Case Details

Title: Nikhat Parveen @ Khusboo Khatoon Versus Rafique @ Shillu

Court: Supreme Court Of India, Criminal Appellate Jurisdiction

Date of Decision: April 21, 2026

Judge: Hon'ble Mr. Justice Sanjay Karol and Hon'ble Mr. Justice Nongmeikapam Kotiswar Singh

Citation: 2026 INSC 399

Case Number: Criminal Appeal No of 2026 (Arising out of Special Leave Petition (Crl.) No.15256 of 2023)

Rethinking the Presumption of Legitimacy under Section 116 BSA,2023, in Light of "Nikhat Parveen @ Khusboo Khatoon v. Rafique @ Shillu (2026 INSC 399)": A Case Comment

I. Abstract

This case comment examines the Supreme Court's decision in Nikhat Parveen @ Khusboo Khatoon v. Rafique @ Shillu (2026 INSC 399), addressing whether a consented and unchallenged DNA test report can rebut the presumption of legitimacy under Section 116 of the Bharatiya Sakshya Adhiniyam, 2023. The case arose from a domestic violence complaint under Section 12 of the DV Act, 2005, where the respondent sought and obtained a DNA test that excluded him as the biological father, thereby denying maintenance to the child. Employing doctrinal analysis and reviewing precedents, the comment critically evaluates the Court's finding that a finalised, consented DNA report prevails over a statutory presumption.

II. Key Words

Presumption of Legitimacy, DNA Paternity Test, Child Maintenance, Judicial Caution.

III. Parties Involved

The appellant, Nikhat Parveen @ Khusboo Khatoon, is the mother of a minor child. She had previously worked as domestic help in the respondent's household and subsequently married him. She filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 ('DV Act')[1] seeking maintenance for herself and her minor child, along with other reliefs. She ultimately carried the matter to the Supreme Court by way of Special Leave Petition (SLP), challenging the concurrent findings of the courts below that denied maintenance to her daughter.

The respondent, Rafique @ Shillu, is the alleged father and husband of the appellant. His consistent position across all proceedings was that he has no obligation to maintain a child who is not biologically his.

IV. Legal Provisions Invoked

The primary provision in this dispute was Section 116 of the Bharatiya Sakshya Adhiniyam, 2023[2]. It provides that a child born during a valid marriage, or within 280 days of its dissolution (the mother remaining unmarried), shall be conclusively presumed to be the legitimate child of the husband, unless it can be shown that the parties had no access to each other at any time when the child could have been conceived. Section 12 of the DV Act was invoked at the Trial Court stage, under which the appellant filed her initial application for interim maintenance.

V. Statement of Facts

The appellant worked in the respondent's residence for approximately three years. The respondent allegedly established a sexual relationship with her on the promise of marriage. The parties solemnised their marriage, and a child was born thirty days after the wedding.

Matrimonial relations broke down quickly. The appellant filed a complaint under Section 12 of the DV Act before the Metropolitan Magistrate seeking interim maintenance of Rs. 25,000/- per month

[1] The Protection of Women from Domestic Violence Act, No. 43 of 2005.
[2] Bharatiya Sakshya Adhiniyam, 2023 § 116.

for herself and her minor daughter, a protection order against the respondent and his family, and restoration of her stridhan.

The respondent denied everything and asked the court to order a DNA test. The validity of the marriage was itself in question before the courts. The Trial Court permitted the test, and the report excluded the respondent as the biological father. On that basis, the Trial Court rejected the application for interim maintenance.

Further, the appellant appealed to the District and Sessions Judge, where the appeal on the appellant's own maintenance was also dismissed.

The appellant then approached the High Court of Delhi, which held that the Section 112 presumption was unavailable to the appellant because the DNA test had already been conducted and its result was undisputed on record. Child maintenance was denied. However, the High Court found that the Trial Court had erred in denying the appellant's own interim maintenance and remanded that question for fresh determination.

Lastly, the appellant filed an SLP before the Supreme Court. Leave was granted, and the matter was converted into a Criminal Appeal.

VI. Issues

Substantive Issues:

1. Whether the presumption of legitimacy under Section 116 of the BSA, 2023 is rebutted by a DNA test report establishing that the respondent is not the biological father of the appellant's child?
2. Whether a child born during the continuance of a valid marriage is entitled to maintenance from the husband, notwithstanding a DNA report negating biological paternity, when the DNA test was conducted with the consent of the parties, and its results have attained finality?

3. Whether the High Court correctly applied the legal position laid down in Nandlal Wasudeo Badwaik 3 in denying maintenance to the child, as distinguished from the position in Aparna Ajinkya Firodia [4]?

