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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE PREM NARAYAN SINGH**

ON THE 27th OF OCTOBER, 2023

MISC. CRIMINAL CASE No. 45214 of 2023

BETWEEN:-

1. VIJAY S/O MOHANLAL DEVDA

2. RAKESH S/O SEKDA DAVAR

3. VIRENDRA S/O BARDA DAVAR

4. SURESH S/O MUKAM SINGH CHOUHAN

(BY SHRI VIVEK SINGH, ADVOCATE)

.....APPLICANT

AND

**THE STATE OF MADHYA PRADESH STATION HOUSE
OFFICER THROUGH POLICE STATION SONDWA DISTT.
ALIRAJPUR (MADHYA PRADESH)**

.....RESPONDENTS

**(BY SHRI ANAND SONI, LEARNED ADDITIONAL ADVOCATE GENERAL
WITH SHRI RAJESH JOSHI, GA FOR THE STATE OF M.P.)**

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**HEARD ON: 20.10.2023
DELIVERED ON 27.10.2023**
.....

This application was heard and the Court pronounced the following:

ORDER

1 . The petitioners have preferred this petition under Section 482 of Cr.P.C. for quashment of the order dated 26.09.2023 passed in CRR No.08/2023 by I ASJ, Alirajpur whereby the learned revisional Court has dismissed the petition of the petitioners by affirming the order dated 01.09.2023 passed in Crime Case No.236/2023 by JMFC, Alirajpur whereby the application filed by the prosecution regarding Narco, Polygraph and Brain Mapping test of the petitioners was allowed.

2. Brief facts of the case are that the police has registered a case against the petitioners bearing Crime No.236/2023 at Police Station Sondwa, District Alirajpur under Sections 379, 392, 452, 294, 166-A, 420 and 409 of IPC regarding loot of ancient gold coins having worth in crores of rupees. The petitioners are police personnel and facing the allegations of crime. Earlier, on 26.08.2023, the petitioners have given their consent for conducting of their Narco, Polygraph and Brain Mapping tests in Sahmati Panchnama.

3. In view of their consent recorded under a *Sahmati Panchnama* of the petitioners, the prosecution has filed an application before the learned Judicial Magistrate First Class for conducting of the aforesaid tests which was allowed. Being aggrieved, the petitioners have filed a criminal revision before the learned revisional Court on the ground that they have never consented for the aforesaid tests and conduction of tests, they will suffer irreparable loss to their health, but vide the impugned order, the learned revisional Court has dismissed the revision petition filed by the petitioners, hence, the present petition before this Court.

4 . During the course of arguments, counsel for the petitioners has submitted that both the learned Courts below have not considered the factum of consent and passed the impugned orders and the same are bad in law. It is

further submitted that the impugned orders are against the principles of Article 20(3) of the Constitution of India by which the protection has been given to the Indian Citizens that no person /accused of any offence shall be compelled to be a witness against himself. It is further submitted that the learned Courts below have not considered the legal aspect involved in the matter and passed the impugned orders in violation of provisions of Article 20(3) of the Constitution of India. It is also contended that the learned trial Court as well as Revisional Court have passed the impugned orders in contravention of the law laid down by Hon'ble Apex Court passed in the case of **Selvi And Others vs. State of Karnataka [(2010) 7 SCC 263]**. Hence, the impugned orders passed by the Courts below are liable to be stuck down.

5. Learned counsel for the petitioners submits that in view of the settled position of law as held in the case of **Selvi (supra)** in Clause (1) of para no.265 that (i) No Lie Detector Tests or any other tests should be administered except on the basis of consent of the accused recorded before the Judicial Magistrate. An option should be given to the accused whether he wishes to avail such test, hence, the learned Courts below have committed error in directing to conduct all the three tests of the petitioners. Hence, prays for setting aside the impugned orders.

6. In turn, learned Additional Advocate General and Govt. Advocate appeared on behalf of the State of Madhya Pradesh, have supported the impugned orders. It is submitted that since the matter is pertaining to the loot of ancient golden coins of crores of rupees, the prosecution has to establish its case in accordance with law. It is further submitted that the petitioners, who are the police personnel and the offence is affecting the social status as well law and order in the society, it is required to be investigated by the scientific means. It is

further submitted that all the petitioners have given their consent in Sehmati Panchnama and one of the petitioner has also given his consent before the learned Judicial magistrate for the aforesaid tests. Hence, there is no illegality or impropriety in findings of learned Courts below. It is further submitted that in such type of cases, where police persons are involved, such scientific investigation is required to be permitted. It is also contended that the investigation agency cannot be interfered by any Court of law because such types of tests are part of the investigation. Hence, prays for dismissal of the petition.

