



CRL.P No. 3664 of 2020

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF SEPTEMBER, 2022

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 3664 OF 2020

BETWEEN:

1. STATE OF KARNATAKA
REPRESENTED BY ITS
SPECIAL PUBLIC PROSECUTOR
R.T.NAGAR POLICE STATION,
BENGALURU-560032
COMPLAINANT SRI CHALLAIAH
AGED ABOUT 72 YEARS
S/O LATE KARIYAPPA,
RETIED PROFESSOR GKVK
NO.39/47, II MAIN ROAD, 7TH CROSS,
OPP: MEDI PLUS SHOP
NEAR GANGANAGAR,
BENGALURU-560032.

...PETITIONER



(BY SRI. JAGADISH D HIREMATH, SPL.P.P.)

AND:

1. SRI. N. PUTTASWAMY
S/O LATE NANJEGOWDA
AGED ABOUT 87 YEARS
2. SRI.T.N.NANJUNDAIAH
S/O LATE NANJEGOWDA
AGED ABOUT 59 YEARS



CRL.P No. 3664 of 2020

3. MR.CHUNNI LAL CHOUDHARY @
C.L.CHOUDHARY
S/O TILAK RAM
AGED ABOUT 42 YEARS

RESPONDENT NOS.1, 2 AND 3
ARE RESIDING AT NO.241,
4TH MAIN ROAD,
OPPOSITE TO OLD POST OFFICE,
H.G.N. EXTENSION,
BENGALURU-560032.

...RESPONDENTS

(BY SRI. O. RAJANNA, ADVOCATE FOR R1 & R3;
R1 - ABATED V/O DATED 29.06.2021)

THIS CRL.P IS FILED U/S.482 OF CR.P.C PRAYING TO
SET ASIDE THE IMPUGNED ORDER PASSED BY THE LEARNED
LXX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AND
SPECIAL JUDGE, BANGALORE ON I.A.NO DATED 10.01.2020 IN
SPL.C.C.NO.363/2015.

THIS PETITION COMING ON ADMISSION THIS DAY, THE
COURT MADE THE FOLLOWING:

ORDER

The prosecution is before this Court calling in
question an order dated 10.01.2020 passed in
Spl.C.C.No.363/2015, whereby the concerned Court
declines to accede to the application filed by the
prosecution for conduct of a NARCO Analysis Test upon the
accused.



CRL.P No. 3664 of 2020

2. Heard the learned Spl.P.P., Sri. Jagadish D. Hiremath, appearing for the petitioner and Sri. O. Rajanna, learned counsel appearing for respondent Nos.1 and 3.

3. Brief facts that leads the prosecution to this Court in the subject petition, are as follows:

A complaint comes to be registered on 30.03.2015 for offences punishable under Sections 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989 (for short, "the Atrocities Act") and Section 420 read with Section 34 of the IPC. The issue in the case at hand is not with regard to the merit of the matter. When the evidence of the accused was concluded, an application is filed under Sections 53, 53A and 54 of the Cr.P.C. and under Section 45 of the Indian Evidence Act, 1872 for conduct of a NARCO Analysis Test upon the accused in the light of the wavering statements that were made during the examination. This is turned down by the



concerned Court which drives the petitioner to this Court in the subject petition.

4. Learned Spl.P.P., Sri. Jagadish D. Hiremath, representing the prosecution would contend that the issue involved is with regard to the provisions of the Atrocities Act and Section 420 of the IPC, which is invoked on account of alleged cheating the victim by the accused to an extent of Rs.39,51,000/- and therefore, seeks Analysis Test. On a consent being sought by the concerned Court upon the accused and the accused declining to give consent for a NARCO Analysis Test, the concerned Court rejects the application on 10.01.2020. The order is erroneous is the submission of the learned counsel.

5. Learned counsel, Sri. O. Rajanna, representing respondent Nos.1 and 3 would contend that the consent is *sine-qua-non* for an application to be allowed for conduct of a NARCO Analysis Test on the accused and the said consent having been declined, no fault can be found with the order passed by the concerned Court.



6. I have given my anxious consideration to the respective submissions made by the learned counsel and have perused the material on record.

