IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE EASWARAN S.

WEDNESDAY, THE 18TH DAY OF NOVEMBER 2026 / 27TH KARTHIKA, 1948

OP(C) NO. 624 OF 2026

AGAINST THE ORDER DATED 31.01.2026 IN IA 31/2017 IN OS NO.367 OF 2013 OF MUNSIFF's COURT, PARAPPANANGADI

PETITIONER/RESPONDENT/PLAINTIFF:

BY ADVS.
SHRI.K.P.SUDHEER
SHRI.SHERRY M.V.
SMT.BHAVANA J. MENON
SMT.ARUNDHATI NAIR
SHRI.P.ANIRUDHAN
SMT.SOORYA S.SHENOY (B/O)

RESPONDENTS/PETITIONERS/DEFENDANTS:

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BY ADV SHRI.O.V.MANIPRASAD FOR R1-R3

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 05.11.2026, THE COURT ON 18.11.2026 DELIVERED THE FOLLOWING:

"C.R"

EASWARAN S., J.

OP(C) No.624 of 2026

Dated this the 18th day of November, 2026

J U D G M E N T

Can the court order a second D.N.A. test merely because it causes no prejudice to the opposite party? This is the short question this court must resolve.

Brief facts necessary for the disposal of the Original Petition are as follows: The plaintiff in OS No.367/2013 on the files of Munsiff's Court, Parappanangadi, a suit for declaration that he is not the biological father of defendants 2 and 3, has come up in the original petition aggrieved by the order (Ext.P12) passed by the trial court referring the parties to a DNA test for the second occasion.

2. The plaintiff contends that defendants 2 and 3, who were born to the first defendant on 11.06.2012, are not his biological children and that an unwarranted allegation was raised by the first defendant that the plaintiff is

the biological father of defendants 2 and 3. On an allegation that the petitioner committed offences under Sections 376, 450, 506 read with Section 34 of the Indian Penal Code, a complaint was lodged by the first defendant, and accordingly, Crime No.379/2012 of Thirurangadi Police Station was lodged, and after undergoing judicial custody and remand for 36 days, the petitioner got bail. In a claim for maintenance and divorce pending before the Family Court, Malappuram, the same allegations were reiterated. Therefore, the plaintiff claims that a declaration in this regard is necessary in order to sustain his reputation. The first defendant resisted the suit by filing a written statement, contending that in September 2011, the plaintiff came to the residence of the first defendant and committed the offence against her. In the suit, the petitioner preferred IA No.2652/2015 seeking to refer the plaintiff and the defendants for a DNA test. The defendants agreed, and the application was allowed; the parties were referred for DNA profile testing to the Rajiv Gandhi Centre for Biotechnology, Thiruvananthapuram. On 7.11.2016, the Rajiv Gandhi Centre for Biotechnology submitted a report concluding that the petitioner is not the

biological father of defendants 2 and 3. The defendants raised an objection to the said report and filed IA No.31/2017 (Ext.P6) to refer for the DNA test to the Centre for DNA Fingerprinting and Diagnostics, Hyderabad, cancelling the report of the Rajiv Gandhi Centre for Biotechnology and the said application was dismissed by the Munsiff's Court, Parappanangadi, on 28.03.2017 (Ext.P7). Challenging the order, the respondents preferred O.P.(C) No.2010/2017. By Ext.P8 judgment dated 09.10.2024, this Court concluded that there was no application to set aside the report and, therefore, an application for a second DNA test is impermissible. The Court also found that the original order referring the parties to the Rajeev Gandhi Centre for Biotechnology was not questioned by the respondents herein, and that they had not taken steps to examine the expert or anyone to prove that the report was false. However, considering the request of the respondents herein-petitioners therein, this Court set aside the order and directed the trial court to reconsider IA No.31/2017. Accordingly, the matter went back for reconsideration, and the expert who submitted the report was examined. After her evidence was concluded, the trial court took up the application and

concluded that nothing on record supports the contention that the DNA test report is unacceptable or inadmissible, as it is based on mere contentions of the petitioners therein without any supporting evidence. However, since the dispute in the suit is with regard to the paternity of defendants 2 & 3, the application was allowed, and the parties were directed to a fresh DNA test from the Centre for DNA Fingerprinting and Diagnostics, Hyderabad. The said order is under challenge, at the instance of the plaintiff.