Procedural Issues:

1. Whether the Trial Court erred in ordering a DNA test in proceedings under Section 12 of the Protection of Women from Domestic Violence Act, 2005, at the respondent's request, and whether the appellant's consent to the same and failure to dispute the results rendered the report final and binding?
2. Whether the First Appellate Court correctly dismissed the appeal after recording that the appellant no longer pressed the prayer for maintenance of the child?
3. Whether the High Court of Delhi erred in its approach by remanding the matter of the appellant-mother's maintenance to the Trial Court for fresh consideration while simultaneously denying maintenance to the child?

VII. Judgment

Precedents Considered:

The Supreme Court undertook an extensive review of the evolution of judicial opinion on the presumption of legitimacy under Section 112 of the IEA. The following precedents were considered:

1. Dukhtar Jahan v. Mohd. Farooq (1987)[5] — The Court noted that Section 112 is a rule of law based on the principle of justice. Courts have always inclined towards upholding the legitimacy of a child unless the facts are "so compelling and clinching as to necessarily warrant a finding that the father could not have at all begotten the child." Courts must refrain from "lightly or hastily rendering a verdict" that would brand a child as illegitimate.

[3] *Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik,* (2014) 2 SCC 576.
[4] *Aparna Ajinkya Firodia v. Ajinkya Arun Firodia*, (2024) 7 SCC 773.
[5] *Dukhtar Jahan v. Mohd. Farooq*, (1987) 1 SCC 624.

2. Goutam Kundu v. State of W.B. (1993) [6] — This decision gave primacy to the presumption under Section 112 and laid down five key principles: (i) courts cannot order blood tests as a matter of course, (ii) roving inquiries are impermissible; (iii) The husband must establish non-access through a strong prima facie case; (iv) courts must consider the consequence of branding a child as illegitimate; and (v) no one can be compelled to give a blood sample.
3. Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik (2014) — The Hon'ble Court has recognised the superiority of a DNA report over a legal presumption, holding that "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." The Court clarified that Section 112 does not create a legal fiction but provides for a presumption of fact, which is rebuttable.
4. Dipanwita Roy v. Ronobroto Roy (2015) [7]— The Court held that DNA testing is "the most legitimate and scientifically perfect means" to establish or rebut allegations of infidelity, and that, depending on facts and circumstances, it would be permissible for a court to direct a DNA examination.
5. Aparna Ajinkya Firodia v. Ajinkya Arun Firodia (2024) [8] — Justice Nagarathna held that even a genuine DNA test result cannot escape the conclusiveness of the presumption under Section 112 if the husband and wife were living together during the time of conception. A mere DNA test report cannot rebut the conclusive presumption of paternity; what is necessary is proof of non-access.
6. Ivan Rathinam v. Milan Joseph (2025)[9] — Justice Surya Kant called for a "balancing of interests" approach, requiring courts to assess (i) whether existing evidence is insufficient, and only then consider ordering a DNA test, and(ii) whether ordering the test is in the best interests of the parties and does not cause undue harm.

[6] *Goutam Kundu v. State of W.B.*, (1993) 3 SCC 418.
[7] *Dipanwita Roy v. Ronobroto Roy,* (2015) 1 SCC 365.
[8] *Aparna Ajinkya Firodia v. Ajinkya Arun Firodia,* (2024) 7 SCC 773.
[9] *Ivan Rathinam v. Milan Joseph,* 2025 SCC OnLine SC 175.

VIII. Issue-by-Issue Examination:

1. Presumption of Legitimacy vs. DNA Test Report:

The appellant-mother challenged the denial of maintenance to her daughter, arguing that the presumption of legitimacy under Section 112 of the IEA should protect the child. Since the child was born during the continuance of a valid marriage, the child should be conclusively presumed to be the legitimate child of the respondent.

The respondent denied paternity and sought a DNA test, the results of which confirmed that he was not the biological father of the child. He relied on this report to deny any obligation of maintenance.

The Supreme Court observed that the present case was distinguishable from Aparna Ajinkya Firodia because in that case, the question was whether a DNA test should be ordered at all. In the present case, the DNA test had already been conducted with the appellant's consent, and its results were never disputed; the report had attained finality. The Court held that the position in Badwaik squarely covered this case: when a DNA test report, conducted on the direction of a court, is available on record and conflicts with the presumption of conclusive proof of legitimacy, the DNA test report cannot be ignored.

2. Entitlement of the Child to Maintenance:

The appellant argued that, regardless of the DNA report, a child born during the subsistence of a valid marriage should be entitled to maintenance from the respondent-husband.

The respondent contended that since the DNA test conclusively established that he was not the biological father, he bore no obligation to maintain the child.

The Court noted the "common thread" running through all precedents, that is, a well-placed hesitation to order or give imprimatur to orders directing DNA tests. However, since the test was already conducted with consent and had attained finality, the Court held that no error could be pointed out in the High Court's decision denying maintenance to the child. The appeal was found bereft of merit and was dismissed.

