relationship. The requirement is of a necessity of such degree that the controversy cannot fairly and effectively be adjudicated on the basis of the evidence otherwise available. As held by the Hon'ble Supreme Court in IVAN RATHINAM referred supra, the Court must first examine the existing evidence and the statutory presumption of legitimacy and only upon finding such evidence insufficient, proceed to examine whether the balance of interests requires the procedure of DNA testing. In the present case, the petitioner has neither

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established the foundational facts of his claim nor has rebutted the presumption under Section 112 of the Act and has also failed to prove why paternity cannot be adjudicated upon the evidence available before the Trial Court. The existence of an eminent need is therefore an essential consideration and not a mere formality. Therefore, no 'eminent need' for directing a DNA test is made out in the case on hand. Hence, if the application is allowed on the material available on record, it would effectively convert the DNA test into an instrument of investigation or a fishing enquiry rather than a measure necessitated in the interests of justice.

10. Taking note of the aforesaid enunciation of law laid down by the Hon'ble Supreme Court, it is well settled that a direction for conducting a DNA test cannot be issued as a matter of course. Such a direction, having regard to its intrusive nature and its consequences upon the dignity, privacy and legitimacy of the parties concerned, can be ordered only upon the party seeking such an order laying a prima facie case for the same. The Hon'ble Supreme Court has reiterated that an application for DNA testing cannot be permitted to become a means of conducting a roving or fishing enquiry. A strong prima facie case along with an 'eminent need' must first be established before the Court can consider directing such a test."

Relying on these judgments, it is submitted that the Court has failed to consider the settled principles of law while allowing an application under Section 45 of BSA and referring the petitioner to go for a DNA test.

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4. Learned counsel appearing for the respondent submits that the order does not suffer from non-application of mind. On the contrary, the learned Judge exercised judicial discretion after weighing the pleadings. The admitted sexual relationship, the written assurances, the sustained conduct of the petitioner over several years, and the specific pleading of non-access of the mother's first husband. Once paternity is clearly disputed and a prima facie foundation is laid, DNA examination is the most reliable and least valuable method of ascertaining the truth. It is submitted that the Family Court considered the cumulative circumstances placed on record including the petitioner's own admission of a sexual relationship in his reply dated 25.03.2024, his acknowledgment of and interaction with the child, his financial contributions, the handwritten assurances, and his conduct over several years. It is submitted that the earlier proceedings in OS.No.25550/2024 i.e., a suit filed for permanent injunction concerning immovable property wherein paternity was not and could not have been a matter directly and substantially an issue. An order dated 23.04.2025 rejecting an interlocutory application for appointment of a

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Commissioner for a DNA test is not a decision on a matter in issue in a former suit and does not operate as *res-judicata*. The conduct of the child's mother in other proceedings can neither defeat nor dilute the independent legal right of the respondent/child nor the impugned proceedings. He relied on the judgment of ***Kanthi Devi Vs. Poshi Ram***[6], and ***Goutam Kundu Vs. State of West Bengal & Anr.***[7]. It is submitted that the Hon'ble Apex Court in case of ***Nandlal Wasudeo Badwaik Vs. Lata Nandlal Badwaik***[8] held that where there is a conflict between a conclusive presumption of law and scientific proof accepted by the world community to be correct, the latter must prevail. This principle has been reaffirmed in case of ***Dipanwita Roy Vs. Ronobroto Roy***[9] and most recently in ***Nikhat Parveen @Khusboo Khatoon Vs. Rafique @Shillu***[10], wherein it was held that an undisputed DNA report must prevail over presumption under the said provision. These authorities clearly support the collection of DNA evidence to enable a just and truthful adjudication of the disputed

