

Cr.R-681-2017

**THE HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR, SINGLE BENCH
{HON'BLE SHRI JUSTICE ANAND PATHAK}**

Cr.R-681-2017

RAJENDRASINGH AND ANR.

Vs.

THE STATE OF MADHYA PRADESH AND ANR.

Shri Amit Lahoti, learned counsel for petitioner.

Shri Aashish Saraswat, learned Public Prosecutor for respondent No.1/State.

None for respondent No. 2, even though served.

Whether approved for reporting: Yes

Law Laid down:

1. Sec. 53-A and Sec. 164-A inserted in the Cr.P.C by way of Amendment Act 2005 which makes the DNA profiling of accused and victim must, is a step towards more Forensic and Scientific Investigation. Therefore, if the DNA report is supported by medical evidence, wherein injuries to the prosecutrix are not sustained over the private parts or over her person and attending circumstances, do not corroborate in any manner, then false implication of the accused can not be ruled out and trial Court needs to see such aspects with caution.

JUDGMENT

(Passed on 16th /11/2018)

The present Criminal Revision has been preferred under Section 397/401 of Cr.P.C arising out of the order dated 27.06.2017 passed by the Special Judge, Vidisha in Special Sessions Trial No.105/2017 whereby charge has been framed against the petitioners alleging offence under Section 376 of IPC.

Precisely stated facts of the case are that respondent No.2/prosecutrix has lodged an FIR on 13.07.2015 alleging that petitioners have committed rape upon her on 11.07.2015, after registration of FIR Police Authority investigated the matter and on the basis of evidence, expunged report in favour of the petitioners was given. But it is the submission of the petitioners

Cr.R-681-2017

that because of direction of this Court vide order dated 23.11.2016 passed in M.Cr.C No. 10926/2016 charge-sheet was submitted and petitioners were arrested and the Court vide order dated 27.07.2016 framed the charges against the petitioners for offences under Sections 376(d) and 506-II of IPC and Section 3(2)(V) of the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 (for short 'The Atrocities Act'). However, the Special Court has discharged the petitioners for the offences under Sections 3(1)(X) as well as 3(2)(XII) of the Atrocities Act.

According to learned counsel for petitioners, this case is of false implication, petitioners are innocent and they have been made accused just to take undue benefits. Moreover, there was dispute of boundaries of agricultural land between the petitioners and prosecutrix, resulted into registration of FIR, which has been lodged with a delay of two days without there being any injury upon the body of the prosecutrix. Moreover, the DNA test report attached with the charge-sheet is also negative in which it has been specifically stated that the presence of body fluid of the petitioners could not be detected on the source of the prosecutrix which indicates that the petitioners were falsely implicated. Earlier Police Authorities also filed expunged report, but because of the wrong interpretation of the order of this Court, the charge-sheet has been filed on false pretext since, no offence under Section 3(2)(V) of the Atrocities Act is prima-facie made out so also the offences under Indian Penal Code.

Cr.R-681-2017

Learned counsel for the petitioner placed reliance on the judgment of Hon'ble Apex Court in the case of **Mukesh & Anr. Vs. State of NCT of Delhi & Others, 2017 (6) SCC 1** and judgment rendered by this Court in the case of **Mulayam Singh Vs. State of M.P., 2017(1) MPJR 260** in support of their contention.

The petitioners also took plea of *alibi* through medical documents of Ratan Singh and Rajendra Singh @ Narendra Singh who were taking treatment at Primary Health Center, village Varkheda, Jhagir and not available in place of incident at the time of occurrence of alleged incident.

It is also submitted that when two sets of documents in the case diary exists then supporting evidence should be seen. Order of charge must contain reasons. He placed reliance on the judgment of Hon'ble Apex Court in the cases of **State of M.P. Vs. Sheetla Sahai & ors., 2009(8) SCC 617, Union of India Vs. Prafulla Kumar Samal and another, AIR 1979 SC 366.**

On the other hand, learned counsel for respondent No.1/State opposed the prayer and submits that no case is made out for interference by placing reliance on the judgment in the case of **Sajjan Kumar Vs. CBI, 2010(9) SCC 368, Amit Kapoor Vs. Ramesh Chander and another, 2012(9) SCC 460** and **Chimanlal Vs. State of M.P., 2015 (3) MPWN 92** and submits that no case for interference is made out.

Heard both the parties at length and perused the

Cr.R-681-2017

documents appended thereto.

