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Court No. - 80

Case :- APPLICATION U/S 482 No. - 24302 of 2024

Applicant :- Ram Chandra Ram
Opposite Party :- State Of U.P. And 3 Others
Counsel for Applicant :- Amit Kumar Yadav,Bheshaj Puri
Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Bheshaj Puri, the learned counsel for applicant and the learned A.G.A. for State-opposite party-1.

2. Perused the record.

3. Applicant-Ram Chandra Ram, who is a named and charge sheeted accused, has approached this Court by means of present application under Section 482 Cr.P.C. with the following prayer:-

"It is, therefore, Most Respectfully prayed that this Hon'ble Court be pleased to allow the present Cr. Misc. Application under section 482 of Cr. P.C. and quash the order dated 02.11.2023 passed by Additional Session Judge/Special Judge POCSO Court, Ghazipur, in Special Session Trail No.573/2021 arises out of Case Crime No. 187of 2021 under sections 376,452,342,506 of I.P.C. & 5/6 of POCSO Act, police station Zamaniya, District- Ghazipur, whereby the application marked as paper no. '36 ba' for D.N.A. Test filed by the applicant has been rejected.

It is further prayed that this Hon'ble court may graciously be pleased to stay the effect and operation of the order dated 02.11.2023 passed by Additional Session Judge/Special Judge POCSO Court, Ghazipur, in Special Session Trail No.573/2021 arises out of Case Crime No. 187of 2021 under sections

376,452,342,506 of I.P.C. & 5/6 of POCSO Act, police station Zamaniya, District-Ghazipur."

4. Record shows that in respect of an incident, which is alleged to have occurred on 29.03.2021, a delayed FIR dated 22.06.2021 was lodged by first informant-opposite party-2, Smt. (mother of the prosecutrix) and was registered as Case Crime No. 0187 of 2021, under Sections 376, 452, 342, 506 IPC and Sections 5/6 POCSO Act, Police Station-Jamaniya, District-Ghazipur. In the aforesaid FIR, applicant-Ram Chandra Ram has been nominated as solitary named accused.

5. Gravamen of the allegations made in the FIR is that named accused entered the house of first informant on 29.03.2021 at around 6:00 – 7:00 p.m. He, thereafter, forcibly carried away the minor daughter of the first informant-opposite party-2 to his home. Subsequently, the modesty of the prosecutrix was dislodged by applicant by committing rape upon her.

6. Subsequent to the aforementioned FIR, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter-XII Cr.P.C. On the basis of material collected by Investigating Officer, during course of investigation, he came to the conclusion that offence complained of against accused-applicant is fully established. He, therefore, opined to submit a charge sheet. Accordingly, Investigating Officer, submitted the charge sheet/police report dated 20.07.2021 in terms of Section 173(2) Cr.P.C., whereby accused-applicant was charge sheeted under Sections 376, 452, 342, 506 IPC and Sections 5/6 POCSO Act.

7. After submission of aforementioned charge sheet/police report, cognizance was taken upon same by the Court concerned, in exercise of jurisdiction under Section 190(1)(b) Cr.P.C. Resultantly, Special Sessions Trial No. 573 of 2021 (State Vs. Ram Chandra Ram), under Sections 376, 452, 342, 506 IPC and Sections 5/6 POCSO Act, Police Station-Jamaniya, District-Ghazipur came to be registered. The concerned Sessions Judge in

exercise of jurisdiction under Section 228 Cr.P.C. framed charges against accused-applicant, vide framing of charge order dated 25.04.2022. However, accused-applicant denied the same and demanded trial. Consequently, the trial procedure commenced. Up to this stage, five prosecution witnesses have deposed before Court below.

8. At this juncture, applicant filed an application dated 18.05.2023 (Paper No. 36 Ba) before Court below with the prayer that the DNA test of the prosecutrix and her child be conducted so that the true facts are available before the Court. Aforesaid application, copy of which is on record at page 85 of the paper book, was primarily based on the fact that since the birth of the child is premature yet the child was fully grown and developed, therefore, the said child was not born out of the co-habitation of the prosecutrix and the applicant.

9. Aforementioned application filed by applicant was opposed by the prosecution. However, no written objections to the same was filed.

