

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE No.2346 of 2016

ORDER :

The present Criminal Revision Case is filed by Accused No.1 (for short 'A.1') of Crime No.217 of 2016 of Women Police Station, DD, Hyderabad, aggrieved by the order dated 08.08.2016 in CrI.M.P.No.2305 of 2016 passed by the learned XIII Additional Chief Metropolitan Magistrate (Mahila Court), Hyderabad, allowing the petition filed by the State, represented by the Station House Officer, Women's Police Station, D.D., Hyderabad, and directing the petitioner/A.1 to undergo medical test/potency test for Erectile Dysfunction (for short 'E.D.') at Osmania General Hospital, Hyderabad, on 22.08.2016, with a further direction to the Investigating Officer, Women Police Station, DD, City Crime Station, Hyderabad, to take necessary steps.

2. The contentions in the grounds of revision *vis-a-vis* the oral submissions in the course of hearing by the learned counsel for A.1 - revision petitioner are that the impugned order of the Court below is contrary to law, wholly unsustainable and failure of justice, that too from the allegations read from FIR against the potency of petitioner - A.1, made by the defacto-complainant, it is nothing but intruding into the personal liberty and privacy and to compel petitioner - A.1 against his wish and such invasive tests will be contrary to and violative of the rights against self-incrimination under Article 20(3) of the Constitution of India, that same is subjecting the petitioner - A.1 to oppressive and degrading treatment, that it is also prohibitive under Article 21 of the

Constitution of India, besides in violation of various pronouncements of the Hon'ble Apex Court, that the learned Judge failed to see that the test for E.D. requires injection to be given to the private parts and certain extracts made, which is violative of Right to Privacy and is contrary to Article 20(3) of the Constitution of India, that the learned Judge failed to see that the offence of cheating as to the representation could not in the facts of the case render Section 53 of Cr.P.C. applicable, that the object of the police in insisting upon the petitioner – A.1 to undergo the potency test is merely a device to harass him and playing in the hands of the defacto-complainant, that the learned Judge failed to see that the reason for the ED can also be caused due to psychological reasons, like serious amount of stress, which results in temporary disability and any test conducted on the petitioner – A.1 cannot be the basis that the petitioner – A.1 suffered from such ED 4 years earlier and hence, sought for dismissal of the impugned order.

3. Whereas, it is the contention of the learned counsel for defacto-complainant and the learned Public Prosecutor that the order of the Court below is well within its scope contemplated by law and the same is necessary for the effective adjudication of the criminal *lis* and there is nothing to interfere therewith and it cannot be stated as intruding into the privacy or in effecting of Fundamental Right, which is not even when absolute, but for qualified, that too subject to due process of law to obey to the orders of the Court in submitting to the requirement of the potency test and hence to dismiss the revision.

4. Heard both sides and perused the material on record.

5. Now, in deciding the revision *lis* on the correctness of the impugned order of the Court below, the factual background necessary to mention, in nutshell, is that the defacto-complainant – Smt. Ahalya Meka, w/o. Naveen Krishna Bothireddy (A.1) has submitted a report against petitioner A.1, among 4 accused viz., A.2 - Raghava Bothireddy (father of A.1); A.3 – Smt. Anuradha Bothireddy (Mother of A.1); and A.4 – Smt. Haritha Bothireddy (Sister of A.1), which was registered as Crime No.217 of 2016 of Women Police Station, DD, Hyderabad, registered for the offences punishable under Sections 498-A, 406, 420, 344, 120-B r/w. Section 34 IPC and Sections 3, 4 and 6 of Dowry Prohibition Act, stating that her marriage with A. 1 - Naveen Krishna Bothireddy was performed on 18.03.2012 as per Hindu rites and customs by spending total marriage expenses of Rs.1.45 Crores and after the marriage, she joined the matrimonial home at Chennai, however, her marriage was not consummated as A.1 is suffering from Erectile Dysfunction (ED) and unfit for marital life, that by suppressing said fact, for the sake of her money and properties, A.1 married her, that after the marriage, her parents arranged an amount of Rs.2.00 Crores in the business of A.1 for the sake of marital life, that A.1 made LW.1 as guarantor/co-applicant to take huge amounts from various banks and made her liable for the same, that A.1 to A.4 used to harass her mentally and physically and tortured her for want of money and properties and thrown out of the marital house and cheated her by suppressing the health condition of A.1, that A.1 himself agreed said fact in his emails and hence requested to take action against them.

6. Basing on the above facts, the revision 1st respondent - Police in the course of investigation filed the aforesaid Crl.M.P.No.2305 of 2016 in Crime No.217 of 2016 seeking to send A.1 for medical check up/potency test to prove whether he is fit for matrimonial life or not, and as he is not ready to go for medical examination, the potency test is required in directing him to appear before the Osmania General Hospital for the same.

7. The same is opposed by A.1 in his counter dated 15.07.2016 by denying the averments and by imputing as a false case and by disputing the allegation of marriage not consummated or he is unfit for marital life or he suppressed any such fact or he cheated his wife or parents-in-laws and with a contention that the said allegations are baseless and made only to malign him with character assassination against him and his family and the alleged cruelty or harassment from him and his parents is also false, that he had already filed W.P.No.10222 of 2016 before the Hon'ble High Court for issuance of a Writ of Mandamus, as the police are frequently calling him to the Police Station without registering the FIR and the said writ petition is still pending, that after receiving notices in the said writ petition, the police registered the present complaint vide Crime No.217 of 2016 against him and his family members, that as the marriage took place over four years ago i.e., on 18.03.2012 and the alleged dishonest representation/suppression and that E.D. can also be caused by psychological reasons, like serious amount of stress, which can be a temporary disability and hence, conducting of such test today and the result thereof cannot be the basis to say that the respondent is suffering from such E.D. four years earlier, that he never had any physical

deformity resulting in E.D., which is evident from the medical reports given after due tests, that for undergoing such test he has to be given injection to the critical parts of the body and the results of such test being used in a criminal case is prohibited as it is violative of Article 20(3) of the Constitution of India, besides in violation of various pronouncements of the Apex Court, that as no sexual offence has been alleged, the Investigating Agency cannot compel him to undergo such potency test to disprove an offence under Section 420 of IPC and hence sought for dismissal of the petition.

