

**228 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM No.M-38408 of 2012 (O&M)
Date of Decision: February 12, 2015**

Rakesh Kumar @ Gora

.... Petitioner

vs.

State of Punjab

.... Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. S.P.S. Sidhu, Advocate for the petitioner.

Mr. Nikhil K. Chopra, Deputy Advocate General, Punjab.

Mr. Gagan Oberoi, Advocate for the complainant.

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the Digest?

Kuldip Singh J.(Oral)

The petitioner has filed this petition under Section 482 of the Code of Criminal Procedure, 1973 for quashing the order dated 24.09.2012 (Annexure P-3) passed by learned Addl. Sessions Judge, Ludhiana, vide which the petitioner was directed to undergo lie detection test in case FIR No.189, dated 28.09.2011, under Section 302 of the Indian Penal Code, 1860 and Section 25 of the Arms Act, 1959, registered at Police Station Salem Tabri, District Ludhiana City. Further prayer has been made to uphold the order dated 05.09.2012 (Annexure P-2) passed by learned Judicial Magistrate 1st Class, Ludhiana, vide which the request of the prosecution for the aforesaid test was declined.

It comes out that one Jarnail Singh had made a complaint that Rakesh Kumar @ Gora (present petitioner), Micky Sahni and Sukhwinder Singh @ Baba had murdered his son Bhupinder Singh @ Lovely.

The prosecution moved an application before the learned Judicial Magistrate 1st Class, Ludhiana, for conducting the narco test, polygraph test and brain mapping test of the aforesaid accused.

On 29.08.2012, the aforesaid accused suffered a statement that they agree to undergo narco test, polygraph test and brain mapping test. However, learned Judicial Magistrate 1st Class, Ludhiana declined the said application on the ground that there was no evidence against the accused and there was no ground for allowing the application for conducting the said tests.

The State of Punjab preferred a revision before the learned Addl. Sessions Judge, Ludhiana. Learned Addl. Sessions Judge, Ludhiana, vide order dated 24.09.2012 (Annexure P-3) set aside the said order and allowed the said application. Learned Addl. Sessions Judge, Ludhiana noticed that the counsel representing the respondents(aforesaid accused), namely Mr. V.S. Rana and Mr. Sunil Dutt had come forward and suffered a statement that they have no objection if the revision petition is allowed partly so as to direct the respondents to undergo the above scientific examination as desired by the investigating agency.

I have heard learned counsel for the parties and have also carefully gone through the case file.

Learned counsel for the petitioner has argued that in this case the aforesaid accused were in custody when their consent was obtained under pressure.

It has been further argued that no revision can lie before the learned Addl. Sessions Judge, Ludhiana. It has been further argued that before the learned Addl. Sessions Judge, Ludhiana, a fresh consent of the said accused was obtained.

I have considered the submissions of learned counsel for the petitioner.

Learned counsel for the petitioner has placed reliance on the judgment of Hon'ble the Supreme Court in case of ***"Selvi v. State of Karnataka"***, 2010(3) SCC(Criminal), 100.

However, it has been conceded that in the said case, the consent of the accused was not obtained.

After going through the facts, I am of the view that the learned Judicial Magistrate 1st Class, Ludhiana erred in declining the request of the prosecution when the aforesaid three persons, who were named in the murder case by the complainant for committing the murder of his son had consented for the aforesaid test. The learned Magistrate recorded that there was no evidence against the aforesaid accused.

I am of the view that the said order is patently illegal and perverse. In this case, the case was under investigation and the evidence was being collected. Therefore, the learned Magistrate was not justified in saying that since there is no evidence, therefore, the application for such test is to be declined. The police was in process of collecting the evidence and from such scientific test of the accused, it was to be concluded whether they are involved in the crime or not.

This Court has been informed that the two accused except the present petitioner have already been undergone the said scientific test and the present petitioner has come up in the present petition. There is nothing on file to show that petitioner ever moved the learned Magistrate for withdrawing his consent. It being so, the impugned order passed by learned Judicial Magistrate 1st Class, Ludhiana, is set aside and scientific tests as requested by the prosecution are allowed to be conducted on the petitioner.

The petition is accordingly dismissed.

February 12, 2015
sarita

(KULDIP SINGH)
JUDGE