3. Heard Smt.Soorya S. Shenoy, the learned counsel appearing for the petitioner, and Sri. O.V. Maniprasad, the learned counsel appearing for respondents 1 to 3.

4. Learned counsel for the petitioner, Smt. Soorya S. Shenoy, submitted that the trial court's order directing a second DNA test is impermissible. The trial court provided no reasons for directing the parties to undergo a second test. Having found the report of the Rajeev Gandhi Centre for Biotechnology, Thiruvananthapuram, correct and requiring no interference, the court nevertheless referred the matter to the Institute of DNA and Finger Printing and Diagnostics, Hyderabad, for a second test,

solely because the paternity of defendants 2 and 3 was in question. The trial court's finding that this caused no prejudice cannot be sustained. Counsel further argued that the issue of prejudice does not arise unless the defendants first substantiate, with cogent evidence, that the report of Rajiv Gandhi Centre for Biotechnology, Thiruvananthapuram is incorrect. Counsel also pointed out that an unwarranted allegation of sexual assault was made against the petitioner, ultimately resulting in his judicial custody for 36 days. In support of the petitioner's case, counsel relied on the Madras High Court (Madurai Bench) decision in ***S. Veeralakshmi v. The Superintendent of Police and Ors. [2015 (2) MLJ (Crl.) 39]***, submitting that a second DNA test is inappropriate when a test result already exists. She further contended that a court may order a second DNA test only in specific circumstances, where the defendants identify infirmities in the first report and demonstrate that it is vitiated by error.

5. On the other hand, Sri. O. V. Maniprasad, learned counsel for the respondents, forcefully urged this Court to uphold the impugned order, as it concerns the paternity of defendants 2 and 3. He submitted that, where no

prejudice would be caused to the plaintiff, the Court should allow a second DNA test. If the report in the present case is accepted, defendants 2 and 3 would ultimately be branded illegitimate. Although DNA testing of a minor child should not be ordered routinely, he argued that a second test is warranted where the report is beset with infirmities—particularly when the person who conducted the DNA profiling was not qualified to do so. He further submitted that, upon examination, the report's author acknowledged having a Ph.D. and M.Sc. in Botany, demonstrating that she was unqualified to issue the report. In support of his submissions, he relied on the Supreme Court decisions in ***Akhtar Ali Alias Ali Akhtar Alias Shamim Alias Raja Ustad v. State of Uttarakhand [2025 SCC OnLine SC 1949 : AIR 2025 SC 4717]*** and ***Aparna Ajinkya Firodia v. Ajinkya Arun Firodia [2023 (2) KLT 101 (SC)].*** He therefore submitted that the impugned order is correct and warrants no interference.

6. I have considered the rival submissions raised across the bar and perused the impugned order.

7. The central question, as formulated, is particularly significant because the respondents neither challenged the trial court's order referring the parties for DNA testing at the Rajeev Gandhi Centre for Biotechnology, Thiruvananthapuram, nor applied to set aside the resulting report.

8. Before proceeding further, this Court may examine the procedure for drawing a report of scientific examination, which is governed by Order XXVI Rule 10A of the Code of Civil Procedure, 1908. Where Rule 10A applies, the procedure prescribed under Rule 10 applies mutatis mutandis.

9. Under sub-rule (2) of Rule 10 of Order XXVI of the CPC, a Commissioner's report forms part of the record and, upon examination of its author, becomes part of the evidence. It is well settled that a defendant cannot routinely seek to have the report set aside. The court must be satisfied that sufficient grounds exist to do so, as is clear from sub-rule (3) of Rule 10 of Order XXVI of the CPC.

10. Applying the foregoing principles to the facts of this case, this Court cannot but note that the respondents' failure to apply to set aside the

report of the Rajeev Gandhi Centre for Biotechnology, Thiruvananthapuram, is a significant omission. The ground raised in IA No. 31/2017, which resulted in the impugned order, was that the petitioner/plaintiff had influenced the Centre's officials to obtain the report. However, when the matter was first referred to the Institute, the respondents/defendants neither objected to the DNA test being conducted there nor refrained from participating in the process. After the report was filed, they also failed to state any grounds for setting it aside. The respondents/defendants could have presented cogent evidence to show that the report was unreliable or otherwise unacceptable. Instead, they sought a second DNA test, which the court rejected. The decision was challenged in OP(C) No. 2010/2017, wherein this Court granted them permission to adduce evidence in support of their claim.