8. It is pursuant to which, after hearing arguments of both sides and considering the material on record, by the impugned order dated 08.08.2016, the learned XIII Additional Chief Metropolitan Magistrate, Hyderabad, allowed the application, observing that as the complainant alleges that her marriage was not consummated and A.1 is suffering from E.D. since prior to marriage, which was also agreed by A.1 through his emails to her stating that he is suffering from E.D. since prior to marriage and as the case is under investigation, to prove the case of the defacto-complainant, it is necessary to send A.1 for potency test and to complete the investigation.

9. It is impugning the same with the contentions referred supra, the revision is maintained and the submissions of both sides in the course of hearing reproduced above no way require repetition.

10. Before discussing the facts further in answering the *lis*, it is just to consider the relevant provisions and propositions.

11. Coming to the provisions, Sections 53, 53A, 54 and Section 2(h), (i) & (y) of the Code of Criminal Procedure, 1973, as amended from time to time, and Articles 20 and 21 of the Constitution of India read as under:-

(a). 53. Examination of accused by medical practitioner at the request of police officer. –

(1) When a person is arrested on a charge of committing an offence of such a nature and alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence, it shall be lawful for a registered medical practitioner, acting at the request of a police officer not below the rank of sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the person arrested as is reasonably necessary in order to ascertain the facts which may afford such evidence, and to use such force as is reasonably necessary for that purpose.

(2) Whenever the person of a female is to be examined under this section, the examination shall be made only by, or under the supervision of, a female registered medical practitioner.”

In the year 2005, a number of amendments were made in the Criminal Procedure Code by Act 25 of 2005. Those amendments included the addition of an explanation to Section 53 and insertion of Sections 53-A and 311-A. The explanation added to Section 53 reads as under:-

“[Explanation. – In this section and in sections 53A and 54, -

a) “examination” shall include the examination of blood, blood stains, semen, swabs in case of sexual offences, sputum and sweat, hair samples and finger nail clippings by the use of modern and scientific techniques including DNA profiling and such other tests which the registered medical practitioner thinks necessary in a particular case; (emphasis added)

b) “registered medical practitioner” means a medical practitioner who possess any medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956 (102 of 1956) and whose name has been entered in a State Medical Register.]”

(b). 53A. 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 kilometres from the place where the offence has been committed by any other registered medical practitioner acting at the 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.

(2) The registered medical practitioner conducting such examination shall, without delay, examine such person and prepare a report of his examination giving the following particulars, namely:--

(i) the name and address of the accused and of the person by whom he was brought,

- (ii) the age of the accused,
- (iii) marks of injury, if any, on the person of the accused,
- (iv) the description of material taken from the person of the accused for DNA profiling, and
- (v) other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at shall also be noted in the report,

(4) The exact time of commencement and completion of the examination shall also be noted in the report,

(5) The registered medical practitioner shall, without delay, forward the report of the investigating officer, who shall forward it to the Magistrate referred to in Section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section.

(c). 54. Examination of arrested person by medical officer:--

(1) When a person is arrested, he shall be examined by a medical officer in the service of Central or State Governments and in case the medical officer is not available by a registered medical practitioner soon after the arrest is made:

Provided that where the arrested person is a female, the examination of the body shall be made only by or under the supervision of a female medical officer, and in case the female medical officer is not available, by a female registered medical practitioner.

(2) The medical officer or a registered medical practitioner so examining the arrested person shall prepare the record of such examination, mentioning therein any injuries or marks of violence upon the person arrested, and the approximate time when such injuries or marks may have been inflicted.

(3) Where an examination is made under sub-section (1), a copy of the report of such examination shall be furnished by the medical officer or registered medical practitioner, as the case may be, to the arrested person or the person nominated by such arrested person.

(d). Section 2(h), (i) and (y) of Cr.P.C.:

In this Code, unless the context otherwise requires,

(h) "investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf;

(i) "judicial proceeding" includes any proceeding in the course of which evidence is or may be legally taken on oath;

(y) words and expressions used herein and not defined but defined in the Indian Penal Code (45 of 1860) have the meanings respectively assigned to them in that Code.

(e) Article 20: Protection in respect of conviction for offences:-- (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been

inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself.

(f) Article 21: Protection of life and personal liberty:-- No person shall be deprived of his life or personal liberty except according to procedure established by law.

12. Coming to the propositions, on the scope of Article 20 of the Constitution of India, the Eleven Judges Bench of the Supreme Court in the majority expression in STATE OF BOMBAY v. KATHI KALU OGHAD¹ clearly held that "to be a witness" may be equivalent to "furnishing evidence" in the sense of making oral or written statements, but not in the larger sense of the expression so as to include giving of thumb impression or impression of palm or foot or fingers or specimen writing or exposing a part of the body by an accused person for purpose of identification.

The Supreme Court further observed that "the giving of fingers impression or of specified signature or of handwriting etc., strictly speaking, is not "to be a witness".

The expression "to be a witness" was held by the Supreme Court to mean imparting knowledge in respect of the relevant facts, by means of oral statements or statements in writing by a person who has personal knowledge of the facts to be communicated to a Court or to a person holding an enquiry or investigation.

¹ AIR 1961 SC 1808

The Court further observed that "person is said 'to be a witness' to a certain state of facts which has to be determined by a Court or authority authorised to come to a decision, by testifying to what he has seen, or something he has heard which is capable of being heard and is not hit by the rule excluding hearsay, or giving his opinion, as an expert, in respect of matters in controversy".

The Supreme Court further observed that "clause 3 of Article 20 of the Constitution is directed against self-incrimination by an accused person. Self-incrimination must mean conveying information based upon the personal knowledge of the person giving the information and cannot include merely the mechanical process of producing documents in Court which may throw a light on any of the points in controversy, but which do not contain any statement of the accused based on his personal knowledge".

