



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF SEPTEMBER, 2022

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BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 6789 OF 2022

BETWEEN:

...PETITIONER

(BY SRI. MANJUNATH V., ADVOCATE)

AND:

1. STATE BY T.N.PURA POLICE STATION
MYSURU DISTRICT,
REPRESENTED BY
THE STATE PUBLIC PROSECUTOR,
HIGH COURT OF COMPLEX,
BENGALURU – 560 001.

2.



...RESPONDENTS

(BY SRI K.S.ABHIJITH, HCGP FOR R1)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE CHARGE SHEET DATED 31.03.2022 FILED BY T.NARASIPURA POLICE STATION (RESPONDENT NO.1) AND FURTHER PROCEEDINGS IN SPL.C.C.NO.188/2022 IN CR.NO.70/2021 PENDING BEFORE THE ADDITIONAL DISTRICT AND SESSIONS JUDGE (FTSC-1) MYSURU DISTRICT, MYSURU FOR ALLEGED OFFENCE P/U/S.376(2)(i) AND 506 OF IPC AND SEC.5(m)(n), 5(J)(ii)(L) AND 6 OF POCSO ACT 2012.

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

ORDER

The petitioner is before this Court calling in question proceedings in Special C.C.No.188 of 2022 arising out of crime No.70 of 2021 registered for offences punishable under Section 376(2)(i)(n) of the IPC and Sections 5(j)(ii), 5(l) and 6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act').

2. Heard Sri V.Manjunath, learned counsel appearing for the petitioner and Sri K.S.Abhijith, learned High Court Government Pleader appearing for respondent No.1.



3. Facts that lead the petitioner to this Court, succinctly stated, are as follows:-

Petitioner is the accused, a man of 45 years working as a Conductor with the KSRTC. A crime comes to be registered on 19-02-2021 by the 2nd respondent, father of the victim. The allegation against the petitioner is that the daughter of the complainant who was 12 years old had become pregnant. The reason for pregnancy is the act of the petitioner/accused who is a relative of the family of the complainant. It is the allegation that on the night of 05-01-2021 the petitioner had indulged in sexual act with the victim and on 17-02-2021 the victim had developed nausea which necessitated the complainant to take her to the doctor and then comes to know that his daughter is pregnant and the reason for pregnancy is the petitioner. The crime then comes to be registered on the complaint of the 2nd respondent in crime No.70 of 2021 for the afore-quoted offences. Since the victim was 12 years old, foetus had to be removed and sent for DNA analysis. The blood sample of the petitioner was also sent along for the analysis. The report of the DNA sample that was sent for analysis was yet to come



about. The police, however, after investigation filed a charge sheet in the matter pending receipt of the report of the DNA sample.

4. When the proceedings in terms of the charge sheet filed in Special C.C.No.188 of 2022 was in progress, the report of DNA comes about and the report of the DNA was in favour of the petitioner, opining that the DNA sample of the foetus did not match with the blood sample of the petitioner. The petitioner on receipt of DNA report rushes to this Court with the subject petition, contending that he was not responsible for the daughter of the complainant becoming pregnant.

5. The learned counsel appearing for the petitioner elaborating the DNA report would contend that no such act had happened on the victim and if at all it had happened, the DNA sample of the foetus should have matched with that of the petitioner. Since DNA report is negative, no offence can be made out against the petitioner and, therefore, the proceedings are to be terminated.



6. On the other hand, the learned High Court Government Pleader placing reliance on the entire records of the case would submit that Section 164 CrPC statement rendered by the victim is clear as to what acts the petitioner had indulged in and, therefore, it would become a matter for trial for the petitioner to come out clean, notwithstanding the report of the DNA being in favour of the petitioner.

