



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Misc(Pet.) No. 2947/2018

Sunil Bhati

----Petitioner

Versus

1. State Of Rajasthan.
2. Ashok :

----Respondents



For Petitioner(s) : Mr. Neel Kamal Bohra
For Respondent(s) : Mr. Vikram Sharma, PP
Mr. Himanshu Maheshwari

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI

Judgment

Reportable

18/08/2022

1. This Criminal Misc. Petition under Section 482 Cr.P.C. has been preferred claiming the following prayer:-

"It is therefore, most respectfully prayed that the order passed by the Additional Session Judge (Women Atrocities Court), Jodhpur in Session Case No. 127/2013 order dated 13.08.2018 may be set aside and the lower court may be directed that petitioner may be allowed to test himself for the Narco Analysis Test and subsequently report of that could be considered by the Hon'ble Court and in alternatively any appropriate order which this Hon'ble Court fit just and proper in the facts and circumstances of the case may kindly be passed in favor of the petitioner."

2. Learned counsel for the petitioner submits that this petition has been preferred against the order dated 13.08.2018 passed by learned Additional Sessions Judge (Women Atrocities Cases), Jodhpur Metropolitan in Sessions Case No.127/2013, whereby the learned trial court has rejected the application of the petitioner,



wherein he sought to submit himself to a Narco Analysis test and bring the resultant report of the same onto the record as a part of his defence. He further submits that the petitioner, who is husband of the deceased-victim, is facing trial under Sections 304-B & 498-A IPC.

3. Learned counsel for the petitioner has drawn the attention of this Court to the fact that after the examination of the prosecution witnesses and defence witnesses, an application was preferred by the petitioner to get himself examined for Narco Analysis test, which is a recognized scientific technique, at the relevant stage of Section 233 Cr.P.C.

4. Learned counsel for the petitioner also submits that Section 233 Cr.P.C. would operate, as while entering into his own defence, the petitioner is entitled to present any evidence, he may have in support thereof.

5. Section 233 Cr.P.C. reads as follows:

"233. Entering upon defence.

(1) Where the accused is not acquitted under section 232, he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof.

(2) If the accused puts in any written statement, the Judge shall file it with the record.

(3) If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice."

6. Learned counsel for the petitioner further submits that once the stage of Section 232 Cr.P.C. is crossed and an acquittal is not



made in favour of the petitioner, an indefeasible right of the petitioner emanates to to adduce any evidence in support of his defence, and that the learned Court below has erred in denying him the same, vide the impugned order.

7. Learned counsel for the petitioner has relied upon the judgment rendered by this Hon'ble Court in **State of Rajasthan Vs. Jasveersingh Jat** reported in **2017(4) Cr.L.R. (Raj.) 2079**.

Relevant portion of the said judgment is reproduced hereunder:

"6. I have heard and appreciated the arguments advanced by the learned counsel for the parties and have gone through the material available on record.

7. The solitary objection raised by Shri Sunil Mehta learned counsel representing the complainant and the learned Public Prosecutor for opposing the prayer of the accused to get himself subjected to the invasive scientific test was that the application was belated and that if at all, the same could have been filed during the course of investigation as per the plain language of Section 54 Cr.P.C.. However, the said objection is not of any significance because in the entire purview of Cr.P.C., the only stage where the accused is allowed to speak out before the court is the stage of defence i.e. under Section 313 Cr.P.C. Before that, the accused has to simply go by the commands of the prosecution and the court. Otherwise also, Section 165 of the Evidence Act empowers the trial court with wide powers to discover or obtain facts. As per Section 315 Cr.P.C., the accused has a right to appear as a witness in defence. The learned Trial Judge, whilst allowing the application of the accused has clearly observed that the endeavour of the accused to get himself subjected to the invasive technical tests would as a matter of fact be of assistance in arriving to the truth and also appears to be essential for providing fair opportunity of defence to the under-trial accused.