3. Welfare of the Child:

The Court expressed deep concern about the welfare of the child . It directed the Secretary, Women and Child Development, Government of NCT of Delhi, to depute an experienced person to ascertain the child's well-being and to take remedial measures wherever the child's situation was found lacking.

IX. Court's Decision:

The Supreme Court of India, in a bench comprising Justice Sanjay Karol and Justice Nongmeikapam Kotiswar Singh, held that the High Court of Delhi committed no error in denying maintenance to the appellant's daughter, and decided the following:

1. Maintenance to the Child: The Supreme Court upheld the High Court's decision denying maintenance to the child, holding that the DNA report (which had attained finality through the appellant's consent and non-challenge) prevailed over the presumption under Section 112 of the IEA, in line with the Badwaik ruling.
2. Maintenance to the Appellant-Mother: The Court acknowledged that the High Court had correctly remanded the matter of the appellant-mother's maintenance to the Trial Court for fresh consideration, noting that the Trial Court had erred in denying her interim maintenance.
3. Child Welfare Direction: In the interest of ensuring the security and well-being of the child, the Court issued a suo motu direction to the Secretary, Women and Child Development, Government of NCT of Delhi, to assess and address the child's welfare needs.

X. Rule of Law / Legal Principle

The Court applied and reconciled several key legal principles:

1. Presumption of Legitimacy (Section 112 IEA / Section 116 BSA): The Court noted that both the IEA and the BSA, 2023, retain this provision in identical terms, reflecting the legislative intent to protect children from the stigma of illegitimacy despite technological advancements.
2. Judicial Caution in Ordering DNA Tests: Drawing from Goutam Kundu, Dipanwita Roy, Aparna Ajinkya Firodia, and Ivan Rathinam, the Court reiterated the well-

established principle that courts must exercise extreme caution before ordering DNA tests.

3. Distinction Between Ordering a DNA Test and Relying on an Existing Report: Once a test has been conducted with consent, its results are undisputed, and the report has attained finality, the legal question shifts to the evidentiary weight of the report vis-àvis the statutory presumption.
4. State's Obligation Towards Child Welfare: Beyond the strict legal question, the Court invoked the principle that the State bears a responsibility to ensure the welfare of vulnerable children, directing governmental intervention to assess and address the child's needs.

XI. Concurring / Dissenting Opinions

The case was adjudicated by a two-judge bench comprising Justice Sanjay Karol and Justice Nongmeikapam Kotiswar Singh. The judgment was authored by Justice Sanjay Karol, and there were no separate concurring or dissenting opinions recorded.

However, the judgment implicitly acknowledged potential alternative perspectives that could arise in similar cases: A stronger child-rights perspective might argue that the presumption under Section 112 should be treated as truly "conclusive" and irrebuttable, as held in Aparna Ajinkya Firodia, regardless of whether the DNA test was consented to or not.

A women's rights perspective might emphasise, following Ivan Rathinam, that the very ordering of a DNA test in a DV Act proceeding, where the woman seeks protection and maintenance, shifts the focus from domestic violence to the woman's sexual history, effectively putting her on trial.

XII. Critical Evaluation

Strengths of the Judgment:

1. Doctrinal Clarity Through Factual Distinction: Rather than creating a conflict between coordinate bench decisions, the Court identified the precise factual differentiator, which is the consent to the DNA test and non-challenge of its results, to hold that Badwaik, rather than Aparna Ajinkya Firodia, governed the case. This approach preserves the

integrity of both lines of precedent while providing clear guidance on when each applies.

2. Humanitarian Direction: The Court's suo motu direction to the Secretary, Women and Child Development, Government of NCT of Delhi, to assess and address the child's welfare demonstrates a commendable humanitarian approach.

Limitations and Concerns:

1. Consent in a Context of Vulnerability: The judgment does not adequately interrogate the quality of the appellant's consent to the DNA test. Whether the appellant's consent to the DNA test was truly informed and voluntary, given the power imbalance and her likely lack of legal awareness, is a question that deserves deeper examination. The finality accorded to the DNA report rests heavily on this consent, yet the circumstances under which it was given remain unexplored.
2. Impact on DV Act Proceedings: The judgment does not address whether ordering a DNA test in proceedings under Section 12 of the DV Act, which are designed to provide urgent protection and maintenance to victims of domestic violence, is appropriate.

XIII. Broader Impact

Conclusively, the judgment signals that while the judiciary remains protective of children's legitimacy and women's dignity, it will not ignore finalised and unchallenged scientific evidence. The welfare direction to the Delhi government reflects an emerging trend of courts using their extraordinary jurisdiction to address the practical consequences of legal rulings on vulnerable parties, particularly children.