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

8. The afore-narrated facts are not in dispute. The incident is alleged to have happened at 12.30 a.m. on 05-01-2021. It is the said incident that becomes the fulcrum of allegations against the petitioner. The incident narrated in the complaint is that when all the members of the family were asleep in the house of the victim where the petitioner was also sleeping, the aunt of the victim walks out and goes to use the washroom for a considerable time. Between the time the aunt of the victim going to the wash room and coming back, the



petitioner is alleged to have indulged in sexual assault on the 12 year old victim. This fact was known to none.

9. On 17-02-2021 the victim develops nausea and begins to regurgitate and was later taken to the hospital where the Doctor on examination finds the victim to be pregnant of 7 to 8 weeks by then. Therefore, the alleged act of the petitioner is said to have resulted in the victim getting pregnant of about 7 to 8 weeks as on 20-02-2021. Since the victim was 12 years old, the pregnancy had to be medically terminated and MTP was carried out on the victim and while doing so, the sample of the foetus in the womb was taken and sent for DNA analysis along with the blood sample of the petitioner.

10. The Police, who were investigating into the crime that had been registered against the petitioner, filed charge sheet without waiting for DNA report invoking the aforementioned Sections. The report of the DNA comes during the pendency of the proceedings before the Special Court and the report depicts that the sample sent was negative to the sample of the petitioner. The report reads as follows:



"SFSL/BLR/FM/32/17.03.2021

GOVERNMENT OF KARNATAKA

State Forensic Science Laboratory, Madiwala, Bengaluru 560068
Tel.No.080-22943763, 080-25532910; Fax: 080-22943763
Email: sfslblr@ksp.gov.in

Reg. No.: FSL(Be)/NA/1218/2022
Report No.: DNA/226/2021 & 166/2022

Dated: 22/04/20122

From

The Director,
State Forensic Science Laboratory,
Madiwala
Bengaluru City.

To

The Deputy Superintendent of Police
Nanjangudu Sub-Division
Mysuru District.

Ref: 1. Your Letter No: NO/NSD/FSL/38/2021, dated: 28/02/2021
2. Your Letter No: NO/NSD/FSL/44/2022: dated: 15/02/2022

TEST REPORT

The articles sent in Cr. No. 070/2021 of T.Narsipura Police Station U/s 376 (2) (I) (N) IPC and section 5 (J)(II)(L). 6 of POCSO Act 2012, vide letter under reference 1 were received in the laboratory for examination on 01.03.2021 through CPC 376, Sri Mahadeva Swamy K of T. Narsipura Police Station. The seals found on the articles were intact and tallied with sample seal sent. The description found on the articles corresponds to that of those present in the invoice.

MATERIALS- EXAMINED

Sl. No.	Description of articles	DNA Code No.
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1	One sealed plastic container within sealed cloth packet said to contain product of conception, collected from victim, by the medical officer.	P-5709
2	Two sealed vacutainers (One EDTA & One plain) said to contain sample blood collected from victim, by the medical officer.	P-5710

In continuation, one more article was duly received in the laboratory vide letter under reference 2 and registered as DNA 166/2022 on 16.02.2022 concerned with T.Narsipura Police Station, Crime No.70/2021, U/s 376(2)(I)(N)IPC and section 5(1)(II)(I), 6 of POCSO Act 2012, through PC 597, Sri Santhosh A L of T.Narsipura Police Station. The seals found on the article were intact. The description found on the article corresponds to that of those present in the invoice.

Sl. No.	Description of articles	DNA Code No.
3	Two sealed vacutainers (One EDTA & One plain) said to contain sample blood collected from male individual by name _____ by the medical officer.	P-6892

Duration of Examination:29.05.2021 to 27.04.2022.

METHOD OF ANALYSIS

1. Due care taken for the integrity of the sample by coding and decoding.
- 2 The DNA was extracted from the source of sample sent.
3. The DNA was quantified from the above sample and then amplified by the polymerase chain reaction (PCR) using VersaPlex™ 27PY system PCR Amplification kit containing primers for 23 STR loci, gender marker Amelogenin and three Y-Specific Loci. The PCR products were separated on Genetic Analyzer (Applied Biosystems Inc.) 3500 XL and analyzed using GeneMapper™ ID-X



Software v1.6 to generate allele profile. The DNA profile resides for the samples are shown in the enclosed table as Annexure I.

