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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-410-2021 (O&M)
Date of decision: 01.08.2024

Amandeep

...Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sandeep Goyat, Advocate
for the petitioner.

Mr. Vikas Bharadwaj, AAG, Haryana.

HARPREET SINGH BRAR, J.(Oral)

1. The present revision petition has been preferred against impugned order dated 18.03.2021 passed by learned Additional Sessions Judge, Fast Track Special Court, Hisar, whereby application dated 25.02.2020 moved by the prosecution seeking permission to draw a blood sample of the petitioner was allowed, in the proceedings stemming from FIR No.27 dated 20.01.2019 under Sections 376(2)(n), 506 IPC (for short 'IPC') and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act'), registered at Police Station Barwala, District Hisar.

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2. On completion of the investigation, final report under Section 173 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') was presented and subsequently, charges were framed. On 25.02.2020, the prosecution moved an application seeking permission to obtain a blood sample of the petitioner-accused in order to conduct the DNA test. The said application was allowed by learned trial Court vide impugned order dated 18.03.2021.

3. Learned counsel for the petitioner, *inter alia*, contends that learned Court below fell into grave error by allowing the application of the prosecution to obtain the petitioner's blood samples as there is no prevalent provision in law, under which the petitioner can be compelled to provide samples of his blood. He further contends that the same would amount to a violation of his right to privacy as enshrined under Article 21 of the Constitution of India. He places reliance on the judgment rendered by the Hon'ble Supreme Court in ***Inayath Ali and another Vs. State of Telangana and another, 2022(6) CTC 284.***

4. Having heard learned counsel for the petitioner and after perusing the record of the case with his able assistance, it transpires that the victim in FIR (*supra*) was impregnated as a result of rape committed by the petitioner-accused. Learned Court below allowed collection of blood sample from the petitioner in order to ascertain the paternity of the foetus vide impugned order dated 18.03.2021.

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5. The DNA is unique to each individual and ascertainment of the same would facilitate the investigating agency in impugning guilt on the right accused. Such scientific method is necessary for proving the guilt as well as innocence of the accused. In fact, when the victim of such crime is a child of a tender age, DNA profiling becomes all the more significant. The law in this regard has been developed to an extent of creating a balance between the rights of the accused under Article 21 of the Constitution of India *vis-a-vis* the right of the victim in particular and the right of the society in general. The first and foremost duty of the investigating agencies and the Courts of law is to ascertain the truth which ensures fair play to all stakeholders.

6. Keeping the same in mind, the legislature, in its wisdom, inserted Section 53-A to Cr.P.C. by Act No.25 of 2005, which came into effect on 23.06.2006. The relevant part of the said provision reads as follows:

“Section 53-A Examination of person accused of rape by medical practitioner-

(1) When a person is arrested on a charge of committing an offence of rape or an attempt to commit rape and there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of such offence, it shall be lawful for a registered medical practitioner employed in a hospital run by the Government or by a local authority and in the absence of such a practitioner within the radius of sixteen kilometers from the place where the offence has been committed by any other registered medical practitioner, acting at the

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request of a police officer not below the rank of a sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the arrested person and to use such force as is reasonably necessary for that purpose.

7. In the landmark case of ***Smt. Selvi Vs. State of Karnataka, 2010(7) SCC 263*** examined the apparent distinction between the testimonial evidence and physical evidence and laid down the ratio that providing specimen signature, handwriting sample or bodily substances such as blood, semen, sputum, sweat, hair can be characterized as physical evidence and the same would not attract the proscription under Article 20(3) of the Constitution of India. Speaking through the then Chief Justice K.G. Balakrishnan, the following was opined:

*“175... A similar view was taken in **Ananth Kumar Naik v. State of Andhra Pradesh, 1977 CriLJ 1797 (A.P.)**, where it was held (in Para. 20) :*

“... In fact Section 53 provides that while making such an examination such force as is reasonably necessary for that purpose may be used. Therefore, whatever discomfort that may be caused when samples of blood and semen are taken from an arrested person, it is justified by the provisions of sections 53 and 54, Criminal Procedure Code.”

*We can also refer to the following observations in **Anil Anantrao Lokhande v. State of Maharashtra, 1981 CriLJ 125 (Bom.)**, (in Para. 30) :*

“... Once it is held that Section 53 of the Code of Criminal Procedure does confer a right upon the investigating machinery to get the arrested persons medically examined by the medical practitioner and the expression used in Section 53 includes in its import the taking of sample of the blood for analysis, then obviously the said provision is not

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violative of the guarantee incorporated in Article 21 of the Constitution of India.

176. This line of precedents shows that the compelled extraction of blood samples in the course of a medical examination does not amount to 'conduct that shocks the conscience'. There is also an endorsement of the view that the use of 'force as may be reasonably necessary' is mandated by law and hence it meets the threshold of 'procedure established by law'. In this light, we must restate two crucial considerations that are relevant for the case before us. Firstly, the restrictions placed on 'personal liberty' in the course of administering the impugned techniques are not limited to physical confinement and the extraction of bodily substances. All the three techniques in question also involve testimonial responses. Secondly, most of the above-mentioned cases were decided in accordance with the threshold of 'procedure established by law' for restraining 'personal liberty'. However, in this case we must use a broader standard of reasonableness to evaluate the validity of the techniques in question. This wider inquiry calls for deciding whether they are compatible with the various judicially-recognised dimensions of 'personal liberty' such as the right to privacy, the right against cruel, inhuman or degrading treatment and the right to fair trial.” (emphasis added)

8. Further, the Division Bench of this Court in **Dewan Singh @ Ram Singh Vs. State of Haryana, 2023 (4) R.C.R. (Criminal) 17**, it was concluded that physical evidence can be utilized for explaining relevant facts within the meaning of Sections 9 & 11 of the Indian Evidence Act, 1872 and as such, a direction to the accused to provide blood samples (physical evidence) would not amount to violation of the right under Article 20(3) as well as Article 21 of the Constitution of India. It was concluded that Section 53-A of Cr.P.C. is mandatory in nature and denial by the accused to provide his blood samples would entail drawing of a negative inference by the Court.

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The medical practitioner as well as the investigating officer are bound to follow the drill of Sections 53-A & 164-A of Cr.P.C and the material collected during the investigation, which includes blood samples, must be sent for DNA profiling.

9. In view of the discussion above, this Court is the considered view that the challenge of the petitioner to the impugned order is unfounded. Learned counsel for the petitioner appears to be under a misapprehension qua the prevalent law and has been unable to indicate any tenable grounds that would merit interference by this Court.

10. Accordingly, the present petition is dismissed and the impugned order dated 18.03.2021 passed by learned Additional Sessions Judge, Fast Track Special Court, Hisar is upheld.

11. All the pending miscellaneous application(s), if any, also stand disposed of.

[HARPREET SINGH BRAR]
JUDGE

01.08.2024
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No