



2026:AHC:54062

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 1428 of 2025

Jawahir Lal Jaiswal

.....Revisionist(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Revisionist(s) : Garima Kumari Jaiswal, Pratibha
Jaiswal

Counsel for Opposite Party(s): G.A., Saurabh Pandey

A.F.R.

Court No. - 85

HON'BLE MADAN PAL SINGH, J.

1. Heard Ms. Pratibha Jaiswal, learned counsel for the revisionist, Mr. Saurabh Pandey, learned counsel for opposite party no.2 and the learned A.G.A. for the State.

2. The present criminal revision has been preferred by the revisionist against the impugned judgment and order dated 1st March, 2025 passed by the Principal Judge, Family Court, Sonbhadra in Criminal Misc. Case No. 575 of 2019 (Khusbu Vs. Jawahir Lal Jaiswal) under Section 125 Cr.P.C., Police Station Pannuganj, District-Sonbhadra, whereby the trial court while allowing the application of opposite party no.2 under Section 125 Cr.P.C. has directed the revisionist to pay Rs. 3,000/- per month to opposite party no.2 from the date of filing of instant application under Section 125 Cr.P.C. till the date of passing of the impugned judgment and Rs. 6,000/- per month from the date of passing of the impugned judgment till the date of her marriage, towards monthly maintenance allowance.

3. Learned counsel for the revisionist submits that it is admitted fact that marriage of the revisionist has been solemnized with the mother of opposite party no.2, namely, Hirmani/Himani on 23rd

June, 1994 in accordance with the Hindu Rites and Rituals. Since mother of opposite party no.2 i.e Himani/Hirmani was very beautiful and the revisionist was not handsome, so she did not like him since her marriage and used to harass and insult him on every small matter. Himani/Hirmani wanted to leave the revisionist and live with someone else, that is why she used to fight with the revisionist on every small matter. In connection with the same, in February, 2000, Himani/Hirmani i.e. mother of opposite party no.2 left the house of the revisionist without any reason and was living with another person, namely, Devanand @ Pachdev. The revisionist had tried best effort to take Himani/Hirmani back to his house but he did not get success. From illicit relationship of Himani/Hirmani with Devanand @ Pachdev, opposite party no.2, namely, Khusbu was born on **1st January, 2011**. On 18th November, 2019, opposite party no.2 filed an application under Section 125 Cr.P.C. through her mother Himani/Hirmani for claiming maintenance allowance from the revisionist as he is her real father, which was registered as Case No. 575 of 2019. On 1st September, 2021 the revisionist filed his objection in the said case and Himani/Hirmani also filed her statement of affidavit. Since Himani/Hirmani i.e. mother of opposite party no.2 was never in a relationship with the revisionist after February, 2000, how could the revisionist be the father of her child like opposite party no.2. As such, the revisionist moved an application before the trial court for getting D.N.A. test of opposite party no.2 and himself conducted for ascertaining the correct parentage of opposite party no.2. The said application was rejected by the trial court vide order dated 1st February, 2025 against which the revisionist filed Application U/S 528 BNSS No. 28087 of 2025 (Jawahir Lal Jaiswal Vs. State of U.P. & Another), which is still pending before the Hon'ble High Court.

4. Learned counsel for the revisionist then submits that when the mother of opposite party no.2 after February, 2000 had never established physical relationship with the revisionist and she has been in adultery with one Devanand @ Pachdev and from their

illicit relationship, opposite party no.2 was born, then under such circumstances, the opposite party no.2 is not entitled to get any maintenance allowance from the revisionist, as he is not her biological father.

5. Lastly, learned counsel for the revisionist submits that since there is a very serious issue as to who is the biological father of opposite party no.2 involved in the present criminal revision for which D.N.A. test of opposite party no.2 and revisionist is very important factor. However, the trial court only on the vague and general averments and on the basis of conjectures and surmises has passed the judgment impugned awarding Rs. 3,000/- per month in favour of opposite party no.2 from the date of filing of instant application under Section 125 Cr.P.C. till the date of passing of the impugned judgment and Rs. 6,000/- per month from the date of passing of the impugned judgment till the date of her marriage, towards monthly maintenance allowance, which is per se illegal.