4. The following loci were examined D3S1358: DIS1656, D2S441, D10S1248, D135317. Penta E, D168539, D18S51, D2S1338. CSEIPO, Penta D. THOI, vWA, D21S11, D7S820, D5S818, TPOX, DSS1179, D12S391, D19S433, D6S1043, D2251045, FGA. gender marker Amelogenin and three Y-specific loci DYS391. DYS576 and DYS570.

REASON

From the comprehensive analysis of the test results as shown in Annexure I it is found that:

1. The alleles in the DNA profile result of product of conception, sent in item no.1 is consistent with having come from the offspring of victim and matching with that of the alleles in the DNA profile result of sample blood son in item no. 2, under 23 STR (short tandem repeats) loci.

2. In the DNA profile of product of conception, sent in item no.1, the **alleles present in the loci** DIS1358, DIS1656, D2S441, D10S1248, Penta E, D18S51, D2S1338. Penta D, D8S1179, D12S391 and D22S1045 **are not matching with that of the alleles present in the DNA profile of** sample blood sent in item no.3, under 23 STR (short tandem repeats) loci

As per the international guidelines, the situation in which the father is lacking an allele of a system that ought to have been contributed to the child and the situation in which the child lacks either of the alleles of a system present in the alleged father are instances of "definite exclusion of a father from the paternity of the child".

OPINION

From the DNA profile results of the samples sent, it is found that:



1. The product of conception, sent in item no. 1 is of human origin and female sex.

2. The DNA profile result of product of conception, sent in item no. 1 is matching with the DNA profile results of victim, sample blood sent in item no. 2.

3. The DNA profile result of product of conception, sent in item no. 1 is not matching with the DNA profile results of [redacted] sample blood sent in item no. 3.

Therefore, victim, sample blood sent in item no.2 is included from being the biological mother and sample blood sent in item no.3 is excluded from being the biological father of the product of conception, sent in item no.1.

Sd/-
(Dr.Asha K.R.)
M.Sc., Ph.D."

(Emphasis added)

The opinion of the analyst was that the petitioner was excluded being the biological father of the product of conception and the victim was included being the biological mother. The product of conception did not match with the DNA profile result of the petitioner i.e., the blood sample that was sent for analysis.

11. It is no doubt true that DNA analysis has emerged in favour of the petitioner, for him not being the biological father. That would not, in the considered view of this Court, absolve the petitioner in entirety for the offences so alleged. Paternity



may have been in doubt due to the analysis. The alleged act has not at all happened cannot be the inference that can be drawn due to a DNA sample coming in favour of the petitioner. Even otherwise, the DNA sample report that is given by the analyst is also to be confirmed by way of evidence. Mere production of DNA sample report before this Court would not mean that it has to be taken as gospel truth without examination or cross-examination of the doctor who has rendered such opinion.

12. It is germane to notice the statement of the victim girl as recorded under Section 164 of the Cr.P.C. The victim narrates the horrendous acts of the petitioner, a 45 year old man on a 12 year old child. Section 164 Cr.P.C. statement reads as follows:

