

Before Suvir Sehgal, J.

JAGJEET SINGH—*Petitioner*

versus

STATE OF HARYANA—*Respondent*

CRR No.92 of 2022

February 09, 2022

Indian Penal Code, 1860—S.365, 376-D and 120—Protection of Children from Sexual Offences Act, 2012—S.6—Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989—S.3(w)(ii)—Code of Civil Procedure, 1973—S.53-A—Case of child molestation and rape—Witness and minor victim turning hostile—Irrelevant to seek blood sample of accused under Section 53-A of Code of Criminal Procedure—Reliance on 2011(7) S.130 to hold that DNA sampling is mandate—Challenge to order directing sample dismissed.

Held that, having considered the arguments addressed by counsel for the parties, this Court is of the view that there is no merit in the petition. Section 53-A has been incorporated in the Code, w.e.f., 23.06.2006 and make it imperative for the prosecution to conduct DNA test in cases involving rape and attempt to rape, for establishing the case against the accused, more so, when there is likelihood that it may provide material to connect the accused with the crime. It has been held by the Hon'ble Supreme Court in Krishan Kumar Malik Versus State of Haryana, 2011 (7) SCC 130 that procedure for getting the DNA test or analysis and matching of semen of the accused with that of the undergarments of the prosecutrix has to be mandatorily resorted to and in case it is not done, the prosecution must face the consequences. It has come on the record that the FSL result of the victim has been found to be positive. In such a situation, it is, therefore, essential for the prosecution to conduct the DNA profiling. Still further, after exhaustive discussion of case law, High Court of Madras in M. Muthukumar Versus Inspector of Police and another, Law Finder doc ID # 1254551 and High Court of Karnataka in Shreemad Jagadgaru Shankracharya Versus State Karnataka, 2014 (37) R.C.R. (Criminal) 787 rejected the ground of self incrimination and has held that Section 53-A of the Code is not violative of fundamental rights in Part III of the Constitution of India.

(Para 6)

Further held that, the argument of the counsel for the petitioner that the victim and other material witnesses have not supported the case of the prosecution during the trial, is not to be gone into at this stage as the evidentiary value of those statements would be matter of appreciation at the time of final adjudication upon the guilt or innocence of the accused.

(Para 7)

Further held that, there is no illegality or perversity in the impugned order.

(Para 8)

Further held that, petition is dismissed.

(Para 9)

Gurdarshan Singh Sidhu, Advocate
for the petitioner.

Mahima Yashpal, DAG, Haryana
for the respondent-State.

SUVIR SEHGAL, J. (ORAL)

(1) Heard through video conferencing.

(2) Instant revision petition has been filed under Section 401 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “the Code”) challenging order dated 18.11.2021 passed by the Trial Court, whereby the SHO concerned has been directed to take the accused-petitioner to the General Hospital, Sirsa, for taking his blood sample and to send the same to FSL, Madhuban, for DNA examination.

(3) In brief, facts leading to the filing of the petition are that FIRNo.20 dated 02.04.2019 has been registered under Section 365, 376-D and 120-B of the Indian Penal Code, 1860, Section 6 of the Protection of Children from Sexual Offences Act, 2012 and Section 3 (w) (ii) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 at Police Station Women, Dabwali, Annexure P-1, on the statement of a minor victim alleging that on 01.04.2019 when her father and brother had gone out of the house to work at a brick kiln, Jagjeet Singh (present petitioner), Namdev Singh and Krishan Singh came to her house. Jagjeet Singh gagged her and three of them forcibly took her to the house of Jagjeet Singh where he raped her. Namdev Singh and Krishan Singh stood on guard outside. In the meanwhile, her brother, Sewak Singh, came and on spotting him, Namdev Singh

and Krishan Singh fled from the spot. A scuffle took place between Sewak Singh and Jagjeet Singh, however, Jagjeet Singh managed to flee.

(4) Counsel for the petitioner contends that the blood sample of the accused was not taken during investigation and during the course of trial after the minor victim and other prosecution witnesses have turned hostile, application dated 27.10.2021, Annexure P-2, has been filed, which after contest has been allowed by the Trial Court vide impugned order. He submits that the application has been submitted at a belated stage to cover up the lacuna. He has urged that the impugned order cannot be sustained as the petitioner cannot be forced to be a witness against himself. He has claimed protection of Article 20 (3) of the Constitution of India.

(5) Opposing the petition, learned State counsel, upon instructions from, L/ASI, Sunita, submits that the blood sample of the accused-petitioner has been taken on 18.11.2021 and has been sent to the laboratory for analysis and report is awaited. She has relied upon Section 53-A of the Code.

(6) Having considered the arguments addressed by counsel for the parties, this Court is of the view that there is no merit in the petition. Section 53-A has been incorporated in the Code, w.e.f., 23.06.2006 and make it imperative for the prosecution to conduct DNA test in cases involving rape and attempt to rape, for establishing the case against the accused, more so, when there is likelihood that it may provide material to connect the accused with the crime. It has been held by the Hon'ble Supreme Court in *Krishan Kumar Malik* versus *State of Haryana*¹ that procedure for getting the DNA test or analysis and matching of semen of the accused with that of the undergarments of the prosecutrix has to be mandatorily resorted to and in case it is not done, the prosecution must face the consequences. It has come on the record that the FSL result of the victim has been found to be positive. In such a situation, it is, therefore, essential for the prosecution to conduct the DNA profiling. Still further, after exhaustive discussion of case law, High Court of Madras in *M. Muthukumar* versus *Inspector of Police and another, Law Finder doc ID # 1254551* and High Court of Karnataka in *Shreemad Jagadgaru Shankracharya* Versus *State Karnataka*² rejected the ground of self incrimination and

¹ 2011 (7) SCC 130

² 2014 (37) R.C.R (Criminal) 787

has held that Section 53-A of the Code is not violative of fundamental rights in Part III of the Constitution of India.

(7) The argument of the counsel for the petitioner that the victim and other material witnesses have not supported the case of the prosecution during the trial, is not to be gone into at this stage as the evidentiary value of those statements would be matter of appreciation at the time of final adjudication upon the guilt or innocence of the accused.

(8) There is no illegality or perversity in the impugned order.

(9) Petition is dismissed.

Inderpal Singh Doabia