Here in the case in hand, petitioners have raised the grievance mainly from charge-sheet and short description of incident, indicate that initially on the basis of DNA report obtained in respect of complainant and accused persons, expunged report was prepared, but the permission of higher Officer was not received. Meanwhile, the order dated 23.11.2016 passed by this Court in M.Cr.C No. 10962/2016 was received by the investigating Authority and considering the said order, as if a direction has been issued, charge-sheet has been filed.

A perusal of the order dated 23.11.2016 passed in M.Cr.C No. 10962/2016 indicates that this Court has not given direction for registration or filing of charge sheet *per se*, but it was a direction to complete the investigation and ensure consequential proceedings in accordance with law which was interpreted to be a direction of filing charge-sheet which was never the spirit of the order. Nonetheless, charge-sheet has been filed and keeping into account the prayer of impartial and fair investigation, a copy of DNA report has been filed.

A perusal of DNA report obtained from State Forensic Science Laboratory, Sagar indicates that the DNA profile of the petitioners could not detect on the source of prosecutrix, whereas, it is specifically mentioned that the blood sample of Rajendra Singh and Ratan Singh (Ex. C & Ex. D) respectively, were not found over the patticot (Ex. B) of the prosecutrix. Although, on the patticot of the prosecutrix, DNA profile of a

Cr.R-681-2017

male was found, but it was certainly not of the petitioners. Similarly, on testing vaginal slide of prosecutrix no male DNA could be detected. Prosecutrix is 45 years aged and is married lady therefore, it is possible that the male DNA profile was found over her paticot may be of her husband. This is the piece of evidence in the case in hand because in a case of rape, most important piece of evidence is DNA report. Since, the paticot (wore at the time of incident by the prosecutrix) was the important article from where DNA could have been seized and another source was vaginal slide, because DNA does not destroy at all. If the petitioners would have committed rape, then DNA profile of sperm/fluid of the petitioners would have been available certainly with in the surface of vaginal slide or paticot, but the same did not occur.

DNA is the abbreviation of Deoxyribo Nucleic Acid. It is the basic genetic material in all human body cells. It is not contained in red blood corpuscles. It is, however, present in white corpuscles. It carries the genetic code. DNA structure determines human character, behaviour and body characteristics. DNA profiles are encrypted sets of numbers that reflect a person's DNA makeup which, in forensics, is used to identify human beings. DNA is a complex molecule. It has a double helix structure which can be compared with a twisted rope 'ladder'.

In District Attorney's Office for the Third Judicial District v. Osborne [2009 SCC online US SC 7: 174 L Ed 2d 38:129 S Ct 2308: 557 US 52 (2009)], Roberts, C.J. of the Supreme Court of United States, while referring to the DNA Test, stated as follows: (SCC OnLine US SC).

Cr.R-681-2017

“DNA testing has an unparalleled ability both to exonerate the wrongly convicted and to identify the guilty. It has the potential to significantly improve both the criminal justice system and police investigative practices. The Federal Government and the States have recognized this, and have developed special approaches to ensure that this evidentiary tool can be effectively incorporated into established criminal procedure-usually but not always through legislation.

Modern DNA testing can provide powerful new evidence unlike anything known before. Since its first use in criminal investigations in the mid- 1980s, there have been several major advances in DNA technology, culminating in STR technology. It is now often possible to determine whether a biological tissue matches a suspect with near certainty. While of course many criminal trials proceed without any forensic and scientific testing at all, there is no technology comparable to DNA testing for matching tissues when such evidence is at issue.”

DNA technology as a part of Forensic Science and scientific discipline not only provides guidance to investigation but also supplies the Court accrued information about the tending features of identification of criminals. The recent advancement in modern biological research has regularized Forensic Science resulting in radical help in the administration of justice. In our country also like several other developed and developing countries, DNA evidence is being increasingly relied upon by courts. After the amendment in [the Criminal Procedure Code](#) by the insertion of [Section 53A](#) by Act 25 of 2005, DNA profiling has now become a part of the statutory scheme. [Section 53A](#) relates to the examination of a person accused of rape by a medical practitioner.

Similarly, under [Section 164A](#) inserted by Act 25 of 2005, for medical examination of the victim of rape, the description of material taken from the person of the woman for DNA profiling is must.