7. In view of the rival submissions and contentions raised in arguments, I have gone through the record as well as the order of both the Courts below.

8. Learned AAG for the State has placed reliance on the judgement of High Court of Madras in the case of **Dinesh Dalmia vs. State by SPE, CBI, BS & FC, New Delhi [2006 (1) MWN (CR.) 404** and submitted that the scientific value of such type of tests is required for testing credibility of the petitioners and if the petitioners left on their will to give consent for such tests, it will be hazardous for prosecution cases where such type of offences are committed. In para no.14, 17 and 18, the High Court of Madras has elaborately considered the issue which are as under:-

"14.....The scientific value of such tests and the credibility thereof will have to be evaluated only during the course of trial. Unless such tests are conducted, the investigating agency may not be in a position to come out with clinching testimony as against the petitioner. Subjecting an accused to undergo such scientific tests will not amount to braking his silence by force. He may be taken to the laboratory for such

tests against his will, but the revelation during such tests is quite voluntary. Therefore, such process does not amount to compelling a witness to give evidence as against him.

17. As the accused had not allegedly come forward with the truth, the scientific tests are resorted to by the investigating agency. Such a course does not amount to testimonial compulsion. When there is a hue and cry from the public and the human rights activists that the investigating sleuths adopt third degree methods to extract information from the accused, it is high time the investigating agency took recourse to scientific methods of investigation. The learned Additional Chief Metropolitan Magistrate, Egmore, Chennai, has granted the relief as prayed for by the respondent herein to secure the ends of justice. Therefore, there is no warrant for upsetting the order passed by the Court below.

18. In the result, the criminal revision petition stands dismissed. Consequently, connected criminal miscellaneous petitions also stand dismissed."

9. In support of his arguments, learned AAG has also placed reliance over the judgement of Delhi High Court in the case of **Shailendra Sharma vs. State and Another [2009 (107) DRJ 499]** wherein the High Court has held that *"Narco Analysis Test does not suffer from any constitutional infirmity as it is a step in aid of investigation and any self-incriminatory statement, if made by the accused, cannot be used or relied upon by the prosecution"*.

10. In view of the aforesaid principles laid down by Hon'ble High Court, learned AAG for the State has submitted that the orders of learned Courts below are having no infirmity and hence, no interference is required by this

Court using extraordinary powers enshrined under Section 482 of Cr.P.C.

11. In reply, learned counsel for the petitioner submits that since the law laid down by Hon'ble Apex Court, the prosecution agencies and Courts are bound to comply with. To bolster his contentions, counsel for the petitioners has placed reliance over the judgment of Hon'ble Apex Court passed in the case of **Selvi And Others vs. State of Karnataka [(2010) 7 SCC 263]** whereby the Hon'ble Apex Court has observed in para Nos.264 & 265 as below:-

"264. 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.

"265 The National Human Rights Commission had published 'Guidelines for the Administration of Polygraph Test (Lie Detector Test) on an Accused' in 2000. These guidelines should be strictly adhered to and similar safeguards should be adopted for conducting the 'Narcoanalysis technique' and the 'Brain Electrical Activation Profile' test.

The text of these guidelines has been reproduced below:

(i) No Lie Detector Tests should be administered except on the basis of consent of the accused. An option should be given to the accused whether he wishes to avail such test.

(ii) If the accused volunteers for a Lie Detector Test, he should be given access to a lawyer and the physical, emotional and legal implication of such a test should be explained to him by the police and his lawyer.

(iii) The consent should be recorded before a Judicial Magistrate.

(iv) During the hearing before the Magistrate, the person alleged to have agreed should be duly represented by a lawyer.

(v) At the hearing, the person in question should also be told in clear terms that the statement that is made shall not be a 'confessional' statement to the Magistrate but will have the status of a statement made to the police.

(vi) The Magistrate shall consider all factors relating to the detention including the length of detention and the nature of the interrogation.

(vii) The actual recording of the Lie Detector Test shall be done by an independent agency (such as a hospital) and conducted in the presence of a lawyer.

(viii) A full medical and factual narration of the manner of the information received must be taken on record.

12. Nevertheless, the law laid down by Hon'ble Apex Court in the case of **Selvi (Supra)** is binding not only on the Courts and Investigation Agencies but also on the citizens of Indian Territory. So far as the citations cited by counsel for the State are concerned, both the citations have been passed earlier to the judgment passed by the Apex Court in the Case of **Selvi (Supra)**, therefore, they are distinguishable.