8. In this background, I find no illegality, irregularity or perversity in the impugned order dated 06.03.2017 passed





by the learned Additional Sessions Judge, Didwana, District Nagaur warranting interference there against in exercise of the revisional jurisdiction of this Court."

8. On the other hand, learned counsel for the respondent No.2 vehemently opposes the aforesaid submissions on the ground that if at all any Narco Analysis Test had to be conducted, then it should have been conducted at the instance of prosecution and that at this stage, if the accused is permitted to undergo the Narco Analysis Test, it shall have no consequence as far as the present trial is concerned, as he will get adequate opportunity to make sufficient deposition before the learned trial court, and the deposition so made will have the same impact as that of the Narco Analysis test.

9. Learned counsel for the respondent No.2 further submits that the purposefulness of permitting the Narco Analysis Test, as sought by the accused herein, is not made out in the present case, and thus, in case, such permission is given, it will not be fruitful or will not create any extra right in favour of the petitioner.

10. Learned counsel for the respondent No.2 has relied upon the judgment rendered by the Hon'ble Delhi High Court in **Sidhu Yadav @ Siddharth Vs. State of NCT of Delhi (CRL.M.C. 1150/2017)** dated 21.03.2017, relevant portion of which reads as follows:

"Regarding conducting Narco Analysis Test at the instance of an accused, the Bombay High Court in its order dated 27th July, 2016 passed in Crl.W.P. 2420/2016 titled as Yogesh @ Charu Ananda Chandane Vs. The State of Maharashtra, observed that the evidence recorded in the course of Narco Analysis Test or Polygraph Test is not an admissible evidence and it would be hazardous situation to permit any/every accused to undergo Narco Analysis Test for proving his defence. It was further held that the



evidence collected by the investigating agency during the course of investigation would be material at the time of trial and just as inculpatory statement of the accused cannot be made basis for conviction; in the same manner, exculpatory statement cannot be made basis for acquittal and it would be futile exercise to permit the accused to undergo such test.

Learned counsel for the petitioner submits that purpose for filing the application for Narco Test was to preserve the evidence, as with passage of time value of the test will be diminished. Reliance has been placed Vinodbhai Gangadas Vanjani Vs. State of Gujarat, 2016 SCC OnLine Guj 302 and Dr. Purshottam Swaroopchand Soni Vs. The State of Gujarat, MANU/GJ/7056/2007. I find these judgments to be in context of different facts. I do not find any force in the contention of learned counsel in view of the observations made herein above."

11. Learned Public Prosecutor appearing on behalf of the respondent-State opposes the submissions made on behalf of the petitioner and submits that the learned court below has rightly passed the impugned order.

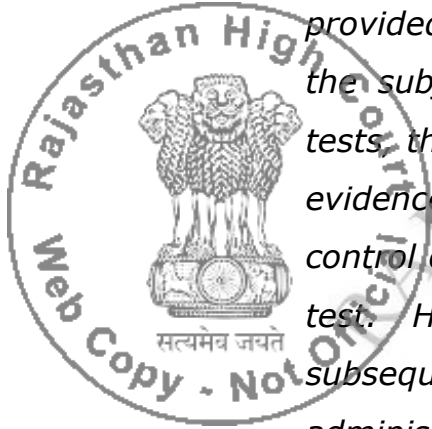
12. After hearing learned counsel for the parties as well as perusing the record of the case along with the judgments cited at Bar, this Court is of the firm opinion that the judgment rendered by this Hon'ble Court in **Jasveersingh Jat (supra)** is directly applicable in the facts and circumstances of the present case.

13. This Court is conscious of the judgment rendered by the Hon'ble Apex Court in **Selvi and Ors. Vs. State of Karnataka (2010) 7 SCC 263**, wherein the Hon'ble Apex Court held that the accused has the right to submit himself or herself voluntarily to a scientific technique of his/her choice, and thereafter, to claim admissibility of the same into evidence to substantiate his/her defence during trial.