10. Court below examined the prayer made by means of aforementioned application in the light of material on record. Having evaluated and examined the grounds raised in the application dated 18.05.2023, Court below recorded the following findings namely (i) cognizance was taken on 27.08.2022, (ii) charges were framed against accused, vide framing of charge order dated 25.04.2022, (iii) up to this stage, five prosecution witnesses have been examined, (iv) in an offence under Section 376 IPC, there is no necessity of getting the paternity identified, (v) the Apex Court has repeatedly observed that direction for DNA test of the prosecutrix and her child should not be given as a matter of course but in exceptional circumstance. On the above findings, Court below concluded that no good ground has emerged to allow the application (Paper No. 36 Ba). Accordingly, vide order dated 02.11.2023, Court below rejected the said application.

11. Thus feeling aggrieved by the order dated 02.11.2023 passed by

Additional Sessions Judge/Special Judge, POCSO Court, Ghazipur, accused-applicant has now approached this Court by means of present application under Section 482 Cr.P.C.

12. Mr. Bheshaj Puri, the learned counsel for applicant in support of this application submits that the order impugned in present application is manifestly illegal and arbitrary. As such, the same is liable to be quashed by this Court. According to the learned counsel for applicant, the trial before Court below is that of an accused. As such, the same ought to be a free and fair trial. Moreover, the object of the trial is to find out the truth. He, therefore, submits that the DNA test of the prosecutrix and her child will specifically prove the guilt/innocence of accused/applicant scientifically. As such, the application dated 18.05.2023 (Paper No. 23 Kha) cannot be said to be an impediment in discovering the truth. He, therefore, submits that in view of above, Court below ought to have allowed the application. Court below while passing the order impugned has completely overlooked the aforesaid aspect of the matter, which has vitiated the same. As such, the order impugned is liable to be set aside by this Court. In support of aforesaid submissions, the learned counsel for applicant has relied upon the following judgments of this Court, other Courts and Supreme Court;-

(i). Criminal Appeal U/s 372 Cr.P.C. No. 300 of 2024 (Chandrama Chauhan Vs. State of U.P. and Another) decided on 23.09.2024,

(ii). Criminal Appeal No. 470 of 2019 (Harishchandra Sitaram Khanorkar Vs. State of Maharashtra) decided on 15.12.2022,

(iii). Rajnesh Kumar Chaudahry Vs. Sarita, 2019 SCC OnLine All 4422,

(iv). Criminal Appeal No. 73 of 2023 (Sudip Biswas @ Bura Vs. The State of Assam and Another) decided on 13.10.2023,

(v). Nandlal Wasudeo Badwaik Vs. Lata Nandlal Badwaik and

Another, (2014) 2 SCC 576,

(vi). Dipanwita Roy Vs. Ronobroto Roy, (2015) 1 SCC 17.

13. Since the issue regarding necessity of DNA test of the prosecutrix and her child has already been dealt with by the Apex Court in the case of **Nandlal Wasudeo Badwaik (Supra) and Dipanwita Roy (Supra),** therefore, there is no necessity of referring to the ratio laid down in other judgments relied upon by the learned counsel for applicant.

14. The judgment rendered by the Apex Court in **Nandlal Wasudeo Badwaik (Supra)**, has been referred to and quoted extensively in the subsequent judgment in **Dipanwita Roy (Supra).** Therefore, to avoid repetition, the relevant observations made in aforementioned judgment are not reproduced herein under.

15. In **Dipanwita Roy (Supra),** the Court was considering the propriety of an order passed by the High Court directing DNA test of the prosecutrix and her child. The Court referred to the previous judgments on the subject as well as the law applicable. In this regard, the relevant observations are to be found in paragraphs 14 to 18 of the report, which are, accordingly, extracted herein under:-

"14. A similar issue came to be adjudicated upon by this Court in Bhabani Prasad Jena vs. Convenor Secretary, Orissa State Commission for Women and another, (2010) 8 SCC 633, wherein this Court held as under:

"21. In a matter where paternity of a child is in issue before the court, the use of DNA test is an extremely delicate and sensitive aspect. One view is that when modern science gives the means of ascertaining the paternity of a child, there should not be any hesitation to use those means whenever the occasion requires. The other view is that the court must be reluctant in the use of such scientific advances and tools which result in invasion of right to privacy of an individual and may not only be prejudicial to the rights of the parties but may have devastating effect on the child. Sometimes the result of such scientific test may bastardise an innocent child even though his mother and her spouse were living together during the time of conception.

22. In our view, when there is apparent conflict between the right to privacy of a person not to submit himself forcibly to medical examination and duty of the court

to reach the truth, the court must exercise its discretion only after balancing the interests of the parties and on due consideration whether for a just decision in the matter, DNA test is eminently needed. DNA test in a matter relating to paternity of a child should not be directed by the court as a matter of course or in a routine manner, whenever such a request is made. The court has to consider diverse aspects including presumption under Section 112 of the Evidence Act; pros and cons of such order and the test of "eminent need" whether it is not possible for the court to reach the truth without use of such test.