13. In RITESH SINHA VS. STATE OF U.P.², the Apex Court by referring to KATHI KALU (supra) among other expressions, observed that:

“21. While departing from the view taken in M.P. Sharma that “to be witness is nothing more than to furnish evidence” and such evidence can be furnished through lips or by production of a thing or of a document or in other modes, **in Kathi Kalu Oghad this Court was alive to the fact that the investigating agencies cannot be denied their legitimate power to investigate a case properly and on a proper analysis of relevant legal provisions it gave a restricted meaning to the term “to**

² (2013) 2 SCC 357 : AIR 2013 SC 1132

be witness". The relevant observations may be quoted: **(KATHI KALU OGHAD's case – AIR – p-1814 – para-10)**

"To be a witness' may be equivalent to 'furnishing evidence' in the sense of making oral or written statements, but not in the larger sense of the expression so as to include giving of thumb impression or impression of palm or foot or fingers or specimen writing or exposing a part of the body. 'Furnishing evidence' in the latter sense could not have been within the contemplation of the Constitution-makers for the simple reason that – thought they may have intended to protect an accused person from the hazards of self-incrimination, in the light of the English Law on the subject – they could not have intended to put obstacles in the way of efficient and effective investigation into crime and of bringing criminals to justice. The taking of impressions or parts of the body of an accused person very often becomes necessary to help the investigation of a crime. It is as much necessary to protect an accused person against being compelled to incriminate himself, as to arm the agents of law and the law courts with legitimate powers to bring offenders to justice."

.....

24. Four of the conclusions drawn by this court, which are relevant for our purpose, could be quoted:

(3) 'To be a witness' is not equivalent to 'furnishing evidence' in its widest significance; that is to say, as including not merely making of oral or written statements but also production of documents or giving materials which may be relevant at a trial to determine the guilt or innocence of the accused.

(4) Giving thumb impressions or impressions of foot or palm or fingers or specimen writings or showing parts of the body by way of identification are not included in the expression 'to be a witness'.

(5) 'To be a witness' means imparting knowledge in respect of relevant facts by an oral statement or a statement in writing, made or given in court or otherwise.

(6) 'To be a witness' in its ordinary grammatical sense means giving oral testimony in court. Case law has gone beyond this strict literal interpretation of the expression which may now bear a wider meaning, namely, bearing testimony in court or out of court by a person accused of an offence, orally or in writing."

.....

26. In **SELVI's** case, a three Judge Bench of this Court was considering whether involuntary administration of certain scientific techniques like narco- analysis, polygraph examination and the Brain Electrical Activation Profile (BEAP) tests and the results thereof are of a 'testimonial character' attracting the bar of Article 20(3) of the Constitution. This Court considered the protective scope of right against self-incrimination, that is whether it extends to the investigation stage and came to the conclusion that even the investigation at the police level is embraced by Article 20(3). After quoting extensively from Kathi Kalu

Oghad, it was observed that the scope of ‘testimonial compulsion’ is made clear by two premises. The first is that ordinarily it is the oral or written statements which convey the personal knowledge of a person in respect of relevant facts that amount to ‘personal testimony’ thereby coming within the prohibition contemplated by Article 20(3). In most cases, such ‘personal testimony’ can be readily distinguished from material evidence such as bodily substances and other physical objects. The second premise is that in some cases, oral or written statements can be relied upon but only for the purpose of identification or comparison with facts and materials that are already in the possession of the investigators. The bar of Article 20(3) can be invoked when the statements are likely to lead to incrimination by themselves or furnish a link in the chain of evidence. It was held that all the three techniques involve testimonial responses. They impede the subject’s right to remain silent. The subject is compelled to convey personal knowledge irrespective of his/her own volition. The results of these tests cannot be likened to physical evidence so as to exclude them from the protective scope of Article 20(3). This Court concluded that compulsory administration of the impugned techniques violates the right against self-incrimination. Article 20(3) aims to prevent the forcible conveyance of personal knowledge that is relevant to the facts in issue. The results obtained from each of the impugned tests bear a testimonial character and they cannot be categorized as material evidence such as bodily substances and other physical objects.

14. In DIPANWITA ROY v. RONO BROTO ROY³ referring to the earlier expressions in Bhabani Prasad Jena etc. v. Convener, Sec. Orissa S.COMN.⁴, and Nandlal Wasudeo Badwaik Vs. Lata Nandlal Badwaik And Another⁵, while holding that there is no conflict in the two decisions of this Court, namely, Goutam Kundu vs. State of West Bengal⁶ and Sharda vs. Dharmpal⁷, it was held that:

“It is borne from the decisions rendered by this Court in Bhabani Prasad Jena (supra), and Nandlal Wasudeo Badwaik (supra), that depending on the facts and circumstances of the case, it would be permissible for a Court to direct the holding of a DNA examination, to determine the veracity of the allegation(s), which constitute one of the grounds, on which the concerned party would either succeed or lose. There can be no dispute,

³ ((2015) 1 SCC 365),

⁴ (2010) 8 SCC 633

⁵ (2014) 2 SCC 576

⁶ (1993) 3 SCC 418

⁷ (2003) 4 SCC 493

that if the direction to hold such a test can be avoided, it should be so avoided. The reason, as already recorded in various judgments by this Court, is that the legitimacy of a child should not be put to peril.”

In fact, even from this expression, even against the will, the DNA test can be ordered to provide sperm, blood or other samples to be extracted from the body of the person for such examination and what is observed to avoid where it can be avoided is, in the interest of the child cannot be put to peril and not in considering any direction tantamounts to testimonial compulsion of the same.

15. In the latest 3-Judges Bench expression of the Apex Court in **SUDHIR CHAUDHARY VS. STATE (NCT of Delhi)**⁸, it was observed no doubt from the consent of accused to the voice sampling that:

“In the submissions which have been urged in these proceedings, learned counsel has specifically stated that the Appellants would abide by the consent which they had furnished to their voice samples being drawn. That being the position, **the only surviving issue for this Court is to ensure that the underlying process for drawing the voice samples is fair and reasonable, having due regard to the mandate of Article 21. On the one hand, it is not open to the accused to dictate the course of investigation.**”

16. From the above, it is clear that the process of collecting samples for conducting tests should be fair and reasonable, having regard to the mandate of Article 21 of the Constitution of India. But, it is not open to the accused to dictate the course of investigation. The conclusion therein is practically from the consent to give voice sample and not against the consent, it's ordering and the expression in RITESH SINHA (supra) not referred therein.