6. On the above premise, learned counsel for the revisionist submits that since the trial court has passed the impugned judgment without application of mind and without any concrete evidence on record, the same cannot legally sustained and is liable to be quashed.

7. On the other-hand learned counsel for opposite party no.2 and the learned A.G.A. have opposed the present criminal revision by submitting that there is no illegality or infirmity in the impugned judgment passed by the trial court so as to warrant any interference by this Court in exercise of revisional jurisdiction.

8. On the above premise, learned counsel for opposite party no.2 submits that since the trial court has not committed any error in passing the impugned judgment and also the same is based on concrete evidence, the present criminal revision is liable to be dismissed.

9. I have considered the facts and circumstances of the case and the submissions made by the learned counsel for the parties and perused record including the impugned judgment passed by the trial court.

10. From the records some disturbing facts emerge, which are as under:

11. In the instant application filed by Himani/Hirmani on behalf of opposite party no.2 under Section 125 Cr.P.C., it has been stated that on 20th February, 2000, when her husband i.e. revisionist and her in-laws had beaten her and thrown out from her matrimonial house and thereafter on 22nd January, 2001, she moved an application for maintenance on which an order was passed on 27th May, 2005 awarding Rs. 600/- per month in favour of Himani/Hirmani i.e. mother of opposite party no.2. It has been further stated that when the revisionist did not comply with the order dated 27th May, 2005, she filed an application under Section 128 Cr.P.C. On oral order passed in the said proceedings, Himani/Hirmani went to her matrimonial house on **25th July, 2009** along with the revisionist. After staying at her matrimonial house only for a month, she went to her parental house and she came to know on 12th January, 2010, the revisionist filed an application before the trial court for her medical examination about her pregnancy.

12. In the application under Section 125 Cr.P.C. filed by Himani/Hirmani on behalf of opposite party no.2 it has again stated that on **15th January, 2010**, she went to her matrimonial house where she stayed **for four months only** and conceived pregnancy. In paragraph no.9, Himani/Hirmani has stated that on **1st January, 2011**, she delivered a female child in Primary Health Centre, Tiyara Ramgadh, Sonbhadra and the said child was named as Khusbu (opposite party no.2 herein).

13. Perusal of page no. 23 and 24 of the supplementary affidavit filed on behalf of the revisionist dated 25th February, 2026, which

is the order dated 19th March, 2014 indicates that an application no. 25B had been moved by the revisionist before the Principal Judge, Family Court, Sonbhadra, which was registered as Case No. 202 of 2013 stating therein that since on oral instruction of Court dated 21st July, 2009 passed in proceedings under Section 128 Cr.P.C. by Himani/Hirmani, on 25th July, 2009, Himani/Hirmani came to the house of the revisionist and after staying for a few days, she told him that she was pregnant, hearing which the revisionist was surprised and asked her to get herself medically examined because if she was not in a relationship with him then how could she be pregnant, therefore, he prayed for get Himani/Hirmani medically examined. The said application was rejected by the trial court vide order dated 19th March, 2014, a copy of which has been enclosed as Annexure No. 6 to the supplementary affidavit filed on behalf of the revisionist. In the said case, Himani/Hirmani claimed that on oral instruction of Court dated 21st July, 2009, she went to the house of revisionist in **April, 2008** and when she became pregnant, she was falsely accused and thrown out of the house, then she came back to her maternal place and gave birth to a daughter in **December, 2009**.

14. Perusal of page no.19 of the said supplementary affidavit reflects that a Certificate has been issued by Medical Officer, Primary Health Centre, Chatara, Sonbhadra certifying that Himani/Hirmani wife of Jawahar delivered a baby at the Primary Health Center in Chatara on **20th November, 2009**. The name of the ANM who delivered the baby is Krishna Kanaujiya, entry of which is at serial number 231 of J.S.Y. Register of 2009-2010. Similarly, page no. 21 of the supplementary affidavit is a birth certificate dated 1st February, 2010 wherein birth date of Khusbu (opposite party no.2 herein) daughter of Jawahar and Himani/Hirmani Devi has been mentioned as **20th November, 2009**.