[6] 2001 (5) SCC 311
[7] (1993) 3 SCC 418
[8] (2014) 2 SCC 576
[9] (2015) 1 SCC 365
[10] 2026 INSC 399

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paternity. It is submitted that the judgment in ***Ivan Rathinam's case*** referred supra is clearly distinguishable and if anything supports the respondent in her case the claim against the alleged biological father failed for the specific reason that non-access of the mother's husband was not proved and the presumption of legitimacy therefore remained intact. The Supreme Court expressly held that the presumption yields where non-access is established. In the present case, unlike in ***Ivan Rathinam's case*** referred supra, the husband has specifically pleaded and placed prima facie material demonstrating the total abandonment and non-access of the mother's first husband well prior to conception. The very determination of non-access and biological paternity is what the impugned order facilitates. The ratio of ***Ivan Rathinam's case*** referred supra thus reinforces, rather than negatives, the necessity of the DNA examination directed by the Family Court. It is submitted that the child's right to identity and maintenance are very much important. The right of a child to know her biological parentage and root is an integral facet of her dignity, identity and personal liberty under Article 21 of the Constitution

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of India and also recognized by Articles 7 and 8 of the United Nations Convention on the Rights of the Child. It is submitted that the order passed by the Family Court is a well considered one and no interference is called for with order impugned.

5. Having heard the learned counsel on either side, perused the entire material on record. In the light of the submission, the question that falls for consideration before this Court is:

> ***"Whether the welfare of the minor child, the necessity of securing maintenance, and the father's admission of a physical relationship with the mother constitute sufficient grounds to direct DNA examination. Particularly when a similar request was rejected earlier and the father objects to the proposed examination relying on Article 21 pf the constitution of India?"***

The first and foremost thing this court has to take into consideration is the nature of the proceedings before the trial court. The mother has approached the court seeking maintenance for the minor child. Section 125(1)(b) of CrPC expressly recognizes the entitlement of both legitimate and illegitimate minor children, unable to maintain themselves, to claim maintenance from their father, subject to the

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requirements prescribed therein. The corresponding protection is available under Section 144(1)(b) of the Bharatiya Nagarik Suraksha Sanhitha, 2023. The law does not distinguish between children born within marriage and those born outside marriage for the purpose of recognizing their entitlement to maintenance under these provisions. The obligation of a father toward his child does not depend on whether he was married to the mother. A child cannot be denied financial support merely because the relationship between the parties did not have the sanction of marriage. However, recognition of this statutory principle does not dispense with the necessity of establishing that the person from whom maintenance is sought is legally responsible for the child's maintenance. The child's entitlement and the liability of the person from whom maintenance is sought are two distinct matters. The former is recognized by statute; the latter must be determined on the facts and evidence. In the present case, the petitioner admits that he had a physical relationship with the mother but denies that he is the biological father. The admission is relevant but cannot be treated as conclusive proof of paternity. A relationship between

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two persons does not, by itself, establish that the child born to the woman was fathered by the man concerned. The court must therefore determine the disputed relationship on legally admissible evidence. The petitioner has raised another objection arising from earlier civil proceedings. According to him, a similar request for DNA examination was rejected by the Civil Court, and consequently the mother is precluded from seeking the same relief in the maintenance proceedings. An order refusing DNA examination and a judgment finally decided on paternity do not necessarily have the same legal effect. An application for DNA examination requires the production of scientific evidence. The court may decline such an examination because the evidence already available is sufficient, because the request is premature, or because the circumstances do not justify interfering with the privacy of the person concerned. Rejection of such an application does not invariably amount to a finding that the alleged biological relationship does not exist. Where the issue of paternity has been conclusively adjudicated between the parties and the determination has attained finality, the principle of *res judicata* may prevent its reconsideration.

