

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.942 of 2009

ORDER:

This criminal revision case is filed under Section 397 read with 401 Cr.PC., challenging the order dated 13.4.2009 in CrI.M.P.No.3604 of 2008 in C.C. No.288 of 2004 on the file of the Court of I Additional Junior Civil Judge, Narasaraopet, wherein and whereby the petition filed by the Investigating Agency under Section 173(8) of Cr.P.C., to permit them to perform Narcoanalysis Test on the petitioner was allowed.

2. The learned counsel for the petitioner submitted that the trial court, without consider the facts of the case, allowed the petition to send the petitioner for Narcoanalysis Test on the sole ground that this Court confirmed the orders of the trial court in CrI.M.P. No.1033 of 2006 permitting the Investigating Agency to conduct further investigation under Section 173(8) of Cr.P.C. He further submitted that if the order of the trial Court is allowed to stand, certainly it would cause miscarriage of justice. *Per contra*, learned Additional Public Prosecutor representing the State submitted that the trial Court considered all relevant aspects in right perspective and allowed the petition. He further submitted that there is no

illegality or irregularity in the order passed by the trial Court, warranting interference of this Court in this revision.

3. In nutshell, the facts of the case on hand are as follows: The petitioner is facing trial in C.C. No.288 of 2004 for the offence under Section 420 of IPC. The allegations made against the petitioner are that the petitioner used to work as an Agent of the *de facto* complainant in the business of gold jewellery. On 22.5.2003, the *de facto* complainant entrusted the jewellery weighing 3.357 Kgs worth Rs.14.00 lakhs to the petitioner for the purpose of selling in Jagtial, Karimnagar District. The petitioner gave a complaint to the Station House Officer, Siddipet I-Town Police Station, alleging that somebody committed theft of the gold jewellery from the bus, who in turn registered a case in Crime No.91 of 2003 for the offence under Section 379 of IPC. The petitioner informed the same to the *de facto* complainant. Basing on the complaint lodged by the *de facto* complainant, Station House Officer, Narasaraopet Town Police Station, registered a case in Crime No.316 of 2003 and investigated into. After completion of the investigation, the SHO, Narasaraopet Town P.S., laid charge sheet against the petitioner for the offence under Section 420 of IPC, which was numbered as C.C. No.288 of

2004. After completion of investigation, the SHO, Siddipet I-Town P.S., closed the case in Crime No.91 of 2003 as false. The *de facto* complainant filed W.P. No.1709 of 2005 on the file of this Court seeking direction to transfer Crime No.91 of 2003 from the file of the SHO, Siddipet I-Town P.S., to the file of the SHO, Narasaraopet Town P.S. Vide order dated 03.3.2005, in W.P.No.1709 of 2005, this Court directed the first respondent therein i.e., the Director General & Inspector General of Police, Lakdi-ka-pool, Hyderabad, to dispose of the representations dated 20.2.2004 and 01.3.2004 made by the *de facto* complainant in that regard.

4. During the pendency of trial, the Investigating Agency filed CrI.M.P. No.1033 of 2006 in C.C. No.288 of 2004 under Section 173(8) of Cr.P.C., to permit the Investigating Agency to conduct further investigation and the trial Court allowed the same on 14.3.2006. Feeling aggrieved by the said order, the petitioner preferred Criminal Petition No.5643 of 2007 and the same was dismissed by this Court on 01.10.2007 with the following observations:

“7. When new facts have come to light and additional material has surfaced, the investigating officer was within his rights in seeking permission of the Court for further investigation into the offence and file additional report and the learned Magistrate has

every authority under the provisions of Cr.P.C to permit such further investigation. The impugned order shows that further investigation was permitted in Cr.No.316 of 2003 pertaining to C.C.No.288 of 2004. The impugned order does not suffer from any illegality that warrants interference by this Court.”

5. It is needless to say that while allowing the petitions of this nature, the Court has to consider the health condition of the petitioner, his willingness to undergo the test and other attending circumstances. Sending a person to Narcoanalysis Test, in certain circumstances, may amount to violation of Article 21 of the Constitution of India. Directing the petitioner to undergo Narcoanalysis Test without his consent, on some occasions, would amount to testimonial compulsion.

6. The alleged offence took place on 22.5.2003. Crime No.316 of 2003 was registered on 03.11.2003. The charge sheet was numbered in the year 2004, as C.C.No.288 of 2004. The trial Court framed the charges against the petitioner on 26.7.2005. The matter is coming up for Prosecution side evidence. The present CrI.M.P.No.3604 of 2008 was filed on 03.6.2008. For one reason or the other, the Investigating Agency did not seek direction to the petitioner to undergo Narcoanalysis Test for a period of four years. In CrI.M.P.No.1033 of 2006 filed under Section 173(8) Cr.P.C., for

further investigation, the Investigating Agency did not seek the relief to send the petitioner for Narcoanalysis Test.

7. In **Selvi v. State of Karnataka**¹, a Full Bench of the Hon'ble apex Court held at paragraph Nos.264 and 265 as follows:

264. 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.

265. 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.

... ..

¹ (2010) 7 SCC 263 : (2010) 3 SCC (Cri) 1

7. The petitioner has taken a specific plea, in his counter, that he is a heart-patient and is not in a position to undergo Narcoanalysis Test. When the petitioner has taken such a specific plea, the trial Court ought to have given a specific finding on his health condition. Since the personal liberty of an individual is involved, the Courts have to consider this type of petitions meticulously. The trial Court allowed the petition on the sole ground that this Court, in Criminal Petition No.1033 of 2006, permitted the Investigating Agency for further investigation. Mere permitting the Investigating Agency for further investigation under Section 173(8) of Cr.P.C., is not a sufficient ground to direct the petitioner to undergo Narcoanalysis Test, without considering the other attending circumstances. The trial Court allowed the petition in a routine manner without applying its judicial mind to the facts of the case on hand.

8. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, this court is of considered view that it is a fit case to set aside the impugned order passed by the trial court directing the petitioner to undergo Narcoanalysis Test, without his consent.

9. Accordingly the criminal revision case is allowed, setting aside the order dated 13.4.2009 in CrI.M.P.No.3604 of 2008 in C.C. No.288 of 2004 on the file of the Court of I Additional Junior Civil Judge, Narasaraopet. Miscellaneous petitions, if any, pending in this revision shall stand closed.

T.SUNIL CHOWDARY, J

September 07, 2017.
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