

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.No.6524 of 2018

ORDER

This petition is filed under Section 482 Cr.P.C., to quash the order dated 15.05.2018 passed in Crl.M.P.No.369 of 2018 in S.C.No.35/S/2016 by the Special Sessions Judge-cum-IV Additional Sessions Judge, Guntur.

2. The petitioners/A1 to A3 filed aforesaid application under Section 293(2) of Cr.P.C., read with Section 155 of Indian Evidence Act, requesting the Court not to admit the document as evidence or mark the expert report/opinion i.e., DNA 127/2017 dated 30.05.2017 without any formal proof of the same as its genuineness is in question.

3. The Public prosecutor for the State filed counter denying the material allegations.

4. It is an undisputed fact that on filing a petition in Crl.M.P.No.674 of 2016 by the prosecution, P.W.1, A1 and newly born bay were referred to the Laboratory for DNA examination and on their examination, the Court received the report and the same is tendered in examination of the investigating officer for marking the same.

5. The main ground raised in the petition before the Sessions Court is that in view of Section 112 of Indian Evidence Act, there is a presumption which will prevail over the DNA report and that the DNA scientific expert is required to be examined in view of the discrepancy in the date of the report etc. The DNA scientific expert is not a privileged witness enumerated under Section 293(4)(e) of

Cr.P.C. and that when the date of issuance of the report is not clear, the expert is required to be examined before the Court as a witness and no prejudice will be caused to the witness.

6. During hearing, learned counsel for the petitioners has drawn the attention of this Court to the DNA report, wherein the date and time was mentioned as 20.01.2011 at 02.22 PM, IST and in the same line in page 1 of 1, the date was mentioned as 29.05.2017. But the report was called for in the year 2016 and the printed date gives rise to suspicion as to whether this report pertains to the persons referred for examination to the scientific expert or not and in such case, the Court has to exercise its discretion under Section 293(2) of Cr.P.C. to do complete justice and admission of the document in evidence would cause serious prejudice to the petitioner and prayed to set aside the order impugned.

7. Undisputedly, P.W.1, A1 and newly born child were referred to the Laboratory as per the orders in Cr.M.P.No.674 of 2016. But the report disclosed the date as 20.01.2011 in the last line of every page, but it was issued on 29.05.2017 and that file number is mentioned as DNA/127/2017 dated 30.05.2017. Therefore, the discrepancy pointed out by the counsel for petitioners can be taken advantage by the defense during arguments. But mere marking of a document would not give rise to genuineness of the document.

8. Section 293 of Cr.P.C., permits the Court to receive any document purporting to be a report under the hand of a Government scientific expert to whom this section applies upon any matter or thing duly submitted to him for examination or analysis and report in

the course of any proceeding under this Code, may be accused as evidence in any inquiry, trial or other proceeding under this Code. Thus, it means, the Court can accept the document issued by any of those Officers enumerated in Clause (4) of Section 293 of Cr.P.C. as valid evidence without examining the author thereof as held by this Court in **Visakha Agro Chemicals (P) Ltd. vs. Fertiliser Inspector-cum-Assistant Director of Agriculture (Regular)**¹. Therefore, receiving the document and marking the same is not a proof of the contents of document. But the petitioner can disprove that the report is not genuine by cross-examining the investigating officer through whom the document is marked. Virtually, the objection raised by the petitioners is not sustainable in view of Section 293(1) Cr.P.C.

9. The other contention raised by the petitioner is that the Assistant Director of Telangana State Forensic Science Laboratory, Hyderabad is not an Officer within sub-section (4) of Section 293. The report was submitted by DNA finger print expert, Telangana State Forensic Science Laboratories, Red Hills, Hyderabad. But the Director of the Finger Print Bureau is included in Clause 4(c) of Section 293 of Cr.P.C. But it does not make any difference whether he is the Assistant Director of Finger Print Bureau or the Director. Therefore, the person who issued the report would fall within Clause 4(c) or 4(a) being a Government scientific expert of Section 293 of Cr.P.C. Therefore, on this ground, the marking of the document cannot be denied.

¹ (1997) 2 Crimes 648 (AP)

10. The other contention of the learned counsel for the petitioners is that prejudice will be caused to the petitioners as the matter was already posted for examination of the accused under Section 313 of Cr.P.C. But the prejudice at this stage cannot be decided for the reason that the petitioners can take advantage of the report based on the date mentioned underneath the report, during arguments and disprove that this report does not pertain to the child or the persons referred for DNA for opinion of scientific expert. Therefore, it is difficult to accept all these contentions and if, for any reason, the Presiding Officer of the Court finds that it is necessary to examine the expert as per sub-section (2) of Section 293 of Cr.P.C. But, the petitioners cannot object making of the document at this stage. Hence, marking of a document by exercising power under Section 293(1) of Cr.P.C., cannot be faulted and the order impugned cannot be interfered with as I find no legal infirmity warranting interference by this court.

11. Accordingly, the Criminal Petition is dismissed. This order will not preclude the Presiding Officer of Court, to exercise power under Section 293(2) Cr.P.C. Miscellaneous petitions, if any, pending in this petition shall stand dismissed.

M. SATYANARAYANA MURTHY, J

25th June, 2018

Note:

Issue CC by three days.

sj