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However, where the earlier order merely declined a particular mode of proof without determining paternity, the question of whether a scientific examination is necessary in subsequent proceedings must be addressed in the context of those proceedings. In this background, the learned counsel for the petitioner relied on the judgment of the Apex Court in ***Ivan Rathinam's case*** referred supra assumes significance. In that case, the child was born during the subsistence of a valid marriage between the mother and her husband. The husband's name was recorded as the father in the birth register. Subsequently, the mother alleged that another person was the biological father and instituted proceedings seeking a declaration to that effect. The civil proceedings resulted in a finding that the statutory presumption of legitimacy under Section 112 of the Evidence Act had not been displaced. That finding attained finality. Thereafter, the question of biological paternity was sought to be reopened in maintenance proceedings on the premise that legitimacy and biological paternity were separate issues. The Supreme Court rejected that approach and held that where the statutory presumption of

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legitimacy operates and the issue has already been conclusively adjudicated, the determination cannot be circumvented by initiating another inquiry into biological paternity in maintenance proceedings. The Court also disapproved of reopening an issue that had attained finality between the parties. The distinction between that case and the present matter must be appreciated. In ***Ivan Rathinam's case*** referred to supra, the question of the child's regularly recognized parentage had been determined in earlier proceedings. In the present case, the petitioner relies upon an earlier rejection of an application for DNA examination. Unless that order also involved a conclusive determination of paternity, its effect cannot be equated with the adjudication considered by the Apex Court. The decision in ***Ivan Rathinam's case*** referred supra has also explained the significance of Section 112 of the Evidence Act, where a child is born during subsistence of a valid marriage, the statutory presumption of legitimacy cannot be displaced merely by alleging that the mother had a physical relationship with another man. The relevant inquiry concerns non-access

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between the spouses during the period when the child could have been conceived. The existence of an additional relationship does not by itself establish non-access. Whether that presumption arises in the present case depends upon the marital status of the mother during the relevant period and the other fundamental factors required by Section 112 of the Evidence Act. The trial court must address that question whenever the pleadings and material discloses circumstances attracting the provision. The petitioner's admission of a physical relationship cannot be used to bypass the statutory presumption that is otherwise applicable. Apart from these factual considerations, ***Ivan Rathinam's case***, referred supra, is based on the principle of wider application concerning DNA examination. The Hon'ble Supreme Court examined the competing interests involved in compelling a person to undergo such a test. It emphasized the necessity of protecting privacy and dignity while recognising that a child may have a legitimate interest in establishing biological parentage. The Supreme Court explained that the Court must first consider whether the existing evidence is sufficient to resolve the controversy. Only

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then the evidence is found insufficient should DNA examination be considered. Even thereafter, the Court must determine whether the examination is justified upon balancing the interests of the person concerned and the consequences of the proposed intrusions. Thus, the requirement of an eminent need is an essential condition for directing for DNA examination. The said principle is consistent with earlier decisions in ***Bhabani Prasad Jena case*** referred supra, in the case of ***Ashok Kumar Vs. Raj Gupta & others, Aparna Ajinkya Firodia case*** referred supra.

6. The ratio laid down in the above cited Judgments raises caution against directing scientific examination merely because it may provide a more convenient or conclusive method of proof. The Court must first consider the evidence otherwise available and determine whether a dispute genuinely requires such examination. In the case of ***Chaturbhuj Pradhan v. Amar Pradhan & Anr***[11], the Hon'ble Supreme Court subsequently considered the principles laid down in ***Ivan Rathinam's case*** referred supra while examining a direction

[11] 2026 INSC 600

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for DNA testing in proceedings where biological paternity was directly in issue. The Court upheld the examination upon finding that the existing evidence could not adequately resolve the controversy and the balance of interest justified the test. The Court also distinguished earlier findings which did not amount to a conclusive adjudication of paternity. These decisions makes it clear that the DNA examination is neither prohibited in all cases involving disputed paternity nor permissible merely because paternity is denied. Its necessity must be established in the circumstances of each case.