15. In paragraph no. 9 of the affidavit of the present criminal revision, it has been stated on behalf of the revisionist that after

leaving the house of the revisionist to be precise in **February, 2000**, Himani/Hirmani i.e. mother of opposite party no.2 had been living in adultery with Devanand @ Pachdev and from their illicit relationship, the opposite party no.2 was born on **1st January, 2011**. Similarly, in affidavit of Application U/S 528 BNSS No. 28087 of 2025 (Jawahir Lal Jaiswal Vs. State of U.P. & Another) filed by the revisionist before the Hon'ble High Court, which is still pending consideration, the birth date of opposite party no.2 has been mentioned as "**1st January, 2011**".

16. From deeper scrutiny of the aforesaid facts, this Court is fully unable to find out as to when and how many times Himani/Hirmani i.e. mother of opposite party no.2 went to her husband i.e. the revisionist's house after 2000, for how many days, she stayed with him, when she became pregnant and when she gave birth to a child and who exactly is her biological father.

17. Perusal of page no. 28 of the supplementary affidavit transpires that a certificate has been issued by Medical Officer, Delivery Centre, Robertsganj, Sonbhadra, wherein it has been mentioned that Hirmani wife of Devenand @ Panchdev has delivered her second child on 12th July, 2017 at 09:15 a.m. and entry of the same is at serial no. 186/584 of yearly registry.

18. When this Court made pointed query upon the learned counsel for the opposite party no.2 whether it was true that Himani/Hirmani had given birth to a second child whose father was Devanand @ Panchdev and also asked with whom Himani/Hirmani was living at present, he has clearly stated that when the revisionist accused Himani/Hirmani of living with someone else due to which opposite party no. 2 was born, since then i.e. after 2011, Himani/Hirmani left the revisionist and was living with Devanand and the second child is theirs but the father of Hirmani/Himani's first child is the revisionist.

19. From the aforesaid facts, this Court is of the prima facie opinion that there is substance in the submission made by the learned

counsel for the revisionist that the revisionist is not the biological father. However, for ascertaining the correct fact as to who is the biological father of opposite party no.2, D.N.A. test of revisionist and opposite party no.2 is required.

20. This Court has not dispute the judgment of the Apex Court in the case of **R. Rajendran VS. Kamar Nisha & Others** reported in *2025 INSC 1304*, wherein it has been opined by the Apex Court that D.N.A. testing should not be warranted if paternity is a collateral issue and not directly required to prove the primary allegations. Compelling DNA testing without such necessity amounts to unwarranted intrusion violating privacy and bodily autonomy. In paragraph no. 29 of the said case the Apex Court has framed certain guidelines for direction qua D.N.A. testing.

21. A Coordinate Bench of this Court in the case of **Sachin Agarwal Vs. State of U.P. & Another passed in Application U/S 482 Cr.P.C. No. 28298 of 2021** decided on 30th May, 2024 in paragraph nos. 15 to 22 has opined as follows:

"15. For the pursuit of justice, the court must employ all available means to uncover the truth and safeguard the rights of all individuals. The fundamental duty of the judiciary is to ensure that justice prevails by utilizing the most accurate and reliable methods, thus upholding the principles of fairness and equity for everyone involved. In the case of Nandlal Wasudeo Badwaik Vs. Lata Nandlal Badwaik & Anr (2014) 2 SCC 576, the Hon'ble Supreme Court in para 17, highlighted the reliability and scientific accuracy of DNA tests. The Court emphasized that while Section 112 of the Evidence Act creates a presumption of conclusive proof under certain conditions, this presumption is rebuttable. The Supreme Court asserted that in the interest of justice, the truth must be ascertained using the best available science, stating :- "In our opinion, when there is a conflict between a conclusive proof envisaged under law and a proof based on scientific advancement accepted by the world community to be correct, the latter must prevail over the former."

16. In Jamshed Vs. State of U.P. [1976 Cri L J 1680 (All)], wherein it was held that a blood sample can be compulsorily extracted during a "medical examination" conducted under Section 53 Cr.P.C. At that time, the collection of blood samples was not expressly contemplated in the said provision. Nevertheless, the Court had ruled that the phrase "examination of a person"

should be read liberally so as to include an examination of what is externally visible on a body as well as the examination of an organ inside the body.