11. The question, therefore, is whether this Court's judgment in the earlier original petition entitles the defendants, as of right, to a second DNA test. The observations in Ext. P8 are decisive. This Court expressly noted that the respondents/defendants had neither applied to set aside the report nor

objected to the reference to the Rajeev Gandhi Centre for Biotechnology, Thiruvananthapuram. The direction to reconsider IA No. 31/2017 was issued only because the respondents pressed that request emphatically. That direction cannot, by itself, be construed as conferring on the respondents a right to a second DNA test.

12. Turning to the objection concerning the admissibility of the report, this Court need not examine the matter further. The trial court, for the reasons advanced by the respondents/defendants, was satisfied that the report did not warrant interference. Moreover, this Court cannot overlook that the Rajeev Gandhi Centre for Biotechnology, Thiruvananthapuram, is a premier government institution that conducts numerous DNA tests. If the respondents genuinely had any objection or apprehension regarding the institution's capability, they ought to have raised it at the earliest opportunity—when the order referring the party for DNA testing was passed.

13. Even if this court examines the respondents' case on merits, it is difficult for this court to assail their contention. After the Ext.P8 judgment, the respondents examined the Chief Scientific Officer who conducted the

test. She was subjected to a lengthy cross-examination. Despite this, the respondents could not elicit any discrepancy in the report, nor could they establish that the DNA test was conducted in violation of any established norms. Therefore, it is inevitable that this Court must hold that there is nothing on record to support the respondents' claim.

14. As regards the decision cited by learned counsel for the respondents, this Court finds that in ***Aparna Ajinkya Firodia*** (*supra*), the Supreme Court considered the scope of Section 112 of the Evidence Act, 1872. The principles laid down in that case, however, do not apply to or support the respondents' case. Here, the petitioner is accused of sexual assault, an offence under Section 376 of the IPC, and the presumption under Section 112 of the Evidence Act, 1872 is therefore not attracted. That presumption applies where a child is born to parties in a matrimonial relationship, reflecting the law's recognition that a child's parents are those who give birth to the child or assume the legal obligations of parenthood through formal adoption. It was in this context that the Supreme Court held

that, where the presumption under Section 112 of the Evidence Act applies, the parties should not routinely be referred for DNA testing.

15. Insofar as the Supreme Court's decision in ***Akhtar Ali Alias Ali Akhtar Alias Shamim Alias Raja Ustad*** (supra) is concerned, it is true that the Supreme Court held that a person with a doctorate in M.Sc. Botany is qualified to conduct the DNA test. The learned counsel for the respondents extensively relied on this decision to contend that the incumbent who conducted the test lacked the requisite qualifications, as evident from his oral testimony. But it must be remembered that the Supreme Court in the above case did not discard the DNA test for the said reason. There were other reasons for discarding the same.

16. Nevertheless, this Court may examine whether the Scientist who conducted the test was qualified or not, since it is the case of the respondents that the incumbent who conducted the test was not qualified. The scientist who conducted the test, PW2, was extensively cross-examined on various aspects, including qualifications. She deposed that she had a PhD in Botany and her area was Biotechnology. She further stated that she was in charge of

the Genome from 1997 onwards and that, for the purpose of DNA Genome, no separate qualification is required. She was also cross-examined regarding the procedure that is required to be followed.

17. Beyond a bare assertion before this Court questioning the qualifications of the scientist who conducted the DNA test, no evidence suggests that the incumbent was unqualified. The respondents could have sought information about the incumbent's qualifications under the Right to Information Act, 2005. Pertinently, neither Section 45 of the erstwhile Indian Evidence Act, 1872, nor Section 39 of the Bharatiya Sakshya Adhiniyam, 2023, requires an expert to hold a specific degree, such as a PhD in Forensic Science. Rather, anyone specially skilled in the relevant science and officially appointed at a premier national institute qualifies as a competent expert.

18. Moreover, this Court cannot presume that a Government institution such as the Rajeev Gandhi Centre for Biotechnology, Thiruvananthapuram, would entrust DNA profile testing to an unqualified person. The quality of the evidence adduced by the respondents is

insufficient for this Court to hold that the incumbent was unqualified to conduct the test. In any event, the trial court was satisfied that this objection did not render the report inadmissible. The procedure followed was proper, and the institute regularly conducted such tests. More significantly, the defendants' principal allegation appears to be that the plaintiff may have influenced the institute in preparing the report. Yet no questions were raised on this point. In these circumstances, this Court finds the defendants' objection to the report to be far-fetched.