“ದಿ:25.12.20220 ರಂದು ನನ್ನ ಅಜ್ಜಿ ಭೈರಾಪುರ ಗ್ರಾಮದಲ್ಲಿ ತೀರಿಕೊಂಡಿದ್ದು, ನಮ್ಮ ಮನೆಯವರೆಲ್ಲ ಸಾವಿಗೆ ಹೋಗಿ ಮನೆಗೆ ಬಂದಿರುತ್ತೇವೆ. ಆಮೇಲೆ ದಿ:04.01.2021ರಂದು ತಿಥಿ ಇದ್ದು, ನಾನು ಸ್ಕೂಲಿಗೆ ಹೋಗಿದ್ದೆ, ಅಪ್ಪ-ಅಮ್ಮ, ತಂಗಿ ತಿಥಿಗೆ ಹೋಗಿ ವಾಪಸ್ಸು ಬಂದಿದ್ದರು. ನಾನು ಅಲ್ಲಿಗೆ ಹೋಗಲಿಲ್ಲ. ದಿ:05.01.2021ರಂದು ಮತ್ತೊಂದು ತಿಥಿಯ ಸಮಾರಂಭ ಇದ್ದು ಅಲ್ಲಿಗೆ ನಾನು ಮದ್ಯಕ್ಕ ಶಾಲೆ ಮುಗಿಸಿ 3.00 ರ ವೇಳೆ ನಾನು ನನ್ನ ದೊಡ್ಡಪ್ಪನ ಜೊತೆ ನನ್ನ ಅಜ್ಜಿಯ ಊರಿಗೆ ಭೈರಾಪುರಕ್ಕೆ ಹೋಗಿರುತ್ತೇನೆ. ಅಲ್ಲಿ ನಾನು ಊಟ ಮಾಡಿದ ನಂತರ ನನ್ನ ಅಪ್ಪಾಜಿ ಮತ್ತು ರೇಖಾ ಆಂಟಿ ನನ್ನನ್ನು ಅವರ ಮನೆಗೆ ಕರೆದುಕೊಂಡು ಹೋದರು, ನಾನು ಮನೆಯಲ್ಲಿ ಟಿ.ವಿ.ನೋಡುತ್ತಾ ಇದ್ದೆ, ಆಗ ಇನ್ನೊಬ್ಬ ಆಂಟಿ ದಿಲ್‌ಪಸ್ ತಿನ್ನುವುದಕ್ಕೆ ಕೊಟ್ಟರು, ಆಗ ರಾತ್ರಿಯಾಗಿತ್ತು, ನನಗೆ ಊಟ ಮಾಡಲು ಹೇಳಿದರು,



ನಾನು ಬೇಡ ಅಂದೇ, ನನ್ನನ್ನು ಆ ದಿನ ಅಲ್ಲೇ ಉಳಿಸಿಕೊಂಡು ಬಿಟ್ಟಿದ್ದರು, ಮದ್ಯರಾಶಿ ರೇಖಾ ಆಂಟಿ ಬಾತ್ ರೂಂಗೆ ಹೋದ ಸಮಯದಲ್ಲಿ ನನ್ನ ಅಪ್ಪಾಜಿ ನನ್ನ ಮುಂದೆ ಬಂದು ಅವರ ಪ್ಯಾಂಟ್ ಅನ್ನು ಬಿಚ್ಚಿ, ನಾನು ಅರೆ ಪ್ರಜ್ಞಾಸ್ಥಿತಿಯಲ್ಲಿರುವಾಗ ನನ್ನ ಎದೆಯ ಮೇಲೆ ಕೈಯಿಂದ ಮುಟ್ಟಿ, ಮೂತ್ರ ಮಾಡುವ ಜಾಗದಲ್ಲಿ ಮುಟ್ಟಿ ನನಗೆ ಹಿಂಸಿಸಿ ನನ್ನ ಮೇಲೆ ಅತ್ಯಾಚಾರ ಮಾಡಿದರು, ನಾನು ಬಿಡಿಸಿಕೊಳ್ಳಲು ಪ್ರಯತ್ನಿಸಿದೆ ಆಗ ಅವರು ನನ್ನ ಬಾಯಿ ಮುಚ್ಚಿ ಈ ವಿಚಾರ ನೀನು ಅಪ್ಪ-ಅಮ್ಮಿಗೆ ಹೇಳಿದರೆ ಅವರನ್ನು ಸಾಯಿಸಿಬಿಡುತ್ತೇನೆಂದು ಹೇಳಿ ಬೆದರಿಕೆ ಹಾಕಿದರು. ನಂತರ ನನ್ನನ್ನು ಸಾಯಿಸಲು ಪ್ರಯತ್ನ ಮಾಡಿದರು, ಅಷ್ಟರಲ್ಲಿ ಬೆಳಗಾಗಿದ್ದು, ರೇಖಾ ಆಂಟಿ ಬಂದರು, ಆಗ ನನ್ನ ಅಪ್ಪಾಜಿ ನನಗೂ ಪ್ಯಾಂಟ್ ಹಾಕಿ, ತಾವು ಕೂಡ ಪ್ಯಾಂಟ್ ಅನ್ನು ಹಾಕಿಕೊಂಡು ಅಲ್ಲಿಂದ ಹೊರಟು ಹೋದರು. ಬೆಳಿಗ್ಗೆ 10.00 ರ ವೇಳೆಗೆ ನನಗೆ ಎಚ್ಚರವಾಯಿತು, ನಂತರ ನನಗೆ ತಿಂಡಿ ಕೊಟ್ಟರು, ಆಗ ನನಗೆ ವಾಂತಿಯಾಗುವಂತೆ ಆಗುತ್ತಿತ್ತು, ತಲೆ ಸುತ್ತುತ್ತ ಇತ್ತು, ನಂತರ ಅಪ್ಪಾಜಿನೇ ನನ್ನನ್ನು ನಮ್ಮ ಮನೆಗೆ ಕರೆದುಕೊಂಡು ಬಂದು ಬಿಟ್ಟು ಹೋಗಿರುತ್ತಾರೆ. ಆ ದಿನ ನಾನು ಶಾಲೆಗೆ ಹೋಗಿರುವುದಿಲ್ಲ.”