17. In light of the Hon'ble Supreme Court's decision in [Aparna Ajinkya Firodia v. Ajinkya Arun Firodia 2023 LiveLaw \(SC\) 122](#), this court recognizes the significance and sensitivity surrounding the order for a DNA test. It is imperative to acknowledge that while a DNA test is a powerful tool in ascertaining biological relationships, its deployment must be carefully weighed against potential misuse, the resultant social stigma, and the psychological impact on the children. The court must be cautious to avoid directing such tests in a routine or casual manner, and instead should assess the necessity based on the specific facts and circumstances of each case.

18. The Supreme Court in the matter of [Selvi Vs. State of Karnataka, 2010 \(7\) SCC 263](#) has categorically held that the civil court can direct for conducting medical examination to ascertain mental state of a party of a divorce proceeding.

19. Furthermore, the applicant's refusal to undergo the DNA test, a procedure deemed essential for determining paternity and safeguarding the child's welfare, could warrant an adverse inference under Section 114, Illustration (h) of the Indian Evidence Act. This provision allows the court to infer that evidence which could be and is not produced would, if produced, be unfavorable to the person withholding it. In [Rohit Shekhar v. Narayan Dutt Tiwari 2011 SCC OnLine Delhi 4076](#), the Delhi High Court affirmed this principle, stating that refusal to undergo a DNA test in a paternity dispute can lead to an adverse inference against the refusing party. Such an inference, while not conclusive, strengthens the court's ability to arrive at a just decision based on the available evidence and the best interests of the children.

20. The psychological and social implications of unresolved paternity disputes cannot be ignored. A definitive determination of paternity through a DNA test can provide closure and stability for all parties involved, particularly the children. Ensuring that the children receive rightful maintenance that not only fulfils their financial needs but also affirms their social and legal status.

21. In the present case, it is essential to consider the broader implications of directing a DNA test. The court is mindful of the potential trauma and stigma that might affect the children, should the paternity dispute be subjected to public scrutiny. The principle that the best interests of the children should be of the paramount consideration in all matters concerning them, as enshrined in Article 3 of the Convention on the Rights of the Children. The right to maintenance is not merely a legal provision but is deeply rooted in fundamental human rights. The Universal

Declaration of Human Rights recognizes the right to an adequate standard of living, which includes food, clothing, housing, and medical care. In the context of children, maintenance is indispensable for their survival, growth, and development. Denying maintenance due to unresolved paternity issues would be a violation of their basic human rights.

22. In this case though the applicant is refusing the maintenance and the paternity of the children, however, when the court ordered for the DNA test, the applicant has assailed that order in this application. The applicant cannot be allowed to blow hot and cold at the same time. He cannot deny the paternity of the children and at the same time he refuses to undergo the DNA test. If he is doubting the paternity the only way to prove his case is by the DNA testing. Moreover, the applicant cannot equate the DNA test with the other tests like Narco test which needs a prior consent. Explanation 53 of Cr.P.C. now makes it abundantly clear "examination" would include DNA parentage."

22. In the Court's view, the present case involves peculiar facts and circumstances in which a father i.e. revisionist has every right to know whether he is biological father of opposite party no.2 or not. Similarly, a daughter i.e. opposite party no.2 also has every right to know who is her biological father because if this is not known, it will continue to trouble both of them throughout their lives and they will also not be able to lead their lives properly in society.

23. Consequently, the impugned judgment and order dated 1st March, 2025 passed by the Principal Judge, Family Court, Sonbhadra in Criminal Misc. Case No. 575 of 2019 (Khusbu Vs. Jawahir Lal Jaiswal) under Section 125 Cr.P.C. 125 Cr.P.C., Police Station Pannuganj, District-Sonbhadra is set aside.

24. After getting the D.N.A. testing of revisionist and opposite party no.2 undertaken, the trial court is directed to consider and decide Criminal Misc. Case No. 575 of 2019 (Khusbu Vs. Jawahir Lal Jaiswal) under Section 125 Cr.P.C., Police Station Pannuganj, District-Sonbhadra afresh on merits, in accordance with law, by means of a reasoned and speaking order, after affording an opportunity of hearing to both parties, preferably within three months from the date of production of a certified copy of this order, without granting unnecessary adjournments to either of the

parties, if there is no other legal impediment.

25. The present criminal revision is **allowed** subject to the observations and directions made above.

26. There shall be no order as to costs.

March 17, 2026

Sushil/-

(Madan Pal Singh,J.)