

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1268-2019 (O&M)
Date of Decision : 10.06.2019

Parveen alias Dilla and another

..... Petitioners

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present : Mr. S.K.Garg Narwana, Senior Advocate with
Mr. Nitin Sachdeva, Advocate
for the petitioner.

Mr. Ashish Sanghi, DAG, Haryana.

RAJ SHEKHAR ATTRI, J. (Oral)

The petitioners have preferred the instant revision petition, challenging the order dated 10.04.2019, passed by the trial court, vide which the application under Section 53-A Cr.P.C., for getting conducting DNA profiling of both petitioners was dismissed.

The trial court dismissed the said application while observing as under:-

“There is no dispute to the fact that it is incumbent upon the Investigating Officer to get the DNA sampling of the accused-applicants get conducted, and during investigation accused-applicant is always at liberty to file any such application before the learned Illaqa Magistrate, in case Investigating Officer failed to comply with the provisions, but no such exercise has been adopted by both the accused-applicants. A perusal of the file reflects that the prosecutrix while stepping into the witness-box as PW6 has very categorically stated each

and every facts in sequence and now after recording the statement of prosecutrix, both the accused-applicants have moved the present applications which to my mind is nothing but misuse the process of law. A person cannot be allowed to move application at any stage he likes. The present applications have not been filed by the accused-applicants at an appropriate stage and now when prosecutrix and other material witnesses have already been examined, then present applications have been filed merely to prolong the proceedings and it will further increase miseries of the prosecutrix, if the present applications are allowed. Hence, finding no merits in both the applications, same stand dismissed. Documents be attached with the main file.”

I have heard learned counsel for the parties and have gone through the record.

Learned counsel for the petitioners has submitted that the dismissal of the application amounts to denial of the fair trial. He also placed reliance upon the judgments of Hon'ble Supreme Court in **Krishan Kumar Malik vs. State of Haryana 2011 (3) RCR (Criminal) 589 and Tameezuddin alias Tammu vs. State (NCT of Delhi) (2009) 15 Supreme Court Cases 566**; the judgment of Rajasthan High Court in **Richpal Kharra vs. State 2013 (8) RCR (Criminal) 2605**; judgment of Andhra Pradesh High Court in **Kodi Satish Naidu vs. State of Andhra Pradesh and another 2015 (4) RCR (Criminal) 346**.

I have heard learned counsel for the parties and have gone through the record.

While holding the criminal trial, a Judge has to take in mind *inter alia* the following factors:-

- (a) providing the fair trial;

(b) the role of the Judge while holding a criminal trial

So far as providing a fair trial is concerned, to the mind of this Court, a fair trial is the heart of the criminal jurisprudence. It is well settled that denial of fair trial is crucifixion of human rights. While emphasizing the principle of fair trial and the practice of the same in the course of trial, it is obligatory on the part of the Courts to see whether in an individual case or category of cases, because of non-compliance of a certain provision, reversion of judgment of conviction is inevitable or it is dependent on arriving at an indubitable conclusion that substantial injustice has in fact occurred. Hon'ble Supreme Court in **Zahira Habibullah Sheikh and another vs. State of Gujarat (SC) 2006 (2) RCR (CrL) 448** has made the following observations:-

“The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the Courts of law. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining the truth has to be fair to all concerned. There can be no analytical, all comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. It will not be correct to say that it is only the accused who must be fairly dealt with. That would be turning a Nelson's eye to the needs of the society at large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a

trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial.”

Secondly, a criminal trial is a search of fact and infact search of truth. Therefore, a Judge has to intervene as and when required, especially to rule out the illegalities, irregularities or infirmities and also the inadmissible evidence.

Under the provisions of Section 53-A Cr.P.C., it is imperative for the prosecution to go in for DNA test. No cogent reason has been assigned by the trial court while dismissing the application of the petitioners.

To the mind of this Court, the opportunity for getting conducted DNA profiling of both the petitioners is a part of fair trial and also is essential for just decision of the case.

Consequently, the instant revision petition stands allowed. The impugned order dated 10.04.2019, passed by the trial court is set aside. The trial court is directed to get conduct the DNA profile of both the petitioners with the available DNA profile of the prosecutrix.

10.06.2019

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**(RAJ SHEKHAR ATTRI)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable :

Yes/No