⁸ (2016) 8 SCC 307 (3JB)

However, it is observed that giving of voice sample is not evidence, since it's purpose is only to compare it with the questioned test, since consented to furnish.

17. Before discussing further on the facts and law, coming to the legal position on 'Expert Opinion', when and where generally required and its value, it is as follows:

(a). OPINION EVIDENCE: A witness in order to give an opinion must be competent (Peritus)-i.e., an Expert in the field and the subject matter must be one in respect of which an opinion is allowed.-See-Section-45-Evidence Act.

(b). Meaning of Opinion-What a person thinks and reasons in respect of the existence or non-existence of fact is opinion. Whatever is presented to the senses of a witness and of which he receives direct knowledge without any process of thinking and reasoning is not opinion.

(c). As a general rule the opinion or belief of third person is not relevant and admissible as the witnesses are allowed to state facts alone of what they themselves saw or heard. However, cases in which the question involved is beyond the range of common experience and knowledge or Investigating Agency and Court have no special study and necessary experience on the subject and is not in a position to form a correct opinion, in such cases help of an expert in that field is necessary as held in Sitaram Srigopal vs. Daulati Devi⁹.

(d). Hearsay-direct evidence-can be tested by actual cross examination and there is fear of perjury. Hearsay indirect evidence is thus prohibited indirectly or precluded.

(f). Hearsay indirect evidence is inadmissible unless the Statute provides for it. Expert opinion evidence is no way an exception to it being opinion of a third person inadmissible as a general rule, but for Sections 45-51 Evidence Act and the like from other provisions. The prerequisite from Section 45 Evidence Act is that the witness must be an Expert in the field.

(g). Expert-is the person who specifically or specially skilled or practiced on any subject. Expert evidence is thus the direct evidence of an expert in the field from what he perceived by the senses of perception or in any other manner. According to Russell, any person who is skilled or has adequate knowledge in a particular field is called Expert.

(h). RELEVANT PROVISIONS DEALING WITH OPINION EVIDENCE:

(I) Section 45 of the Evidence Act, speaks that- for the Court to form an opinion the opinion of an expert is relevant. This section is thus an exception to the general rule as regards exclusion of opinion evidence. This section no way confined, like in Section 73 of the Indian Evidence Act, the power of Court during enquiry or trial only, leave about amended Section 311-A Cr.P.C. filled the gap in Section 73 of the Indian Evidence Act.

(II) Section 51 says that whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.

⁹ AIR 1979 SC 1225

(III) Section 46 makes facts, not otherwise relevant, are relevant- (1). If they support or are inconsistent with the opinions of experts, when such opinions are relevant.

(IV) Regarding opinion evidence-the other relevant sections are Sections.47-50, 73 & 67, among which-

(V) Section.50-speaks of relevancy of opinion on relationship for the Court to form an opinion.

(VI) Section.49-speaks of relevancy of opinion on usages and tenets of any body of men or family- for the Court to form an opinion.

(VII) Section.48-speaks of relevancy of opinion on existence of custom or right general or relating to a considerable class of persons for the Court to form an opinion.

(XIV) Sections 45-51 nowhere speak of requirement of corroboration to the opinion evidence. Section 134 Evidence Act-says no particular number of witnesses shall in any case be required for the proof of any fact.

(XV) Coming to relevancy and evidentiary value of expert opinion and evidence, the Latin general maxim is that-“EXPERTOCREDE” to mean an Expert is to be generally believed. It is because the testimony of an expert as to general scientific facts and doctrines which are unintelligible to the lay-men, will serve to elucidate the facts in issue. However the general rule is that the evidence of an expert has to be tested as any other evidence. Thus the privilege of drawing inferences including in case of expert opinion evidence is given to the Courts to appreciate with reference to facts and circumstances of the case and from other evidence available on record for overall appreciation to arrive a right conclusion on a fact is proved or not proved or disproved.

(XVIII) The cases in which testimony of an expert is admissible are of two types: 1). When the conclusions to be drawn by the Court depends upon the existence of facts which are not of common knowledge and which are peculiarly within the special knowledge of men whose experience and study enables them to speak with authority upon the subjects in question. 2). When the conclusions to be drawn by the Court depends both upon the facts stated as well as the knowledge of the facts themselves not within the range of ordinary intelligence. In the first class of cases – the facts are to be stated by the expert and the conclusion is to be drawn by the Court. In the second class of cases – the expert states the facts and give his conclusions in the form of opinion – which may be accepted or rejected by the Court from appreciation of evidence.

(XIX) The credibility of the expert witness and his competency to give opinion and the reasons given supporting it are the material aspects in the appreciation of evidence by the Court concerned:

- (i) The test to determine competency of an expert is (a). Educational background in the field, (b). Practical knowledge in the field, (c). Careful analysis in arriving to the conclusion opined & (d). Ability to explain the expertise and how he arrived to the conclusion opined.
- (ii) The test to determine credibility of an expert is (a). Basis of opinion- The opinion must be based on facts and reasons there from to support the conclusion. How far to rely there from is a matter of appreciation in evidence by the Court. The expert furnishes the data with reasons to his opinion there from and the Court decides there from and from other material in evidence if any.
- (iii) The correct approach for the Court would be to weigh the reasons on which the expert report is based and the quality of expert's opinion would ultimately depend upon the soundness of the reasons on which it is founded-held in Uma kant Bajpayee vs. State of UP.