23. There is no conflict in the two decisions of this ourt, namely, Goutam Kundu vs. State of West Bengal (1993) 3 SCC 418 and Sharda vs. Dharmpal (2003) 4 SCC 493. In Goutam Kundu, it has been laid down that courts in India cannot order blood test as a matter of course and such prayers cannot be granted to have roving inquiry; there must be strong prima facie case and the court must carefully examine as to what would be the consequence of ordering the blood test. In Sharda, while concluding that a matrimonial court has power to order a person to undergo a medical test, it was reiterated that the court should exercise such a power if the applicant has a strong prime facie case and there is sufficient material before the court. Obviously, therefore, any order for DNA test can be given by the court only if a strong prima facie case is made out for such a course.

24. Insofar as the present case is concerned, we have already held that the State Commission has no authority, competence or power to order DNA test. Looking to the nature of proceedings with which the High Court was concerned, it has to be held that the High Court exceeded its jurisdiction in passing the impugned order. Strangely, the High Court overlooked a very material aspect that the matrimonial dispute between the parties is already pending in the court of competent jurisdiction and all aspects concerning matrimonial dispute raised by the parties in that case shall be adjudicated and determined by that court. Should an issue arise before the matrimonial court concerning the paternity of the child, obviously that court will be competent to pass an appropriate order at the relevant time in accordance with law. In any view of the matter, it is not possible to sustain the order passed by the High Court. " (emphasis is ours)

It is therefore apparent, that despite the consequences of a DNA test, this Court has concluded, that it was permissible for a Court to permit the holding of a DNA test, if it was eminently needed, after balancing the interests of the parties.

15. Recently, the issue was again considered by this Court in Nandlal Wasudeo Badwaik vs. Lata Nandlal Badwaik and another, (2014) 2 SCC 576, wherein this Court held as under:

"15. Here, in the present case, the wife had pleaded that the husband had access to her and, in fact, the child was born in the said wedlock, but the husband had specifically pleaded that after his wife left the matrimonial home, she did not return and thereafter, he had no access to her. The wife has admitted that she had left the matrimonial home but again joined her husband. Unfortunately, none of the courts below have given any finding with regard to this plea of the husband that he had not any access to his wife at the time when the child could have been begotten.

16. As stated earlier, the DNA test is an accurate test and on that basis it is clear that the appellant is not the biological father of the girl child. However, at the same time, the condition precedent for invocation of Section 112 of the Evidence Act has been established and no finding with regard to the plea of the husband that he had no access to his wife at the time when the child could have been begotten has been recorded. Admittedly, the child has been born during the continuance of a valid marriage. Therefore, the provisions of Section 112 of the Evidence Act conclusively prove that Respondent 2 is the daughter of the appellant. At the same time, the DNA test reports, based on scientific analysis, in no uncertain terms suggest that the appellant is not the biological father. In such circumstances, which would give way to the other is a complex question posed before us.

17. We may remember that Section 112 of the Evidence Act was enacted at a time when the modern scientific advancement and DNA test were not even in contemplation of the legislature. The result of DNA test is said to be scientifically accurate. Although Section 112 raises a presumption of conclusive proof on satisfaction of the conditions enumerated therein but the same is rebuttable. The presumption may afford legitimate means of arriving at an affirmative legal conclusion. While the truth or fact is known, in our opinion, there is no need or room for any presumption. Where there is evidence to the contrary, the presumption is rebuttable and must yield to proof. The interest of justice is best served by ascertaining the truth and the court should be furnished with the best available science and may not be left to bank upon presumptions, unless science has no answer to the facts in issue. In our opinion, when there is a conflict between a conclusive proof envisaged under law and a proof based on scientific advancement accepted by the world community to be correct, the latter must prevail over the former.

18. We must understand the distinction between a legal fiction and the presumption of a fact. Legal fiction assumes existence of a fact which may not really exist. However, a presumption of a fact depends on satisfaction of certain circumstances. Those circumstances logically would lead to the fact sought to be presumed. Section 112 of the Evidence Act does not create a legal fiction but provides for presumption.

19. The husband's plea that he had no access to the wife when the child was begotten stands proved by the DNA test report and in the face of it, we cannot compel the appellant to bear the fatherhood of a child, when the scientific reports prove to the contrary. We are conscious that an innocent child may not be bastardised as the marriage between her mother and father was subsisting at the time of her birth, but in view of the DNA test reports and what we have observed above, we cannot forestall the consequence. It is denying the truth. "Truth must triumph" is the hallmark of justice." (emphasis is ours)

This Court has therefore clearly opined, that proof based on a DNA test would be sufficient to dislodge, a presumption under Section 112 of the Indian Evidence Act.