If what the 12 year old child narrates before the learned Magistrate, as quoted hereinabove, is taken note of, they are all unpardonable acts on the part of the petitioner unless proved otherwise. The DNA test would exclude the petitioner as father of the child, but cannot discredit what the victim has narrated in her 164 Cr.P.C. statement that the petitioner had forcibly committed sexual acts on her. There is no reason to disbelieve the testimony of the victim as narrated in the said statement. The DNA test cannot be said to be a conclusive evidence with regard to the allegations made against the petitioner. The DNA test can at best be used as a corroborative evidence. Reference being made to the judgment of the Apex



Court in the case of **SUNIL V. STATE OF MADHYA PRADESH¹** in the circumstances would be apposite. The Apex Court has held as follows:

*"4. From the provisions of Section 53-A of the Code and the decision of this Court in Krishan Kumar [Krishan Kumar Malik v. State of Haryana, (2011) 7 SCC 130 : (2011) 3 SCC (Cri) 61] it does not follow that failure to conduct the DNA test of the samples taken from the accused or prove the report of DNA profiling as in the present case would necessarily result in the failure of the prosecution case. As held in Krishan Kumar [Krishan Kumar Malik v. State of Haryana, (2011) 7 SCC 130 : (2011) 3 SCC (Cri) 61] (para 44), **Section 53-A really "facilitates the prosecution to prove its case". A positive result of the DNA test would constitute clinching evidence against the accused if, however, the result of the test is in the negative i.e. favouring the accused or if DNA profiling had not been done in a given case, the weight of the other materials and evidence on record will still have to be considered. It is to the other materials brought on record by the prosecution that we may now turn to.**"*

(Emphasis supplied)

In the light of the judgment rendered by the Apex Court in the case of **SUNIL** (*supra*), the unmistakable inference would be, if a positive result of the DNA comes about against the accused, it would constitute a clinching evidence against him for further proceeding. If the result is negative i.e., favouring the

¹ (2017)4 SCC 393



accused, then the weight of other materials and evidence on record will still have to be considered for corroboration. Therefore, it does not form such a clinching evidence that would result in termination of proceedings against the accused, the petitioner in the case at hand.

13. Finding no merit, the Criminal Petition is dismissed.

Consequently, I.A.No.1/2022 also stands dismissed.

**Sd/-
JUDGE**

BKP
List No.: 1 Sl No.: 52