

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

CRR-1674 of 2017 (O&M)
Date of decision: 18.07.2017

Gurdhian Singh

...Petitioner

Versus

State of Punjab

...Respondent

CRR-1833 of 2017 (O&M)
Date of decision: 18.07.2017

Kewal Singh and another

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mohd. Yousaf, Advocate
for the petitioner (in CRR-1674-2017).

None for the petitioner (in CRR-1833-2017).

Mr. N.K. Banka, DAG, Punjab.

Jitendra Chauhan, J. (Oral)

The aforementioned two petitions are being decided by way of this common order, as the same have arisen out of the same impugned order. However, the facts are being derived from CRR-1674 of 2017 to avoid the repetition.

The revision petitions have been filed against the impugned

order dated 24.04.2017, passed by Addl. Sessions Judge, Patiala, whereby the application filed by the petitioner(s) for conducting DNA Test on the child of the complainant and the accused had been dismissed.

It is contended that learned Addl. Sessions Judge, has wrongly dismissed the application by ignoring the sufficient material on record. In fact the petitioner has been falsely implicated in the instant case. Earlier, on an application moved by the relative of the petitioner to the SSP, Patiala for enquiry in the matter which was marked to DSP (Investigation), Patiala and after detailed inquiry, the petitioner was found to be innocent and the competent authority recommended the discharge of the petitioner. However, during the pendency of the inquiry, the challan was presented before the trial Court. Thereafter, the petitioner filed the application for conducting DNA which was dismissed. He further states that decision on the application does not prejudice the case of the prosecution, rather, it affects the petitioner's case, in case, he is found to be guilty.

On the other hand, the learned State counsel states that the trial Court finding nothing material has rightly dismissed the application. He further states that the trial is at the fag end and the case is fixed for defence evidence and arguments.

Heard.

Hon'ble Orissa High Court in **Bhima Bhoi** Vs. **State of Orissa**, 2016 CriLj 1708 in para No. 14 has held as under:-

“14. Coming to the contention of the learned counsel for the appellant regarding conducting of DNA test to establish the

paternity of the child, it is the settled principle of law that DNA test in a matter relating to paternity of the child should not be directed by the Court as a matter of course or in a routine manner, whenever such a request is made. In this case, nobody has made any request for conducting such test. Moreover, the paternity of the child is not the issue in this case rather the issue is whether the appellant raped the victim on number of occasions.”

Hon'ble Calcutta High Court in **Sabur Hossain Biwas** Vs. **State of West Bengal and others**, rendered in CRR No.3394 of 2007 in para No.8 has held as under:-

“Even it is assumed for the sake of argument that the DNA test becomes favourable to the petitioner that would not amount to absolving him of the charge under Section 376 of the IPC because the trial Court will have to consider the charge on the basis of the evidence of the prosecutrix and of other witnesses, if any and if the evidence of the prosecutrix and/or of any other witnesses supporting in the prosecutrix are found by the trial Court sufficient to indicate that offence under Section 376 of the IPC has been committed by the petitioner then the result of the DNA test by itself would be of no avail. Contra, if the oral evidence of the witnesses including that of prosecutrix are found to be not sufficient to hold the petitioner guilty of the charge of rape, then the result of the DNA test even if it would go to establish the paternity will equally be of no avail. Therefore it is not a deserving case where DNA test should be held.”

There is no delay in lodging the FIR. As per record, the petitioner along with co-accused raped the prosecutrix who is deaf and mute. All the material witnesses have been examined and the case is fixed

for defence evidence. The prosecutrix was cross examined at length by giving sufficient opportunity to the defence on each and every aspect of the case. It would not be out of place to mention here that the prosecutrix has fully supported the prosecution version and this application has only been filed to fill up the lacunae and to prolong the trial. This Court is not to adjudicate upon the parentage of the child. Rather, the verdict is to be given on the allegations of sexual assault, if any. Even otherwise, the victim or the prosecution has nowhere claimed that she had conceived from the loins of any of the accused. There are allegations with regard to rape only. Therefore, in the given facts and circumstances and in view of the ratio of law laid down in Bhima Bhoi's case (supra) and Sabur Hossain Biwas case (supra), there is no necessity for getting the DNA test of applicant/accused and the child of the victim. The learned trial Court after analyzing the facts and appreciation of law on the issue has rightly dismissed the application of the petitioner.

In the light of the above facts and circumstances, this Court finds no infirmity or illegality in the impugned order dated 24.04.2017. Accordingly, the present revision petitions are dismissed.

18.07.2017

sumit.k

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No