7. In the present case, the trial court has relied upon the welfare of the minor child and the petitioner's admission of a physical relationship with the mother. These are undoubtedly relevant considerations. The child has approached the court seeking maintenance and determination of paternity may be necessary for deciding whether the petitioner is liable to maintain the child. The admission also provides a factual foundation for examining the mother's assertion. Nevertheless, the welfare of the child, important as it is, cannot be treated as a substitute for the judicial inquiry required before directing

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DNA examination. The child's need for maintenance establishes the importance of deciding the claim expeditiously. It does not necessarily establish that the claim is decided only through scientific testing. The trial court was required to consider whether the mother could establish the alleged parental relationship through the evidence otherwise available. The circumstances concerning the period of the admitted relation, the birth of the child, any acknowledgment of parentage and other relevant evidence would have a bearing upon the inquiry. Only if such evidence was insufficient to resolve a dispute, would the necessity of a DNA examination arise.

8. The impugned order does not disclose that the Family Court undertook this exercise. Its reasoning rests principally upon the child's welfare, the need for maintenance and the admission of the physical relationship. While those considerations establish the relevancy of paternity to the proceedings, they do not, without an assessment of the available evidence, establish the imminent need contemplated in ***Ivan Rathinam's case*** referred supra. The objection under Article 21 of the Constitution of India must also be examined in

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this context. DNA examination involves collection and analysis of biological material capable of revealing sensitive genetic information. The petitioner's right to privacy and bodily autonomy is therefore directly engaged. The fact that he has accepted the physical relationship does not amount to consent for a DNA examination or surrender of his constitutional rights. At the same time, the petitioner cannot claim absolute immunity from the scientific examination merely by invoking Article 21 of the Constitution of India. In the case of ***Sharda Vs. Dharampal***[12], the Hon'ble Supreme Court recognised that courts may direct medical examination in appropriate circumstances. Such directions must, however, be founded upon sufficient material and justified by the requirements of adjudication. The right to privacy recognised in ***Justice K.S. Putta Swami (Retd.) Vs. Union of India***[13] similarly requires interference with bodily autonomy and personal information to satisfy the requirements of legitimacy, necessity and proportionality. The Court must therefore decide whether the intrusion is genuinely necessary for adjudicating the

[12] 2003 4 SCC 493
[13] 2017 10 SCC 1

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maintenance claim, and whether the same purpose can reasonably be achieved through less intrusive evidence. The exercise involves balancing the rights of both individuals rather than treating either interest as automatically overriding the other. The trial Court has not addressed the petitioner's constitutional objection through this balancing exercise. Merely observing that the welfare of the child is paramount does not answer whether the proposed examination is necessary and proportionate. The power to direct DNA examination is available to the trial Court, but its exercise must satisfy the principle laid down by the Apex Court. The importance of the issue to be determined does not dispense with the necessity of examining whether the proposed means of proof is legally sustainable.

9. In these circumstances, this Court is of the considered view that the Family Court is justified in recognizing the relevance of the disputed biological relationship to the maintenance proceedings, but it failed to undertake the further inquiry required before directing DNA examination. The reason assigned in the impugned order does not satisfy the tests of evidentiary necessity and proportionality explained in ***Ivan***

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Rathinam's case referred supra. Hence, this Court is passing the following:

ORDER

i. The order dated 18.03.2026 passed in I.A.No.5 in Crl.Misc.No.63/2025 by the Principal Judge, Family Court, Bangalore, directing DNA examination, and the order passed under Section 45 of the BSA are ***set aside,*** and the matter is ***remanded back*** to the Family Court for fresh consideration.

ii. The Family Court shall reconsider the application after examining the effect of the earlier civil proceedings, the applicability of the statutory presumption of legitimacy, if applicable, the evidence otherwise available to determine paternity, and the necessity of DNA testing.

iii. If scientific examination is found necessary, the Family Court shall record reasons showing that the dispute cannot be adequately resolved by other evidence and that the proposed intrusion upon privacy is proportionate to the legitimate object of

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the proceedings. The Family Court shall decide the application expeditiously, without being influenced by any observations made by this court.

iv. Pending IAs., if any in the petition shall stand closed.

SD/-
(LALITHA KANNEGANTI)
JUDGE

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List No.: 1 Sl No.: 8
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