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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-38041 of 2015

Date of decision: November 05, 2015

Sunil @ Sheela and others

.....Petitioners

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. J.S. Bedi, Senior Advocate with
Mr. Sunil Sihag, Advocate
for the petitioners.

SABINA, J

Petitioners have filed this petition challenging the order dated 17.10.2015.

Petitioners are facing trial in FIR No.22 dated 01.02.2015, under Sections 346, 364, 376-D, 377, 201, 302, 34 of Indian Penal Code, 1860 ('IPC' for short), registered at Police Station PGIMS, Rohtak.

During the pendency of the trial, prosecution moved an application for taking blood sample of the mother of the deceased for Deoxyribonucleic Acid ('DNA') examination. The said application was allowed by the trial Court vide the impugned order dated 17.10.2015. Hence, the present petition.

Learned Senior counsel for the petitioners has submitted that the application moved by the prosecution had been allowed without affording an opportunity of hearing to the petitioners. In support of his argument, learned Senior counsel has placed reliance on *Mrunalinidevi Puar versus Gaekward Investments Corporation Private Limited and another*, 2012 (12)

SCC 570, *State of Punjab versus Davinder Pal Singh Bhullar and others*, 2012 (1) R.C.R. (Criminal) 126 and *D. Venkatasubramaniam and others versus M.K. Mohan Krishnamachari and another*, 2009(4) R.C.R. (Criminal) 318, wherein, it was held that no adverse order could be passed against the person without affording any opportunity of hearing to the person concerned.

Impugned order dated 17.10.2015 reads as under:

“Present: Sh. Surender Pahwa and Sh. D.C. Sharma, Public Prosecutor for the State assisted by Sh. S.S. Kinha, Ms. Trivena Verma, Advocate and Sh. Pardeep Malik, Advocates, counsel for complainant. Accused Padam in custody with counsel Sh. Dalbir Singh, Advocate. Accused Manbir in custody with counsel Sh. Virender Deswal, Advocate. Advocate Pawan in custody with counsel O.P. Parmar, Advocate and Sh. Deepak Bhardwaj, Advocate, Legal Aid Counsel. Accused Sarwar in custody with counsel Sh. Vedpal Khalsa, Advocate. Accused Rajesh @ Ghochru in custody with counsel Sh. Deepak Bhardwaj, Advocate, Legal Aid Counsel. Accused Sunil @ Sheela in custody assisted by Sh. Rakesh Birla, Advocate. Accused Sunil @ Matha in custody assisted by Sh. J.K. Gakhar, Advocate.

Eight witnesses are present. Out of them, seven are examined as PW7 to PW13. PW Jai Narain is given up by Learned Public Prosecutor vide his separate recorded statement for his being unnecessary. Request of witness HC Satish is received. Heard. For want of any specific reason, said request is declined.

At this stage, an application is moved by prosecution for taking blood sample of mother of deceased for 'DNA' examination. Head. As per the application, DNA Profile of the deceased has been preserved by the FSL, Laboratory and her body parts including hair and teeth. Said items can be used to

ascertain her identity scientifically also by way of matching her profile with the DNA Profile of her mother.

Keeping in view the importance of test particularly when same will not cause any prejudice to the accused-persons, thus, in the interest of justice and for fair trial, present application is hereby allowed.

Now, file be put up on 20.10.2015, another date already fixed for prosecution evidence. For date fixed, bailable warrants of HC Satish in sum of Rs.5000/- with one surety in the like amount be issued executable by concerned SHO."

A perusal of the impugned order reveals that the same was passed in the presence of the petitioners and their counsel. A perusal of the impugned order further shows that the parties were heard and thereafter, the application was allowed, so as to effectively decide the case. Petitioners have disputed the identity of the dead body. With a view to enable the trial Court to effectively dispose of the case, prosecution moved an application for taking blood sample of the mother of the deceased for DNA examination. The DNA examination would ensure fair trial. The order passed by the trial Court has been passed with a view to do justice between the parties. The judgments relied upon by the learned Senior counsel for the petitioners fail to advance the case of the petitioners as in the present case, parties were heard before the impugned order was passed.

No ground for interference is made out.

Dismissed.

**(SABINA)
JUDGE**

November 05, 2015
mahavir