Relevant portion of the said judgment is reproduced hereunder:-

"In light of these conclusions, we hold that no individual should be forcibly subjected to any of the techniques in question, whether in the context of investigation in criminal cases or otherwise. Doing so would amount to an unwarranted intrusion into personal liberty. However, we do leave room for the voluntary administration of the impugned techniques in the context of criminal justice, provided that certain safeguards are in place. Even when the subject has given consent to undergo any of these tests, the test results by themselves cannot be admitted as evidence because the subject does not exercise conscious control over the responses during the administration of the test. However, any information or material that is subsequently discovered with the help of voluntary administered test results can be admitted, in accordance with Section 27 of the Evidence Act, 1872."



14. This Court holds that under Section 233 Cr.P.C., an indefeasible right is created, which has been carved out with a clear legislative intent of giving the accused who has not been acquitted at the stage of Section 232 Cr.P.C., an opportunity to present evidence, which he may have in support of his defence. Even if the Narco Analysis test may not have an absolute binding impact upon the result of the trial, it is certainly is a scientific technique recognized by law, and is being utilized in the course of investigation, by prosecution agencies as well as by the Courts, to support and corroborate the main evidence. And thus, denying the petitioner an opportunity to render such defence evidence at the appropriate stage, as is statutorily provided to him, would not only be detrimental to the cause of justice, but shall also be a clear violation of his statutory right envisaged under Section 233 Cr.P.C.

15. Moreover, the provision of the law contained in Section 315 Cr.P.C. affords the accused an opportunity to be a competent



witness for his own defence, and the proviso to the said section, in keeping with the liberty granted to the accused under the Constitution, in Article 20 (3), being the right against self-incrimination, is also upheld as the accused cannot be compelled to give evidence against himself but permits him to do so, if he so chooses. In the present case, the accused-petitioner voluntarily seeks to submit himself to a Narco Analysis test in support of his defence.

Section 315 Cr.P.C. is reproduced hereinunder for the sake of brevity:-

315. Accused person to be competent witness.—

(1) Any person accused of an offence before a Criminal Court shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial:

Provided that—

(a) he shall not be called as a witness except on his own request in writing;

(b) his failure to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise to any presumption against himself or any person charged together with him at the same trial.

(2) Any person against whom proceedings are instituted in any Criminal Court under section 98, or section 107 or section 108, or section 109, or section 110, or under Chapter IX or under Part B, Part C or Part D of Chapter X, may offer himself as a witness in such proceedings:

Provided that in proceedings under section 108, section 109, or section 110, the failure of such person to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise to any presumption against him or any other person proceeded against together with him at the same inquiry.



15. This Court also observes that since the same is being sought to be utilized by the petitioner at the appropriate stage, denying the petitioner the said right would be a travesty of justice. And, therefore, the same has to be allowed; more particularly, when by no stretch of imagination, it can be said that a scientific technique, like a Narco Analysis Test, is of no consequence for the result of the trial of the accused.

16. This Court, however, does not wish to enter into the degree of relevance of such a test, but certainly finds that such a scientific technique, which is recognized by the strength of law in the courts and in the legal system of the Country, and is crystallised by the Hon'ble Apex Court in the landmark case of **Selvi (supra)** wherein the Hon'ble Apex Court has held that the voluntary administration of such scientific techniques in the context of criminal justice may be permitted, and therefore, the same cannot be denied to the petitioner as it would amount to depriving him of the valuable right to defend himself during the trial.

17. In view of the aforesaid observations, the present petition is allowed and while quashing and setting aside the order dated 13.08.2018 passed by learned Additional Sessions Judge (Women Atrocities Court), Jodhpur in Sessions Case No.127/2013, the learned trial court is directed to immediately permit the petitioner to undergo for the Narco Analysis Test and enter the same into evidence before the learned court below.

18. All pending applications stand disposed of.

(DR.PUSHPENDRA SINGH BHATI), J.

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