13. Now, coming to another contention of learned AAG as to whether this Court has power to interfere in the investigation or not., the learned AAG

has placed reliance on the judgment of Hon'ble Apex Court passed in the case of **The State of Uttar Pradesh vs. Aman Mital & Anr. in Criminal Appeal nos.1330-1331/2019** wherein the Hon'ble Apex Court, while dealing with the right of the investigating agency has observed as under:

*"Such directions are liable to be set aside in view of the fact that the High Court, while exercising jurisdiction under Section 482 of the Code, cannot interfere in the manner of investigation, in terms of the Judgment of this Court in **M. C. Abraham and Another v. State of Maharashtra and Others [(2003) 2 SCC 649]** wherein it was held as under: -*

“13. This Court held in the case of J.A.C. Saldanha [(1980) 1 SCC 554: 1980 SCC (Cri) 272] that there is a clear-cut and well-demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively reserved by the executive through the police department, the superintendence over which vests in the State Government. It is the bounden duty of the executive to investigate, if an offence is alleged, and bring the offender to book. Once it investigates and finds an offence having been committed, it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits report to the court requesting the court to take cognizance of the offence under Section 190 of the Code of Criminal Procedure, its duty comes to an end. On cognizance of the offence being taken by the court, the police function of investigation comes to an end subject to the provision contained in Section 173(8), then commences the adjudicatory function of the judiciary to determine whether an offence has been committed and if so, whether by the person or persons charged with the crime. In the circumstances, the judgment and order of the High Court was set aside by this Court.”

13) Therefore, the directions issued including in respect of change of Investigating Officer and that the District Judge to be associated with 6 (2003) 2 SCC 649 various action, falling exclusively in the domain of the Investigating Agency are patently beyond the scope of the petition under Section 482 of the Code and are, therefore, liable to be set aside."

14. Certainly, the extraordinary powers enshrined under Section 482 of Cr.P.C can be used in rarest of the rare cases where ends of justice demands. It can be used only to prevent the abuse of process of law and to secure the ends of justice. In the case of **State of W.B. vs. Narayan K. Patodia [AIR 2000 SC 405]** the Hon'ble Apex Court ordained "*Inherent powers of the High Court as recognized in Section 482 of the Code are reserved to be used "to give effect to any orders under the Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice."*

15. Nevertheless, investigation into a cognizable offence is a statutory power of police and superintendence thereof is vested with the State Government. So, the High Court is not justified in interfering with it without justifiable reasons. However, in this case, since the mandate of Hon'ble Apex Court has not been followed by investigating authorities, the High Court has to use its extraordinary powers enshrined under Section 482 of Cr.P.C.

16. From the face of impugned order dated 01.09.2023 passed by Judicial Magistrate First Class, it is clear that Suresh Chouhan (petitioner No.4) has only given his consent to the aforesaid three tests. Others petitioners namely Virendra, Rakesh and Vijay have declined for all the three tests on the ground of their respective health issues and ailment. Hence, it is clear that except petitioner no.4/ Suresh Chouhan, no one has given their consent for conducting of the tests before the Judicial Magistrate.

17. During the Course of arguments, although, on this aspect, learned AAG for the State has contended that if these petitioners are not ready to go through the aforesaid tests, the adverse inference would be drawn against them. In reply, counsel for the petitioners has no objection regarding such type of adverse inference.

18. Certainly, this Court is also of the view that if the petitioners are not ready to go through the procedure of the aforesaid three tests, the learned trial Court may draw appropriate inference against them as and when required in accordance with law. However, at this Stage, in view of the settled proposition of law, this Court is not giving any opinion in this regard.

19. In this way, as the law laid down by Hon'ble Apex Court in the case of **Selvi (supra)** all three tests i.e. Narco, Polygraph and Brain Mapping test cannot be conducted of the petitioners who have not given their consent before the learned Magistrate.

20. In view of the aforesaid elaborate discussion and the law laid down by Hon'ble Apex Court in the case of **Selvi (supra)**, the finding of learned Courts below regarding conduct of all three tests for all the petitioners (including who have not given their consent), is liable to be and is hereby modified to that extent that the prosecution shall conduct all the three tests of petitioner No.4/Suresh Chouhan only who has given his consent before the Magistrate. Rest of the petitioners i.e. Vijay, Rakesh and Virendra cannot be forced without their consent for conducting the aforesaid tests.

21. However, in future, if the petitioners Vijay, Rakesh and Virendra Singh give their consent for the aforesaid tests, in accordance with the law laid down by apex Court in the case of **Selvi (supra)**, as the case may be, the

investigation agency shall be at liberty to conduct their all three tests in accordance with law.

22. With the aforesaid observation and direction, present petition stands partly allowed and disposed off.

Certified copy as per rules.

(PREM NARAYAN SINGH)
JUDGE

AMIT