16. It is borne from the decisions rendered by this Court in Bhabani Prasad Jena (supra), and Nandlal Wasudeo Badwaik (supra), that depending on the facts and circumstances of the case, it would be permissible for a Court to direct the holding

of a DNA examination, to determine the veracity of the allegation(s), which constitute one of the grounds, on which the concerned party would either succeed or lose. There can be no dispute, that if the direction to hold such a test can be avoided, it should be so avoided. The reason, as already recorded in various judgments by this Court, is that the legitimacy of a child should not be put to peril.

17. The question that has to be answered in this case, is in respect of the alleged infidelity of the appellant-wife. The respondent-husband has made clear and categorical assertions in the petition filed by him under Section 13 of the Hindu Marriage Act, alleging infidelity. He has gone to the extent of naming the person, who was the father of the male child born to the appellant-wife. It is in the process of substantiating his allegation of infidelity, that the respondent-husband had made an application before the Family Court for conducting a DNA test, which would establish whether or not, he had fathered the male child born to the appellant-wife. The respondent feels that it is only possible for him to substantiate the allegations levelled by him (of the appellant-wife's infidelity) through a DNA test. We agree with him. In our view, but for the DNA test, it would be impossible for the respondent-husband to establish and confirm the assertions made in the pleadings. We are therefore satisfied, that the direction issued by the High Court, as has been extracted hereinabove, was fully justified. DNA testing is the most legitimate and scientifically perfect means, which the husband could use, to establish his assertion of infidelity. This should simultaneously be taken as the most authentic, rightful and correct means also with the wife, for her to rebut the assertions made by the respondent-husband, and to establish that she had not been unfaithful, adulterous or disloyal. If the appellant-wife is right, she shall be proved to be so.

18. We would, however, while upholding the order passed by the High Court, consider it just and appropriate to record a caveat, giving the appellant-wife liberty to comply with or disregard the order passed by the High Court, requiring the holding of the DNA test. In case, she accepts the direction issued by the High Court, the DNA test will determine conclusively the veracity of accusation levelled by the respondent-husband, against her. In case, she declines to comply with the direction issued by the High Court, the allegation would be determined by the concerned Court, by drawing a presumption of the nature contemplated in Section 114 of the Indian Evidence Act, especially, in terms of illustration (h) thereof. Section 114 as also illustration (h), referred to above, are being extracted hereunder:

"114. Court may presume existence of certain facts – The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustration (h) - That if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him."

This course has been adopted to preserve the right of individual privacy to the extent possible. Of course, without sacrificing the cause of justice. By adopting the above course, the issue of infidelity alone would be determined, without expressly disturbing the presumption contemplated under Section 112 of the Indian Evidence

Act. Even though, as already stated above, undoubtedly the issue of legitimacy would also be incidentally involved."

16. It is thus apparent that the direction issued by the High Court for getting the DNA test of the prosecutrix and her child was sustained in the peculiar facts and circumstances of aforementioned case inasmuch as, it was the specific case of the husband therein that he had no access to his wife at the time when the child could have been begotten. As such, on facts, aforementioned case is clearly distinguishable.

17. Learned counsel for applicant would then submit that Court below erred in law and fact in negating the prayer of the accused/applicant for directing the DNA test of the prosecutrix and her child. The DNA test of the prosecutrix and her child was necessary in the facts and circumstances as the said test could alone establish the innocence/guilt of accused/applicant scientifically. As such, the order impugned dated 02.11.2023 passed by Additional Sessions Judge/Special Judge, POCSO Court, Ghazipur is liable to be quashed by this Court.

18. Per contra, the learned A.G.A. representing State-opposite party-1 has vehemently opposed the present application. Learned A.G.A. submits that the order impugned in present application is perfectly just and legal and therefore, the same is not liable to be interfered with by this Court. Charges have already been framed against accused-applicant by Court below, vide framing of charge order dated 25.04.2022. Learned A.G.A. thus contends that once the charges have been framed against applicant, then Court is bound to answer the same one way or the other. The Court cannot pre-empt the trial. Further, it is an admitted fact that the trial of accused/applicant is at the stage of prosecution evidence i.e. Section 242 Cr.P.C. In view of above, the Court is to ensure compliance of Sections 230 and 231 Cr.P.C. Therefore, at this stage, Court cannot direct for defence evidence. Moreover, the application dated 18.05.2023 (Paper No. 36-Ba) was filed at a very belated stage i.e. after 5 prosecution witnesses had deposed before Court below. Court below has rejected the application

