

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 645 of 2021

1. State Of Chhattisgarh, Through Police Station Bilaigarh, District Balodabazar-Bhatapara (C.G.).

---- Applicant

Versus

1. Rupesh Barman S/o Anuj Ram Barman, Aged About 21 Years, R/o Shuklabhata, Chowki Beladula, Police Station Sarsinva, District Balodabazar-Bhatapara (C.G.).

---- Respondent

For Applicant	: Mr. Adil Minhaj, Govt. Advocate.
For Respondent	: Mr. S.P. Sahu, Advocate

Hon'ble Shri Justice Gautam Chourdiya

Order on Board

06/12/2021

- 1) The applicant has filed this revision petition challenging the order dated 09/06/2021 passed by the Additional District & Sessions Judge (FTC) (POCSO Act), Balodabazar, District Balodabazar-Bhatapara (C.G.) under Crime No. 83/2021 rejecting the application of the applicant/State for the medical test of the respondent/accused.
- 2) Learned counsel for the applicant/State submits that during the course of investigation, the prosecution filed an application for potency test of the accused, on which the Trial Court vide order dated 07/06/2021 allowed the prosecution for the said test of the accused subject to his consent. However, the accused refused for his potency test and, therefore, the Court below restrained the prosecution for conducting potency test of the respondent /accused.
- 3) Learned counsel for the applicant/State submits that in this case the charge sheet has been filed against the respondent under Sections 363, 366(A) and 376 of Indian Penal Code and

Sections 4 & 8 of the Protection of Children from Sexual Offences Act, 2012 Act before the Special/POCSO Court. The Court below was not justified in passing the impugned order. The Court below failed to consider that the medical examination of the accused including potency test is permissible under the law and can be done even against the will/consent of the accused by exercising reasonable force on him. He submits that no prejudice or harm is going to be caused to the accused by such examination and in the facts and circumstances of the case the potency test of the accused is necessary for collecting the evidence. Therefore, the impugned order is liable to be set aside and the applicant/State be permitted to conduct potency test of the accused.

4) On the other hand learned Counsel for the respondent has supported the impugned order.

5) Section 53A of the Code of Criminal Procedure reads as under :-

“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 kilometers 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.
- (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.”
- 6) In view of specific provision contained in Section 53A of the Code of Criminal Procedure, the judgment of *Hon'ble Supreme Court in Selvi and Others Vs. State of Karnataka* reported in 2010 (7) SCC 263, in this case the prosecutrix was a minor, the charges against the accused are under Section 363, 366 & 376 of Indian Penal Code and Section 4 of Protection of Children from Sexual Offences Act, 2012, charge sheet has been filed, for collecting further evidence having a strong bearing on the case medical examination of the accused is required, this Court is of the opinion that the Court below was not justified in not allowing the applicant/State for medical examination of the accused merely on the ground that the accused has not consented for the same. Accordingly, the revision petition is allowed and the impugned order is hereby set aside. The prosecution has already filed an application for medical examination of the accused during investigation and therefore the accused be sent for conducting his medical examination in accordance with law.

Sd/-
(Gautam Chourdiya)
Judge