18. From the above, covering the scope of 'Expert Opinion', admissibility and relevancy, now coming to the opinion as to potency of A.1 can be sought or not through Expert Opinion and whether it is a testimonial compulsion, effecting and intruding into the privacy and personal liberty of A.1 and whether such a qualified Fundamental Right is governed by any existing Statutory provision to obtain, this Court in Crl.P.No.2119 of 2015, dated 23.06.2015, at para-3, held as follows:

"3) Though the Eleven Judges Constitutional Bench expression of the Apex Court in State of Bombay V. Kathikalu Oghad [1] is clear that once accused is arrested in connection with investigation or other proceeding under Section 5 of the Identification of Prisoners Act, 1920, a Magistrate of the First Class, where satisfied that, for purpose of said investigation or proceeding under the Criminal Procedure Code, it is expedient to direct the person to allow his photographs or measurements (which include finger impressions or foot print impressions as per Section 2(i)(iii) of the Act, 1920 (that may extends to signatures even) for purpose of comparison with any disputed finger impressions or the like, that does not hit by Article 20(3) of the Constitution of India as not within the meaning of 'to be a witness' but for 'furnishing' evidence in the larger sense and what is protected an accused is from hazards of self incrimination, the bar under Article 20(3) of the Constitution of India can be invoked when the statements are likely to lead to incrimination by themselves or furnish a link in the claim of evidence."

19. From the above, coming back to the decision placed reliance by both the parties is the 3-Judge Bench of the Apex Court in SELVI AND OTHERS v. STATE OF KARNATAKA¹⁰.

26. In **SELVI**'s case (supra), a three Judge Bench of this Court was considering whether involuntary administration of certain scientific techniques like narco- analysis, polygraph examination and the Brain Electrical Activation Profile (BEAP) tests and the results thereof are of a 'testimonial character' attracting the bar of Article 20(3) of the

¹⁰ (2010) 7 SCC 263

Constitution. This Court considered the protective scope of right against self-incrimination, that is whether it extends to the investigation stage and came to the conclusion that even the investigation at the police level is embraced by Article 20(3). After quoting extensively from Kathi Kalu Oghad, it was observed that the scope of 'testimonial compulsion' is made clear by two premises. The first is that ordinarily it is the oral or written statements which convey the personal knowledge of a person in respect of relevant facts that amount to 'personal testimony' thereby coming within the prohibition contemplated by Article 20(3). In most cases, such 'personal testimony' can be readily distinguished from material evidence such as bodily substances and other physical objects. The second premise is that in some cases, oral or written statements can be relied upon but only for the purpose of identification or comparison with facts and materials that are already in the possession of the investigators. The bar of Article 20(3) can be invoked when the statements are likely to lead to incrimination by themselves or furnish a link in the chain of evidence. It was held that all the three techniques involve testimonial responses. They impede the subject's right to remain silent. The subject is compelled to convey personal knowledge irrespective of his/her own volition. The results of these tests cannot be likened to physical evidence so as to exclude them from the protective scope of Article 20(3). This Court concluded that compulsory administration of the impugned techniques violates the right against self-incrimination. Article 20(3) aims to prevent the forcible conveyance of personal knowledge that is relevant to the facts in issue. The results obtained from each of the impugned tests bear a testimonial character and they cannot be categorized as material evidence such as bodily substances and other physical objects.

(a). There the issue was, whether the Narcoanalysis, Polygraph (lie-detector test) and BEAP (Brain Electrical Activation Profile) Test conducted against the will of a person is legally permissible and it was observed that voluntary undertaking of tests is different from the tests conducted under compulsion violating the right against self-incrimination and personal liberty under Articles 20(3) and 21 of the Constitution of India and Right of Silence under Section 161 (2) of Cr.P.C.

(b). It is observed that as per Sections 53, 53-A and 54 Cr.P.C., Narcoanalysis, Polygraph and BEAP tests are not included and the general expression such other tests used in Section 53 – Explanation (a) of Cr.P.C., cannot be construed as covering of the three tests, because they are not of the same category to which the tests specified therein belong, so to include, when the Parliament, while amending the said Explanation (a) in the year 2005, did not include those tests, despite the fact that these tests were in existence at that time. The protection of Right of Silence against compulsion violating the right against self-incrimination, when lost, in the case of Narcoanalysis, because the said test subjects under the influence of drug (sodium pentothal) injected into his body loses control over his verbal responses and, therefore, cannot decide consciously about the question, which he should not answer.

(c). Similar is the case with BEAP test, wherein the electrical waves emanating from the test subjects the brain or studied in response to probes and these techniques involve testimonial compulsion. The mental privacy, which is the aspect of personal liberty under Article 21 of the Constitution of India, is intruded upon because common feature of these tests is that the test subjects verbal or physiological responses extracted in a manner that he has no conscious control over them. Voluntary undertaking of tests is permissible, provided certain safeguards, like the one recommended by NHRC, in case of Polygraph tests are observed and similar safeguards be advised for Narcoanalysis and BEAP tests.

(d). Even in SELVI's case, it is clearly observed that -- The rule under Article 20(3) of the Constitution of India against the testimonial compulsion, however, does not prohibit collection of material evidence, such as bodily substances and other physical objects and the statement used for comparison with facts already known to investigators. To ascertain whether the statement is incriminatory, depends upon the use to which it is put. The distinction, whether the statement is inculpatory or exculpatory is to decide at the stage of trial, whereas the Right to remain Silence is available even at the stage of investigation in a criminal case.

(e). It is observed therefrom with reference to the Sections 53, 53-A and 54 Cr.P.C. r/w. Articles 20(3) and 21 of the Constitution of India that:

“.....Article 20(3) protects a person who is 'formally accused' of having committed an offence or even a suspect or a witness who is questioned during an investigation in a criminal case. However, Article 20(3) is not applicable when a person gives his/her informed consent to undergo any of the impugned tests. It has also been described earlier that the 'right against self-incrimination' does not protect persons who may be compelled to undergo the tests in the course of administrative proceedings or any other proceedings which may result in civil liability. It is also conceivable that a person who is forced to undergo these tests may not subsequently face criminal charges. In this context, Article 20(3) will not apply in situations where the test results could become the basis of non-penal consequences for the subject such as custodial abuse, police surveillance and harassment among others.

In order to account for these possibilities, we must examine whether the involuntary administration of any of these tests is compatible with the constitutional guarantee of 'substantive due process'. The standard of 'substantive due process' is of course the threshold for examining the validity of all categories of governmental action that tend to infringe upon the idea of 'personal liberty. We will proceed with this inquiry with regard to the various dimensions of 'personal liberty' as understood in the context of Article 21 of the Constitution, which lays down that: 'No

person shall be deprived of his life and liberty except according to procedure established by law'.