Hon'ble Apex Court had the occasion to consider various

Cr.R-681-2017

aspects of DNA profiling and DNA reports. K.T. Thomas, J. in Kamti Devi V. Poshi Ram [(2001) 5 SCC 311: 2001 SCC (Cri) 892], observed: (SCC p. 316, para 10).

“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. ...”

In Pantangi Balarama Venkata Ganesh V. State of A.P. [(2009) 14 SCC 607: (2010) 2 SCC (Cri) 190], a two-Judge Bench had explained as to what is DNA in the following manner:

“41. Submission of Mr Sachar that the report of DNA should not be relied upon, cannot be accepted. What is DNA? It means:

“Deoxyribonucleic acid, which is found in the chromosomes of the cells of living beings is the blueprint of an individual. DNA decides the characteristics of the person such as the colour of the skin, type of hair, nails and so on. Using this genetic fingerprinting, identification of an individual is done like in the traditional method of identifying fingerprints of offenders. The identification is hundred per cent precise, experts opine.”

There cannot be any doubt whatsoever that there is a need of quality control. Precautions are required to be taken to ensure preparation of high molecular weight DNA, complete digestion of the samples with appropriate enzymes, and perfect transfer and hybridization of the blot to obtain distinct bands with appropriate control. (See article of Lalji Singh, Centre for Cellular and Molecular Biology, Hyderabad in DNA profiling and its applications.) But in this case there is nothing to show that such precautions were not taken.

42. Indisputably, the evidence of the experts is admissible in evidence in terms of [Section 45](#) of the Evidence Act, 1872. In cross-examination, PW 46 had stated as under:

“If the DNA fingerprint of a person matches with that of a sample, it means that the sample has come from that person only. The probability of two persons except identical twins having the same DNA fingerprint is around 1 in 30 billion world population.””

Similarly, this aspect was dealt with in detail in the case of **Mukesh Yadav (Supra)** as well as in detail judgment rendered

Cr.R-681-2017

by this Court in the case of **Mulayam Singh (Supra)**. Consideration of these judgments indicate that investigation has rightly followed the procedure prescribed under Section 53-A of Cr.P.C and DNA report was produced exonerating the petitioner in unqualified terms.

Beside that, the DNA report is supported by the medical evidence because medical evidence nowhere indicates any injury mark over the prosecutrix. The date of alleged incident is 11.07.2015, FIR was registered on 13.07.2015 and medical was done on 14.07.2015, therefore, injury marks would have been apparent if the prosecutrix would have been subjected to rape forcibly by the petitioners, because place of incident is agricultural field and its *medh* and as per her own allegation, petitioners threw her on the ground and committed rape. The said action would have resulted into bruises or abrasions at least over her back if she would have been subjected to rape. Medical report nowhere supports the story of prosecution, rather support the case of the petitioners.

Section 53-A and Section 164-A inserted in the Cr.P.C by way of Amendment Act 2005 which makes the DNA profiling of accused and victim must, is a step towards more Forensic and Scientific Investigation. Therefore, if the DNA report is supported by medical evidence, wherein injuries to the prosecutrix are not sustained over the private parts or over her person and attending circumstances, do not corroborate in any manner, then false implication of the accused can not be ruled out and trial Court needs to see such aspects with caution.

When the rape was committed on 11.07.2015, then

Cr.R-681-2017

registration of FIR on 13.07.2015 is quite long in the present facts and circumstances of the case and no plausible explanation has been given.

In her FIR, she admits that she had some dispute with petitioners for land belonging to them. Therefore, possibility cannot be ruled out that to implicate the petitioners on false pretext, theory of rape is devised to settle score or to put pressure over the petitioners.

In the considered opinion of this Court, case in hand indicates that investigation wrongly instituted case against the petitioners, perhaps persuaded by the order dated 23.11.2016 passed by this Court which never meant for direction for filing charge-sheet. It was only for ensuring free, impartial and fair investigation. Trial Court erred in passing the order and framing charges against the petitioners. If the petitioners are relegated for trial it would be abuse of process of law and giving premium to the vexatious litigation. Therefore, impugned order dated 27.06.2017 framing charges as referred above are hereby quashed and petitioners are discharged from allegation of the case pending against the petitioners under Section 376(d) of IPC and Section 506(Part II) IPC as well as under Section 3(2)(V) of the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 because offences against the provisions of I.P.C are discarded.

Criminal revision stands allowed and disposed of.

(Anand Pathak)
JUDGE