filed by the accused/applicant on the ground that in an offence under Section 376 IPC, the paternity of the child is not necessarily required to be ascertained nor direction for DNA test of the prosecutrix and her child can be given as a matter of course. The said findings have neither been specifically challenged nor the same could be dislodged by the learned counsel for applicant as being illegal, perverse or erroneous. It is well settled that if the findings could not be dislodged, the conclusion cannot be altered. No such peculiar circumstance has emerged on record warranting DNA test of the prosecutrix and her child. On the above premise, the learned A.G.A. thus contended that no illegality or perversity can be attached to the order impugned. As such, the present application is liable to be dismissed.

19. Having heard the learned counsel for applicant, the learned A.G.A. for State-opposite party-1 and upon perusal of record, this Court finds that applicant is a named and charge sheeted accused. He is facing trial before Court below for an offence under Sections 376, 452, 342, 506 IPC and Sections 5/6 POCSO Act. After submission of charge sheet/police report dated 20.07.2021 in terms of Section 173(2) Cr.P.C. cognizance was taken upon same by the concerned Special Judge/Sessions Judge, vide Cognizance Taking Order dated 27.08.2021 in exercise of jurisdiction under Section 190(1)(b) Cr.P.C. Thereafter, charges were framed against accused/applicant by Court below, vide framing of charge order dated 25.04.2022 in terms of Section 228 Cr.P.C. Subsequent thereto, five prosecution witnesses have deposed before Court below. It is at this stage that the application dated 18.05.2023 (Paper No. 36-Ba) was filed by applicant before Court below. It is thus apparent that the charges have already been framed against applicant. Once the charges have been framed then Court is bound to answer the charges so framed one way or the other. Court cannot pre-empt the trial. Apart from above, the trial is at the stage of prosecution evidence i.e. Section 242 Cr.P.C. Therefore, by reason of above, Court has to ensure compliance of Sections 230 and

Section 231 Cr.P.C. Therefore, by reason of above, Court below could not direct for collecting defence evidence. Furthermore, the findings returned by Court below that in an offence under Section 376 IPC, the paternity of the child is not required to be looked into and that direction for DNA test of the prosecutrix and her child cannot be issued in a routine manner have neither been specifically challenged nor the same could be dislodged by the learned counsel for applicant at the time of hearing as being illegal, perverse or erroneous. It is well settled that if the findings could not be dislodged, the conclusion cannot be altered. Moreover, the DNA test of the prosecutrix and her child has serious social consequences. Only when compelling and unavoidable circumstances have emerged on record, which make out a cast-iron case for directing DNA test of the prosecutrix and her child that Court can direct for such a test. It is on account of above that the Apex Court has repeatedly observed that Courts should exercise care, caution and circumspection, while considering an application with the prayer for DNA test of the prosecutrix and her child. In this regard, reference be made to the following judgments of Supreme Court in **(i) Goutam Kundu vs. State of West Bengal, (1993) 3 SCC 418, (ii) Amarjit Kaur vs. Harbhajan Singh and Anr., (2003) 10 SCC 228, (iii) Bhabani Prasad Jena vs. Convenor Secretary, Orissa State Commission for Women and Anr., (2010) 8 SCC 633 (iv) Dipanwita Roy vs. Ronobroto Roy, (2015) 1 SCC 365 (v) Ashok Kumar vs. Raj Gupta and Ors., (2022) 1 SCC 20 (vi) Aparna Ajinkya Firodia vs. Ajinkya Arun Firodia, (2024) 7 SCC 773 and (vii) Ivan Rathinam vs. Milan Joseph, 2025 SCC OnLine SC 175.**

20. Perusal of the application dated 18.05.2023 (Paper No. 36 Ba) filed by applicant will go to show that the same was neither founded on strong and clinching facts nor the facts therein were substantiated by material facts or impeccable evidence so as to lead to the conclusion that the DNA test of the prosecutrix and her child is a compelling necessity and an unavoidable circumstances. In view of above, it cannot be said that Court below has

committed an illegality in passing the order impugned. As such, no jurisdictional error has been committed by Court below either negating the prayer of the applicant regarding DNA test of the prosecutrix and her child.

21. In view of the discussion made above, the present application fails and is liable to be dismissed.

22. It is, accordingly, **dismissed**.

Order Date :- 22.08.2025
Vinay