19. The next question is whether a second DNA test may be ordered merely because the opposing party has suffered no prejudice. The Supreme Court has repeatedly held that compelling a person to undergo DNA testing infringes their bodily autonomy and fundamental right to privacy under Article 21 of the Constitution of India. Moreover, when a test is conducted under judicial supervision at a Government-accredited forensic laboratory, its report is presumed scientifically accurate. Ordering a repeat test solely because one party dislikes the result would undermine the finality of expert evidence. Courts must therefore carefully scrutinise applications that seek

only to delay proceedings or secure a different outcome, and require concrete justification before ordering a second test.

20. Moreover, to justify an order for retesting, the defendant must establish specific, verifiable defects in the original process; general appeals to fairness are insufficient. Credible evidence must indicate that the blood or buccal-swab samples were mixed up, improperly sealed, or left unguarded in transit to the laboratory. A retest may also be ordered where a party presents prima facie evidence of fraud, impersonation during sample collection, or collusion involving officials or the testing facility. No such evidence has been presented here. Nor do the respondents contend that the sample was degraded or contaminated, produced an inconclusive result, or was tested in breach of mandatory forensic standards.

21. The further question is whether, even when overwhelming factors weigh against the respondents, the court may order a second DNA test merely because it considers doing so expedient to satisfy the opposing party.

22. This question came before the Madurai Bench of the Madras High Court in ***S.Veeralakshmi v. The Superintendent of Police and Ors. [2015(2) MLJ (Crl.) 39],*** and the Court held as follows.

> "13. It is also worthwhile to refer the decision of this Court made in Crl.O.P.No.5258 of 2010, dated 16.9.2010, wherein, while following the decision of this Court in 'Sakthivel vs. Karpagam' [(2005)3 MLJ 483] and referring to the order, dated 13.4.2010 made in Crl.R.C.(MD) No.567 of 2008 which was relied on by the petitioner, this Court has declined to order second DNA test. It has been observed in para 10 to as under:
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> > "10. However, the learned Counsel for the petitioner would submit that the report of the expert is quite antithetical to the realities. The de facto complainant is the best person to say as through whom she gave birth to the child as she with all sincerity submitted that she gave birth to the child only in view of her sexual life with the accused and in such a case, the report should be wrong and accordingly, the learned Counsel for the petitioner prays for a second DNA test. He also relied upon the unreported judgment of this Court dated 13.04.2010 in Crl.R.C.(MD)No.567 of 2008. An excerpt from it, would run thus:
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> > > "10. ... On taking into consideration of the submission of the learned Counsel appearing for the revision petitioner, this Court finds some force on it, because since the first respondent in the revision petition being the father of the victim girl had voluntarily come forward with the petition in Crl.M.P.No.48 of 2008 in S.C.No.388 of 2006, with a request to pass an order for the second D.N.A. test apprehending that the first report dated 25.04.2007 could have been obtained by the influence of

a doctor, known to this revision petitioner, it may be appropriate to order for the second DNA test at the expenses of the parties concerned.

11. As adumbrated supra, there is nothing wrong to conduct another test for the satisfaction of the victim girl at their expenses. Under these circumstances, the order of the learned Sessions Judge, Mahila Court, Madurai, shall have to be modified."

The above cited judgment is merely out of concession being given to the victim in the facts and circumstances of that case; however, in the earlier judgment, the law point has been dealt with in extenso.

"11. A mere reading of the decision of this Court in Sakthivel v. Karpagam reported in (2005) 3 M.L.J.483, would show that simply because an expert opinion is not in favour of a particular individual, that individual cannot go on seeking separate expert opinion till he could find a favourable opinion. No doubt, in this case, the petitioner/defacto complainant based on her own confidence in herself has come forward with the plea that she gave birth to the child only through the accused and at this stage, this Court cannot give any finding on that. However, before she could ask for a second DNA test, she must be able to point out as to what are the defects in the earlier DNA test and absolutely, there is no iota or shred, shrug or molecular, jot or pint of evidence to point out that the available expert opinion is fraught with falsity or illegality or with any non-medical approach. When such is the position, this Court, at this stage, cannot simply order for the second DNA test.""

This Court finds the observations made by the Madurai Bench of the Madras High Court sufficiently persuasive to accept.