Since administering the impugned tests entails the physical confinement of the subject, it is important to consider whether they can be read into an existing statutory provision. This is so because any form of restraint on personal liberty, howsoever slight it may be, must have a basis in law. However, we have already explained how it would not be prudent to read the explanation to Sections 53, 53-A and 54 of the CrPC in an expansive manner so as to include the impugned techniques. The second line of inquiry is whether the involuntary administration of these tests offends certain rights that have been read into Article 21 by way of judicial precedents. The contentions before us have touched on aspects such as the 'right to privacy' and the 'right against cruel, inhuman and degrading treatment'. The third line of inquiry is structured around the right to fair trial which is an essential component of 'personal liberty'.

There are several ways in which the involuntary administration of either of the impugned tests could be viewed as a restraint on 'personal liberty'. The most obvious indicator of restraint is the use of physical force to ensure that an unwilling person is confined to the premises where the tests are to be conducted. Furthermore, the drug-induced revelations or the substantive inferences drawn from the measurement of the subject's physiological responses can be described as an intrusion into the subject's mental privacy. It is also quite conceivable that a person could make an incriminating statement on being threatened with the prospective administration of any of these techniques. Conversely, a person who has been forcibly subjected to these techniques could be confronted with the results in a subsequent interrogation, thereby eliciting incriminating statements.

We must also account for circumstances where a person who undergoes the said tests is subsequently exposed to harmful consequences, though not of a penal nature. We have already expressed our concern with situations where the contents of the test results could prompt investigators to engage in custodial abuse, surveillance or undue harassment. We have also been apprised of some instances where the investigation agencies have leaked the video-recordings of narcoanalysis interviews to media organisations. This is an especially worrisome practice since the public distribution of these recordings can expose the subject to undue social stigma and specific risks. It may even encourage acts of vigilantism in addition to a 'trial by media'.

We must remember that the law does provide for some restrictions on 'personal liberty' in the routine exercise of police powers. For instance, the CrPC incorporates an elaborate scheme prescribing the powers of arrest, detention, interrogation, search and seizure. A fundamental premise of the criminal justice system is that the police and the

judiciary are empowered to exercise a reasonable degree of coercive powers. Hence, the provision that enables Courts to order a person who is under arrest to undergo a medical examination also provides for the use of 'force as is reasonably necessary' for this purpose. It is evident that the notion of 'personal liberty' does not grant rights in the absolute sense and the validity of restrictions placed on the same needs to be evaluated on the basis of criterion such as 'fairness, non- arbitrariness, and reasonableness'.

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.

The discussion on the 'right to privacy' in *Sharda v. Dharampal*, (supra.) also cited a decision of the Court of Appeal (in the U.K.) in *R (on the application of S) v. Chief Constable of South Yorkshire*, (2003) 1 All ER 148 (CA).....As per the majority decision in *Kathi Kalu Oghad*, (supra.) the use of material samples such as fingerprints for the purpose of comparison and identification does not amount to a testimonial act for the purpose of Article 20(3). **Hence, the taking and retention of DNA samples which are in the nature of physical evidence does not face constitutional hurdles in the Indian context..... The judgment delivered in Sharda v. Dharampal, (supra.) had surveyed the above-mentioned decisions to conclude that a person's right to privacy could be justifiably curtailed if it was done in light of competing interests. Reference was also made to some statutes that permitted the compulsory administration of medical tests.**

For instance, it was observed, at Para. 61-62: "Having outlined the law relating to privacy in India, it is relevant in this context to notice that certain laws have been enacted by the Indian Parliament where the

accused may be subjected to certain medical or other tests. By way of example, we may refer to Sections 185, 202, 203 and 204 of the Motor Vehicles Act, Sections 53 and 54 of the Code of Criminal Procedure and Section 3 of the Identification of Prisoners Act, 1920. Reference in this connection may also be made to Sections 269 and 270 of the Indian Penal Code. Constitutionality of these laws, if challenge is thrown, may be upheld."

The National Human Rights Commission which had published 'Guidelines relating to administration of Polygraph test (Lie Detector test) on an accused (2000)'. The relevant extract has been reproduced below: "... The lie detector test is much too invasive to admit of the argument that the authority for Lie Detector tests comes from the general power to interrogate and answer questions or make statements. (Ss. 160-167 CrPC). However, in India we must proceed on the assumption of constitutional invasiveness and evidentiary impermissiveness to take the view that such holding of tests is a prerogative of the individual, not an empowerment of the police. In as much as this invasive test is not authorised by law, it must perforce be regarded as illegal and unconstitutional unless it is voluntarily undertaken under non-coercive circumstances. If the police action of conducting a lie detector test is not authorised by law and impermissible, the only basis on which it could be justified is, if it is volunteered. There is a distinction between: (a) volunteering, and (b) being asked to volunteer. This distinction is of some significance in the light of the statutory and constitutional protections available to any person. There is a vast difference between a person saying, 'I wish to take a lie detector test because I wish to clear my name', and when a person is told by the police, 'If you want to clear your name, take a lie detector test'. A still worse situation would be where the police say, 'Take a lie detector test, and we will let you go'. In the first example, the person voluntarily wants to take the test. It would still have to be examined whether such volunteering was under coercive circumstances or not. In the second and third examples, the police implicitly (in the second example) and explicitly (in the third example) link up the taking of the lie detector test to allowing the accused to go free."

While these arguments merit consideration, it must be noted that ordinarily it is the task of the legislature to arrive at a pragmatic balance between the often competing interests of 'personal liberty' and public safety. In our capacity as a constitutional court, we can only seek to preserve the balance between these competing interests as reflected in the text of the Constitution and its subsequent interpretation. There is absolutely no ambiguity on the status of principles such as the 'right against self-incrimination' and the various dimensions of 'personal liberty'. We have already pointed out that the rights guaranteed in

Articles 20 and 21 of the Constitution of India have been given a non-derogable status and they are available to citizens as well as foreigners. It is not within the competence of the judiciary to create exceptions and limitations on the availability of these rights.