7. The issue with regard to whether NARCO Analysis Test should be permitted upon the accused, notwithstanding his declining consent is no longer *res integra* and need not detain the Court for long as the Apex Court in the case of **SELVI AND OTHERS V. STATE OF KARNATAKA**¹ has laid down the guidelines insofar as the conduct of NARCO Analysis Test. The said judgment is followed by this Court in plethora of cases, one of which is, in the case of **RAMACHANDRA BALIGA V. THE STATE AND OTHERS** in Crl.P.No.7613/2016 dated 12.06.2017, wherein the Co-ordinate Bench of this Court has held as follows:

"2. This petition is filed seeking quashing of two orders, one passed by the learned Magistrate, JMFC (III Court) at Mangaluru in CC No.2097/2016 and another one passed by the I Addl. District and

¹ **(2010) 7 SCC 263**



CRL.P No. 3664 of 2020

Sessions Judge, DK, Mangaluru in Crl.R.P.No.127/2016, in rejecting the application filed by the investigating officer on 27.06.2016 seeking permission of the Trial Court to conduct brain mapping, polygraph test and Narco Analysis test on respondent No.2 who is arrayed as accused No.1 in the said case. The said application was filed by the State through investigating officer which came to be rejected by the Trial Court mainly relying upon the decision of the Hon'ble Apex Court reported in (2010) 3 SCC (Crl) 1 between Selvi and Others Vs State of Karnataka.

3. Being aggrieved by the said order, defacto-complainant by name Ramachandra Baliga (petitioner herein) has preferred the Revision Petition before the Sessions Court in Crl.R.P.No.127/2016. The revisional Court also relying upon the said decision has rejected the said revision petition and therefore, the petitioner is before this Court.

4. At the outset, learned Counsel for the petitioner has strenuously contended before this Court that he is not able to find any decision differing the principles laid down in Selvi's case. He further submits that still it is a debatable point that, if a person conspires with another to commit an offence, if his intention and plan are hidden in his mind and brain then, it is very difficult for the investigating



agency to extract the same and place the truth before the Court. Further, he contends that by way of scientific methods, the investigation has to be conducted with equipments advanced that is to say by means of examination of the accused by way of brain mapping, polygraph and Narco Analysis test without affecting the body and without effecting the health of a person by taking utmost care. By such scientific methods, one can easily find out the truth from the accused.

5. Though the arguments of the learned Counsel is very attractive, but the Supreme Court in the above said Selvi's case, has thoroughly considered all the above said aspects and the said case is mainly concentrated on the consent and voluntary-ness of the statement of accused to subject him to undergo any scientific medical examination as noted above. Of course, in a Criminal Procedure Code certain provisions are inserted so that the Court can direct even the accused to undergo certain medical examination like blood test etc., but so far as the statement of the accused is concerned, as already submitted by the learned Counsel the law is not yet so developed so that the Court can mandate the accused to undergo the said medical examination without his consent, which almost replaces the voluntary statement of the accused.



6. Hence on the above said facts and circumstances, though the decisions cited by the learned Counsel are nearer to jurisdiction and the permission granted by the Courts for such Narco Analysis medical test, but he failed to submit before the Court by producing any ruling to show that without the consent of accused, whether such test can be conducted by the investigating agency and whether Court can grant such permission. On the other hand, the above noted Selvi's case directly on the point where in the Hon'ble Apex Court invariably and after thoroughly going through the earlier decisions of its own has come to the conclusion that without consent, no such scientific medical examination can be done on the accused. In the above said facts and circumstances and the legal dictum laid down by the Apex Court, there is no room for this Court to interfere with the orders passed by the Trial Court as well as the Sessions Court.

7. Hence, this petition deserves to be dismissed. However, the arguments of the learned Counsel is thought provoking and the same can be if possible be addressed before the Hon'ble Apex Court, in the event, if the petitioner chooses to prefer any appeal before the Supreme Court."



CRL.P No. 3664 of 2020

In the light of the judgment rendered by the Co-ordinate Bench of this Court following the judgment in the case of ***SELVI*** (*supra*), I do not find any merit to entertain the petition, as I do not find any error committed by the concerned Court in declining to accept the application filed by the prosecution for conduct of a NARCO Analysis Test upon the accused.

The petition lacks merit and is dismissed.

**Sd/-
JUDGE**

SJK
List No.: 1 SI No.: 1