23. Before concluding, this Court must address one final issue: whether the absence of prejudice to the plaintiff can justify the impugned order. The Court must not adopt an approach that could favour bastardy. The respondents may argue that the order should be upheld because remitting the matter to the DNA Fingerprinting and Diagnostics Centre, Hyderabad, would cause the plaintiff no prejudice. But that is not the question. The issue is whether the courts acted properly in ordering a second DNA test as a matter of course, merely because the person against whom the report was made found it unacceptable. Court proceedings are governed by procedural law. A party challenging the accuracy of a scientific report must establish that it is materially flawed. Without proof of such defects, the court cannot order a fresh examination of the same subject.

24. In fine, this Court is satisfied that the respondents failed to address the pivotal question: precisely on what grounds the report is unacceptable or affected by infirmities? Having found the defendants'

reasons insufficient to reject the report, the trial court should not have gone further and ordered the parties to undergo fresh testing at the DNA Fingerprinting and Diagnostics Centre in Hyderabad. Accordingly, this Court finds that the petitioner is entitled to succeed. The original petition is thus allowed. Ext.P12, the order of the Munsiff's Court, Parappanangadi, in IA No.31/2017 in OS No.367/2013 dated 31.1.2026 stands set aside. Consequently, IA No.31/2017 in OS No.367/2013 on the files of the Munsiff's Court, Parappanangadi, stands dismissed. However, no order as to costs.

Ordered Accordingly.

Sd/-
EASWARAN S.
JUDGE

jg

APPENDIX OF OP(C) NO. 624 OF 2026

PETITIONER EXHIBITS

EXHIBIT P 1	**TRUE COPY OF PLAINT DATED 30.11.2013 IN O.S. NO. 367/2013 ON THE FILE OF THE MUNSIFF COURT, PARAPPANANGADI.**
EXHIBIT P 2	**TRUE COPY OF WRITTEN STATEMENT DATED 16.08.2014 FILED BY THE 1ST RESPONDENT IN O.S. NO. 367/2013 ON THE FILE OF THE MUNSIFF COURT, PARAPPANANGADI.**
EXHIBIT P 3	**TRUE COPY OF I.A. NO. 2652/2015 IN O.S. NO. 367/2013 DATED 12.10.2015 ON THE FILE OF THE MUNSIFF COURT, PARAPPANANGADI.**
EXHIBIT P 4	**TRUE COPY OF OBJECTION DATED 17.11.2015 IN I.A. NO. 2652/2015 IN O.S. NO. 367/2013 ON THE FILE OF THE MUNSIFF'S COURT, PARAPPANANGADI.**
EXHIBIT P 5	**TRUE COPY OF REPORT NUMBERED AS RGCB-RFDF FILE NO. 759/2016 DATED 07.11.2016 ISSUED BY RAJIV GANDHI CENTRE FOR BIOTECHNOLOGY.**
EXHIBIT P 6	**TRUE COPY OF I.A. NO. 31/2017 IN O.S. NO. 367/2013 ON THE FILE OF THE MUNSIFF'S COURT, PARAPPANANGADI.**
EXHIBIT P 7	**TRUE COPY ORDER DATED 28.3.2017 IN I.A. NO. 31/2017 IN O.S. NO. 367/2013 PASSED BY MUNSIFF'S COURT, PARAPPANANGADI**

EXHIBIT P 8	**TRUE COPY OF JUDGMENT DATED 09.10.2024 IN O.P.(C.) NO. 2010 OF 2017 PASSED BY THIS HONOURABLE COURT.**
EXHIBIT P 9	**TRUE COPY OF DEPOSITION OF THE 1ST RESPONDENT AS PW1 IN I.A. NO. 31/2017 IN O.S. NO. 367/2013 ON THE FILE OF THE MUNSIFF'S COURT, PARAPPANANGADI.**
EXHIBIT P 10	**TRUE COPY OF DEPOSITION OF PW2 IN I.A. NO. 31/2017 IN O.S. NO. 367/2013 ON THE FILE OF THE MUNSIFF'S COURT, PARAPPANANGADI.**
EXHIBIT P 11	**TRUE COPY OF DEPOSITION OF PETITIONER AS RW1 IN I.A. NO. 31/2017 IN O.S. NO. 367/2013 ON THE FILE OF THE MUNSIFF'S COURT, PARAPPANANGADI.**
EXHIBIT P 12	**TRUE COPY OF ORDER DATED 31.01.2026 IN I.A. NO. 31/2017 IN O.S. NO. 367/2013 PASSED BY THE MUNSIFF COURT, PARAPPANANGADI.**