CONCLUSION

In our considered opinion, the compulsory administration of the impugned techniques violates the 'right against self-incrimination'. This is because the underlying rationale of the said right is to ensure the reliability as well as voluntariness of statements that are admitted as evidence. This Court has recognised that the protective scope of Article 20(3) extends to the investigative stage in criminal cases and when read with Section 161(2) of the Code of Criminal Procedure, 1973 it protects accused persons, suspects as well as witnesses who are examined during an investigation. The test results cannot be admitted in evidence if they have been obtained through the use of compulsion. Article 20(3) protects an individual's choice between speaking and remaining silent, irrespective of whether the subsequent testimony proves to be inculpatory or exculpatory. Article 20(3) aims to prevent the forcible conveyance of personal knowledge that is relevant to the facts in issue'. The results obtained from each of the impugned tests bear a 'testimonial' character and they cannot be categorised as material evidence.

We are also of the view that forcing an individual to undergo any of the impugned techniques violates the standard of 'substantive due process' which is required for restraining personal liberty. Such a violation will occur irrespective of whether these techniques are forcibly administered during the course of an investigation or for any other purpose since the test results could also expose a person to adverse consequences of a non-penal nature. The impugned techniques cannot be read into the statutory provisions which enable medical examination during investigation in criminal cases, i.e. the Explanation to Sections 53, 53-A and 54 of the Code of Criminal Procedure, 1973. Such an expansive interpretation is not feasible in light of the rule of 'ejusdem generis' and the considerations which govern the interpretation of statutes in relation to scientific advancements. We have also elaborated how the compulsory administration of any of these techniques is an unjustified intrusion into the mental privacy of an individual. It would also amount to 'cruel, inhuman or degrading treatment' with regard to the language of evolving international human rights norms. Furthermore, placing reliance on the results gathered from these techniques comes into conflict with the 'right to fair trial'. Invocations of a compelling public interest cannot justify the dilution of constitutional rights such as the 'right against self-incrimination'.

In light of these conclusions, we hold that no individual should be forcibly subjected to any of the techniques in question, whether in the context of investigation in criminal cases or otherwise. Doing so would amount to an unwarranted intrusion into personal liberty. However, we do leave room for the voluntary administration of the impugned techniques in the context of criminal justice, provided that certain safeguards are in place. Even when the subject has given consent to undergo any of these tests, the test results by themselves cannot be admitted as evidence because the subject does not exercise conscious control over the responses during the administration of the test. However, any information or material that is subsequently discovered with the help of voluntary administered test results can be admitted, in accordance with Section 27 of the Evidence Act, 1872. The National Human Rights Commission had published 'Guidelines for the Administration of Polygraph Test (Lie Detector Test) on an Accused' in 2000. These guidelines should be strictly adhered to and similar safeguards should be adopted for conducting the 'Narcoanalysis technique' and the 'Brain Electrical Activation Profile' test. The text of these guidelines has been reproduced below:

- (i) No Lie Detector Tests should be administered except on the basis of consent of the accused. An option should be given to the accused whether he wishes to avail such test.
- (ii) If the accused volunteers for a Lie Detector Test, he should be given access to a lawyer and the physical, emotional and legal implication of such a test should be explained to him by the police and his lawyer.
- (iii) The consent should be recorded before a Judicial Magistrate.
- (iv) During the hearing before the Magistrate, the person alleged to have agreed should be duly represented by a lawyer.
- (v) At the hearing, the person in question should also be told in clear terms that the statement that is made shall not be a 'confessional' statement to the Magistrate but will have the status of a statement made to the police.
- (vi) The Magistrate shall consider all factors relating to the detention including the length of detention and the nature of the interrogation.
- (vii) The actual recording of the Lie Detector Test shall be done by an independent agency (such as a hospital) and conducted in the presence of a lawyer.
- (viii) A full medical and factual narration of the manner of the information received must be taken on record."

20. From the above, it is to be decided, whether the potency test by E.D. is compelled extraction of the samples in the course of

medical examination that does not amount to conduct that shocks the conscience. The procedure established by law when provides a reasonable force, which may be reasonably necessary, it is permissible and the Law Commission also, in this regard, has discussed supra and observed that, holding of tests contending as Constitutional invasiveness is not neither prerogative of the individual nor it is empowerment of the police, if this invasive test, if not authorised by law, it must perforcibly be regarded as illegal, unless it is voluntarily undertaken to justify. Once it is authorised by law, reasonable restriction on the Constitutional guarantee within the threshold of the procedure established by law, the same is permissible.

21. From this, we have to now consider whether the E.D. test is one of the permissible tests Statutorily provided to enforce even against the will to compel within the qualified and not absolute Fundamental Rights of Right to Life, Liberty and Privacy from the expressions supra, within the meaning of procedure established by law.

22. A reading of the wording of Sections 53, 53-A and 54 Cr.P.C., permits for its conducting Statutorily as per the procedure established by law and when such is the case and once it is not within the prohibited limitation for not like the case of Narcoanalysis, Polygraph test and BEAP test, the same is permissible and the principles laid down in SELVI's case (supra) thereby no way prohibits ordering of the test (ED).

23. Coming to the Single Judge expression of the Madras High Court in J. THILAGALAKSHMI's case, it has no application to the

facts of the present case, as here it is one of the issues as to the revision petitioner – A.1 having been known that he is not a potent, married the woman as his wife and once such is the case and it is the prosecution version from the report and statements, particularly of the victim, that is required to be determined through medical examination for expert opinion as part of fair investigation and even any final report filed, it can be done later even by seeking permission from Court under Section 173(8) Cr.P.C. or on direction of Court under Section 156(3) Cr.P.C. by further investigation from the necessity, vide decision of the Apex Court in *SAKIRI SRINU v. STATE OF UTTAR PRADESH*¹¹.

