

**HON'BLE SRI JUSTICE A.V.RAVINDRA BABU**

**CRIMINAL REVISION CASE No.1525 OF 2008**

**ORDER:**

This Criminal Revision Case is filed under Sections 397 and 401 of the Code of Criminal Procedure, 1972 (for short, 'the Cr.P.C.) by the petitioners, who are accused pertaining to Crime No.160 of 2007 of Governorpeta Police Station, Vijayawada, impugning the order in CrI.M.P. No.2898 of 2008, dated 14.10.2008, on the file of the Court of III Additional Chief Metropolitan Magistrate, Vijayawada (for short, 'the trial Court'), where under the learned Magistrate directed the petitioners herein to subject themselves for Narco Analysis Test at FSL, Bangalore.

2. The petitioners herein are the respondents in CrI.M.P. No.2898 of 2008 in Crime No.160 of 2007. The Sub-Inspector of Police, Governorpeta Police Station, filed the said Application before the learned Magistrate to give directions to the petitioners-accused to go for Narco Analysis Test at FSL, Bangalore to bring out the truth in a scientific manner.

3. The learned Magistrate, by virtue of the order, dated 14.10.2008, allowed the said Application and, aggrieved by the same, the present Criminal Revision Case is filed.

4. Now the simple question that falls for consideration is, whether the order in Crl.M.P. No.2898 of 2008, dated 14.10.2008, on the file of the Court of III Additional Chief Metropolitan Magistrate, Vijayawada, is tenable under law?

5. **POINT:** Sri D. Kodandarami Reddy, learned counsel appearing on behalf of the petitioners, would contend that the law relating to Narco Analysis Test is no longer *res-integra* by virtue of the decision of the Hon'ble Supreme Court in ***Selvi and others v. State of Karnataka***<sup>1</sup>. Though the aforesaid decision of the Hon'ble Supreme Court was decided on 05.05.2010 *i.e.*, subsequent to the order under challenge but the instant Criminal Revision Case is pending way back from the year 2008, as such the above legal position is squarely applicable to the case on hand and the learned counsel would further rely upon a decision of the High Court of Karnataka at Bengaluru in Criminal Petition No.3664 of 2020, dated 02.09.2022, where the Hon'ble High Court of Karnataka at Bangalore followed the judgment of the Hon'ble Supreme Court in ***Selvi and others supra***.

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<sup>1</sup> (2010) 7 SCC 263

6. Sri Y. Jagadeeswara Rao, learned counsel, representing learned Public Prosecutor, submitted that appropriate orders may be passed in this case.

7. The factual matrix pertaining to Crl.M.P. No.2898 of 2008, filed before the learned Magistrate, is that the petitioners herein are shown as accused pertaining to Crime No.160 of 2007 of Governorpeta Police Station. The allegations therein were that there was house breaking by night and theft was occurred on 16.12.2007 at Jaihind Complex at B.G. Jewellers wherein main door was opened with duplicate keys, and culprit opened the iron safe and committed theft of gold ornaments. The Investigating Officer, basing on the confessional statements of the petitioners pertaining to other crimes, shown them as that of the accused in the subject matter and secured the presence of the petitioners before the learned Magistrate by way of production warrants. He prayed the Police Custody of the petitioners for 10 days and he approached the learned Magistrate by filing Crl.M.P. No.2898 of 2008 stating that in spite of their interrogation, the petitioners did not reveal the truth, as such subjecting them to Narco Analysis Test is necessary.

8. The petitioners herein filed counter in the above said Petition mainly contending that in spite of granting of Police Custody, the Investigating Officer failed to recover the stolen property and, if the petition is allowed, he would rope them in the Crime and, if the test is ordered, it may affect their health and they may become mentally retarded. With the above prayer, the petitioners sought for dismissal of the Petition.

9. The learned Magistrate passed the impugned order on 14.10.2008 ordering the petitioners to undergo Narco Analysis Test at FSL, Bangalore. As against the above, the present Criminal Revision Case is filed.

10. As verified from the record, there was *interim* stay granted by this Court, as such the petitioners could not be taken to Narco Analysis Test. There is no dispute that the impugned order was dated 14.10.2008. There is also no dispute that the law has been changed giving more clarity in respect of conducting any test of Narco Analysis on the persons who are accused of any crimes. As seen from the order of the High Court of Karnataka at Bengaluru in Criminal Petition No.3664 of 2020, the Hon'ble High Court of Karnataka, dealing with the similar situation, relied upon the decision of the Hon'ble Supreme Court in ***Selvi and others supra***

held that the law in this regard is no longer *res-integra* and further held that consent of the accused to undergo the medical examination is mandatory. It is also a case where when the Investigating Officer filed applications before the trial Court to subject the accused for Narco Analysis Test it was rejected. Against which a Revision was filed before the Sessions Court which was also dismissed and as against the same the Criminal Revision Case was filed before the Hon'ble High Court of Karnataka where the Hon'ble High Court of Karnataka relying upon ***Selvi and others***, as stated *supra*, dismissed the same.

11. This Court has gone through the decision of the Hon'ble Supreme Court in ***Selvi and others*** *supra*. Though the said order is dated 05.05.2010 but the fact is that the Criminal Revision Case filed by the petitioners is pending, as such the law laid down by the Hon'ble Supreme Court in ***Selvi and others*** *supra* is squarely applicable to the present case on hand. The Hon'ble Supreme Court dealt with the issue in an elaborate manner. The Hon'ble Supreme Court held that the legal questions that came up for consideration in the batch of Criminal Appeals relates to the involuntary administration of certain scientific techniques namely Narco Analysis Test, Polygraph Examination and Brain Electrical

Activation Profile. Ultimately the Hon'ble Supreme Court held that conducting of such a test without the consent is violative of Articles 23 and 21 of the Constitution of India. The Hon'ble Supreme Court of India categorically held that the mental privacy which is an aspect of personal liberty under Article 21 is intruded upon because common feature of these tests is that test subjects verbal or physiological responses are extracted in a manner that he has no conscious control over them. Such involuntary disclosure of information is also cruel, inhuman and degrading treatment to an individual, which is against violation of Article 21. Ultimately the Hon'ble Supreme Court held that voluntary undertaking of tests is permissible provided certain safeguards like the one recommended by the National Human rights Commission (NHRC) are observed.

12. Needless to point out here that the petitioners vehemently resisted the prayer of the Investigating Officer before the trial Court by filing a counter.

13. Having regard to the above and the law laid down by the Hon'ble Supreme Court, which is squarely applicable to the present facts and circumstances, this Court is of the considered view that the impugned order in Crl.M.P. No.2898 of 2008, dated

14.10.2008, on the file of the Court of III Additional Chief Metropolitan Magistrate, Vijayawada is not tenable under law, as such it is liable to be set-aside.

14. In the result, the Criminal Revision Case is allowed setting aside the order dated 14.10.2008 in CrI.M.P. No.2898 of 2008 in Crime No.160 of 2007 of Governorpeta Police Station, Vijayawada, on the file of the Court of III Additional Chief Metropolitan Magistrate, Vijayawada.

Consequently, Miscellaneous Applications pending, if any, shall stand closed.

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**JUSTICE A.V.RAVINDRA BABU**

Date : 03.11.2022  
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