





# NARAYAN DUTT TIWARI VS. ROHIT SHEKHAR & ANR.

(2012) 12 SCC 554

## 2012

Case Status

**NOT  
OVERRULED**

The Supreme Court upheld the Delhi High Court's reasoning on paternity tests which was that the right to privacy exists; however, it is subject to lawful action taken to protect others.

Case Type

**SPECIAL LEAVE  
PETITION (CIVIL)**

Additional  
Aspect(s)  
of Privacy

**AUTONOMY**

Constitutional  
Provision(s)

**ARTICLE  
21**

Bench  
Strength

**2**

JUDGES

1 opinion by

Justice D. Verma and  
Justice S.J. Mukhopadhaya.

Number of  
Opinion(s)

**1 / 0**

OPINIONS DISSENT

*“We are therefore of the opinion that adverse inference from non-compliance cannot be a substitute to the enforceability of a direction for DNA testing. The valuable right of the appellant under the said direction, to prove his paternity through such DNA testing cannot be taken away by asking the appellant to be satisfied with the comparatively weak ‘adverse inference’.”*

In this case, Rohit Shekhar, the Respondent, had filed a suit with the High Court of Delhi, seeking a declaration of paternity from prominent politician Narayan Dutt Tiwari, the Petitioner. In appeal, the Supreme Court considered an order passed by a Division Bench of the High Court of Delhi upholding an order by a Single Judge of the Delhi High Court in an interim application filed by the Petitioner. The order of the single Judge directed the Petitioner to permit a DNA test to be conducted on him. The Supreme Court, while affirming the order of the Division Bench passed certain directions to ensure the confidentiality of the Petitioner. The orders before the Division Bench of the High Court dealt with the issues of implementability and enforceability of the Single Judge’s order directing a DNA test and addressed the main impediments to the enforceability of such order. These impediments included the potential violation of the right to privacy of the Petitioner, if compelled to take the DNA test. However, on balance, the High Court, considered the Respondent’s right to know his paternity would take primacy.

The Single Judge noted the decisions of the Supreme Court in *Sharda vs. Dharmpal* ((2004) 4 SCC 493) and *Bhabani Prasad Jena vs. Convenor Secretary, Orissa State Commission for Women and Anr* ((2010) 8 SCC 633), observing that there was no violation to the right to life or privacy in directing a DNA test to be undergone by a person. However, this decision should be exercised after weighing all pros and cons and satisfying the test of eminent need. However, while the Single Judge suggested that a DNA test could not be compelled and the Court was only entitled to draw an adverse inference from a failure to take such a test, the Division Bench differed from this opinion. They suggested that in light of the fact that the privacy rights of an individual were subject to checks and balances, and that technological advances required a harmonious reading of statutory provisions, a DNA test could be compelled. The Division Bench therefore directed ‘use of reasonable force’ against the Petitioner to ensure compliance with the Single Judge’s order, as it felt that primacy needed to be given to the Respondent’s right to know his paternity over the Petitioner’s right to privacy.

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## Facts

Rohit Shekhar, the Respondent had filed a suit with the High Court of Delhi, seeking a paternity declaration along with a perpetual injunction restraining the Petitioner from denying in public or otherwise the fact that he was the father of the Respondent. Further, the Respondent also filed an interim application requesting the High Court to direct the Petitioner to submit himself for a DNA test or any other test required to determine the paternity of the Respondent. The Single Judge allowed the Respondent's application and directed the parties to appear before the Joint Registrar for the purpose of DNA testing. Aggrieved by this order, the Petitioner filed an appeal before the Division Bench of the High Court, contending that he should not be compelled or forced against his will, to provide blood or other tissue samples for DNA testing.

The Division Bench dismissed the Petitioner's appeal, after which he filed this Special Leave Petition (SLP).

## Issue

A) Whether a court order directing DNA testing was an enforceable and implementable order.

## Decision

The Supreme Court made minor modifications (by providing additional confidentiality safeguards to the Petitioner) to the order of the High Court which analysed the impugned order of the Single Judge. However, the Court largely affirmed the order of the Division Bench of the High Court. The High Court discussed the fact that the Single Judge placed reliance on *Sharda vs. Dharmpal* ((2003) 4 SCC 493), to hold that although a matrimonial court had the implicit and inherent power to order a person to submit himself to a medical test, if the person refused to comply with the court's order, the only consequence of that would be to draw an adverse inference. The Division Bench noted on the aspect of enforceability and implementability of the impugned order that the same was not the subject matter of *Sharda* or other judgments like *Goutam Kundu vs. State of West Bengal* ((1993) 3 SCC 418), and *Bhabani Prasad Jena vs. Convenor Secretary, Orissa State Commission for Women and Anr* ((2010) 8 SCC 633), which the Single Judge had relied upon in his judgment.

Further, the Division Bench referred to *H.M Kamaluddin Ansari & Co. vs. Union of India* ((1983) 4 SCC 417) and *Attorney General vs. Guardian Newspapers Ltd.* ((1987) 1 WLR 1248) which held that orders of the court were to be complied with and the court would not pass an order which would be ineffective. It also referred to *K.A. Ansari vs. Indian Airlines Ltd* ((2009) 2 SCC 164) wherein it was held that difficulty in implementation of an order passed by the court, could not be an excuse for its non-implementation. Moreover, the Court noticed in *M.V.S. Manikayala Rao vs. Narasimhaswami* (AIR 1966 SC 470) that under Section 36 of the Code of Civil

Procedure, 1908, the provisions relating to execution of decree also applied to the execution of orders.

The Division Bench noted that the Single Judge had held the impugned order unimplementable and unenforceable for the reason that it would be violative of Article 21, because mandating a medical test for an unwilling individual would entail an element of violence and intrusion into an individual's privacy, which was impermissible under Article 21, and therefore the impugned order allowed the Petitioner liberty to comply with or disregard its order. The Single Judge also observed that confining a person to forcibly draw blood or other bodily substances was not envisaged in any statutory provisions governing civil legislation. In this regard, the High Court referred to *Selvi vs. State of Karnataka* ((2010) 7 SCC 263) which held that compelled extraction of blood samples in course of medical test did not amount to conduct that shocks the conscience and use of reasonable force, where necessary, was mandated by law.

Further, the Division Bench analysed the impugned order on the aspect of privacy and noted that the impugned order had held that DNA testing was not violative of Article 21, while stating that the level of privacy protection was contextual and human rights law justified ordering a person to submit himself to medical tests that may be invasive as the right to privacy was not an absolute right and could be reasonably curtailed. In stating this, the Single Judge had contradicted himself as he had held the same factors to be an impediment to the implementability and enforceability of his order. The Division Bench noted this and

thus held, "what is not an impediment to the making of the order, cannot become an impediment to the enforceability of the order and would tantamount to saying that the court order is violative of the rights of the litigant".

The Division Bench found it improper to allow the Petitioner to subdue a valuable right of the Respondent, by agreeing to be satisfied with a comparatively weak 'adverse inference', and thus directed the Single Judge to take police assistance as well as allowed use of reasonable force, to ensure compliance with the impugned order. Broadly speaking, the Division Bench of the High Court did not interfere with the impugned order as it noticed that Single Judge directed a medical test upon *prima facie* evidence that satisfied the eminent need test, but modified the impugned order to ensure its compliance and corrected the inherent contradiction of the impugned order.

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