24. Coming to the other Single Judge expression of the Madras High Court in Crl.R.C.No.770 of 2009 and M.P.No.1 of 2009, dated 29.07.2010, reported in *VEERAPAN v. SHANMUGA DEVI*¹², there the accused was not ready to give his consent for DNA test in determining the paternity of the child, it was held that without the consent, it is not possible to compel for DNA test, as the Apex Court in *SELVI's case (supra)* so laid down. It is not a correct conclusion to say in *SELVI's case (supra)* so stated, even not so stated and, in fact, it was held permissible of the DNA test by referring to *DHARMPAL's case (supra)*, from what the Apex Court laid down in *SELVI's case* detailed and discussed *supra*.

25. Said expression of the Madras High Court in *VEERAPAN's case (supra)* is not only contrary to *SELVI's case (supra)*, but also to the subsequent expressions of the Apex Court in *DIPANWITA ROY*

¹¹ (2008) 2 SCC 409

¹² 2010 (3) MWN (Crl.) 143

v. RONOBROTO ROY¹³, which is also in relation to the proof of legitimacy of the child sought for DNA examination, holding the same as permissible even to compel the parties to undergo DNA examination for it cannot be contended as affecting the Right of Privacy and in NANDLAL WASUDEO BADWAIK¹⁴ of permissibility of DNA examination to determine the veracity of the allegations on the paternity of the child in dispute concerned.

26. No doubt, in DIPANWITA ROY's case (supra), it was observed at para-18, upholding of the order of the High Court directing for DNA examination by giving liberty to the wife to comply with and if she declines, the allegation would be determined by the Court concerned by drawing a presumption of the nature contemplated by Section 114, particularly from illustration (h) (adverse inference) of the Evidence Act.

27. This decision, no doubt, shows that despite direction, if a party failed to obey the same, the Court is entitled to draw an adverse inference.

28. Coming to the other contentions on the maintainability of the revision, once it affects the Rights of the parties, the revision definitely lies, though an outcome of the interlocutory order and even for that matter, apart from the power of the Court, either under Article 227 of the Constitution of India or under Section 483 and 482 of Cr.P.C., that are also available to invoke, as held by explaining MOHIT @ SONU's case and by approving DHARIVAL TOBACCO PRODUCTS's case and MADHU LIMAYE's case, while

¹³ (2015) 1 SCC 365

¹⁴ (2014) 2 SCC 576

referring to several of the earlier expressions in the latest expression of the 3-Judges Bench of the Apex Court in PRABHU CHAWLA v. STATE OF RAJASTHAN AND OTHERS¹⁵.

29. Now, coming to another aspect raised from the material on E.D./Potency examination, Authors Dr. Ayush Goyal and Dr. Praveen Jha articulated that penile erection is result of complex interaction between nerves, arterial, venous and sinusoidal systems and any defect in one of these links can lead to Erectile Dysfunction (ED). So far as psychological factors concerned, the mental impulse causes presumption of para-sympathetic impulses to the penis. This causes relaxation of arterioles and corpora cavernosa, sinusoids. So far as psychogenic is concerned, generally in 10% it is from stress, anxiety and depression and either from organic viz., endoconal disorders or neurogenic disorders, and so far as arteriogenic impotence is concerned, it is generally in 30% among diabetes or peripheral vascular disease, so far as venogenic impotency is concerned, it is generally among 15% due to penile venous extinction and a combined arteriogenic venogenic may be of 10% and the other causes are from drugs and excessive alcohol, smoking etc. It may be expressed that it is not because of impotency, erectile dysfunction may be the result, but from any of the several other factors, it is premature to go into this aspect, but for soliciting the expert opinion, including capable of giving also with reference to it so to give, as the material shows penile Doppler ultrasound and other tests are possible to some extent to decipher.

¹⁵ 2016 (5) CTC 779

30. Even from the above, what the material speaks is, E.D. may be outcome of different causes. It no way speaks, it cannot be deciphered of specific causes as if so, the statistics on different causes not possible to give. Once such is the case, the test can be permitted for submitting to the same is not a testimonial compulsion and not within the meaning of 'to be a witness' but for furnishing of information in its larger sense and no way affects the Right to Life for same is within the meaning of procedure established by law and within the sweep of 'such other tests' to cover by the provisions of law. Hence, the order of the Court below no way requires interference.

31. Accordingly and in the result, the order dated 08.08.2016 in Crl.M.P.No.2305 of 2016 passed by the learned XIII Additional Chief Metropolitan Magistrate (Mahila Court), Hyderabad, allowing the petition filed by the State for subjecting the petitioner (A.1) for E.D. medical examination (Potency test), is upheld by dismissing the revision for no grounds to interfere for this Court, while sitting in revision against it within the scope of law. However, time is granted to submit to examination within two (2) weeks from the date of receipt of a copy of this order.

32. As a sequel, miscellaneous petitions pending, if any, in this revision shall stand closed.

Dr. JUSTICE B. SIVA SANKARA RAO

20.02.2017

NOTE: (1) L.R. Copy be marked.
(2) Issue C.C. by 21.02.2017
(B/O)
Msr

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE No.2346 of 2016



20.02.2017
Msr

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

+CRIMINAL REVISION CASE No.2346 of 2016

% 20.01.2017

Naveen Krishna Bothireddy

..... Petitioner

And

\$ State of Telangana and another

..... Respondents

< GIST :

> HEAD NOTE :

! Counsel for the petitioner : Sri N. Sreedhar Reddy and
Sri A. Santhosh Kumar

^ Counsel for respondent No.1 : Public Prosecutor

Counsel for respondent No.2 : Sri V. Pattabhi

? CASES REFERRED :

1. AIR 1961 SC 1808
2. (2013) 2 SCC 357 : AIR 2013 SC 1132
3. ((2015) 1 SCC 365),
4. (2010) 8 SCC 633
5. (2014) 2 SCC 576
6. 1993) 3 SCC 418
7. 2003) 4 SCC 493
8. (2016) 8 SCC 307 (3JB)
9. AIR 1979 SC 1225
10. (2010) 7 SCC 263
11. (2008) 2 SCC 409
12. 2010 (3) MWN (Crl.) 143
13. (2015) 1 SCC 365
14. (2014) 2 SCC 576
15. 2016 (5) CTC 779