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DR. RAJESH TALWAR AND ANR.

v.

C.B.I. AND ANR.

(Special Leave Petition (Crl.) No. 7966 of 2013)

OCTOBER 8, 2013

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[DR. B.S. CHAUHAN AND S.A. BOBDE, JJ.]

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Criminal Trial -Application u/s.233 r/w. s.91 Cr.P.C. by accused seeking reports of scientific test conducted on 3 persons who were initially suspected accused in the case - Application disposed of by trial court - Petition u/s.482 seeking the reports rejected by the High Court on the ground that the application was vexatious and intended to delay the proceedings - Held: Criminal Courts are not obliged to accede to the request made by any party to entertain and allow application for additional evidence, and are bound in terms of s.233(3) Cr.P.C. to refuse such request, if it appears that they are made in order to vex the proceedings or delay the same - In the facts of the case, it is evident that the accused have been adopting dilatory tactics - Hence, the petition rejected.

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Selvi and Ors. vs. State of Karnataka (2010) 7 SCC 263: 2010 (5) SCR 381; Selvi J. Jayalalithaa and Ors. vs. State of Karnataka and Ors. 2013 (12) SCALE 234; Smt. Triveniben vs. State of Gujarat AIR1989 SC 1335: 1989 (1) SCR 509; Zahira Habibullah Sheikh (5) vs. State of Gujarat AIR 2006 SC 1367: 2006 (2) SCR 1081; Capt. Amarinder Singh vs. Parkash Singh Badal and Ors. (2009) 6 SCC 260: 2009 (9) SCR 194; Mohd. Hussain @ Julfikar Ali vs. State (Govt. of NCT of Delhi) AIR 2012 SC 750: 2012 (1) SCR 64; Natasha Singh vs. CBI (2013) 5 SCC 741 - relied on.

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Case Law Reference:

2010 (5) SCR 381	relied on	Para 10	A
2013 (12) SCALE 234	relied on	Para 10	
1989 (1) SCR 509	relied on	Para 10	B
2006 (2) SCR 1081	relied on	Para 10	
2009 (9) SCR 194	relied on	Para 10	
2012 (1) SCR 64	relied on	Para 10	C
(2013) 5 SCC 741	relied on	Para 10	

CRIMINAL APPELLATE JURISDICTION : Special Leave Petition (Crl.) No. 7966 of 2013.

From the Judgment and Order dated 19.07.2013 of the High Court of Judicature at Allahabad in Application U/s. 482 No. 20215 of 2013.

U.U. Lalit, Sandeep Kapur, Shivek Trehan, Niharika Karanjawala, Manik Karanjawala (for Karanjawala & Co.) for the Appellants.

Siddharth Luthra, ASG, Rajiv Nanda, Padma Lakshmi Nigam, Pramod Kumar Dubey, Supriya Juneja, B.V. Balram Das, Anandana Handa, Shiv Pande, Hemant Shah for the Respondents.

The Order of the Court was delivered by

S.A. BOBDE, J. 1. This special leave petition has been preferred against the impugned judgment dated 19.7.2013, passed by the High Court of Judicature at Allahabad in Application under Section 482 No.20215 of 2013 whereby the petitioners' prayer for documents pertaining to scientific tests made in their application 405/Kha dated 11.6.2013 filed under Section 233 of the Code of Criminal Procedure, 1973

A (hereinafter referred to as 'Cr.PC') read with Section 91 was rejected.

2. The petitioners are being tried for charges of committing the murder of their daughter Arushi and their domestic helper Hemraj in their house. At the initial stage, the investigation was conducted by the U.P. Police, however, it was later transferred to the Central Bureau of Investigation (hereinafter referred to as the 'CBI'). A closure report was submitted before the Magistrate who disagreed with it and has issued the process to the petitioners for the charge of committing the double murder.

3. The present stage of the trial is that the evidence of the prosecution is closed and the statements of the accused are being recorded under Section 313 Cr.PC. The application in question under Section 311 for examining 7 other left over witnesses was moved at this stage. Alongwith this application, another application under Section 233 Cr.PC read with Section 91 has been moved on 11.6.2013, in respect of the reports of certain tests conducted on 3 persons who at one time were suspected accused and had been in police custody, namely, Krishna, Raj Kumar and Vijay Mandal. By this application, the petitioners' sought the following reports:

(i) Narco-analysis test reports and CD of Krishna conducted at FSL Bangalore;

(ii) Narco-analysis test reports and CD of Rajkumar conducted at FSL Bangalore;

(iii) Narco-analysis test reports and CD of Vijay Mandal conducted at FSL Bangalore;

(iv) Brain mapping test of Rajkumar conducted at FSL Gandhinagar;

(v) Brain mapping test of Krishna conducted at Bangalore;

DR. RAJESH TALWAR AND ANR. v. C.B.I. AND ANR. 507
[S.A. BOBDE, J.]

(vi) Brain mapping test of Vijay Mandal conducted at Bangalore; A

(vii) Lie detector, polygraph test reports of Krishna, Raj Kumar and Vijay Mandal conducted at CFSL New Delhi, FSL Bangalore, FSL Gandhinagar; B

(viii) Psychological analysis test reports of Krishna, Raj Kumar and Vijay Mandal conducted at AIIMS, FSL Bangalore, FSL Gandhinagar.

(ix) The Narco-analysis test, brain mapping test, polygraph test and the psychological tests done at AIIMS, CFSL New Delhi and at FSL Gandhinagar of the accused Dr. Rajesh Talwar and Mrs. Nupur Talwar. C

x) The written opinion / report and its annexures and other related documents dated 31.7.2008 of the postmortem doctors i.e. Dr. Sunil Dohre and Dr. Naresh Raj regarding inspection and examination of the then murder weapon (Khukhri) sent to them by the CBI. D

In addition, applicants also asked for call records, material forming the basis of report prepared by PW.6 and sound simulation test reports. E

4. These applications were disposed of by the trial Court by order dated 18.6.2013 allowing them partly. F

5. Before the High Court, it was contended by the petitioners that the said reports are essential for the defence since they pertain to those persons who were at one time suspected as being responsible for the offence and contain exculpatory statements favouring the petitioners. According to the petitioners, it is only upon examination of the reports by the Court that the petitioners will be able to put up their plea that the crime, in fact, may have been committed by Krishna, Raj Kumar and Vijay Mandal who were earlier suspected of the offence and had been interrogated. The High Court inter-alia G H

A rejected the petitioners' prayer on the ground that the application is vexatious and intended to only delay the proceedings as was also found by the trial Court.

B 6. Before us, Shri U.U. Lalit, learned Senior counsel for the petitioners submitted that the production of the reports pertaining to the abovenamed 3 persons is absolutely essential and relying on Section 91 Cr.PC, submitted that the production of these reports being relevant, the prayer ought to have been allowed by the High Court. According to Shri Lalit, the reports, if produced, would not breach either Article 21 read with Article C 20(3) which protects the accused from self-incrimination and/or would not be hit by Section 21 of the Evidence Act since the persons in respect of whom those reports have been prepared are not accused anymore. In any case, according to the learned counsel, the reason given by the High Court that D such reports having been prepared on the basis of statements and data collected in contravention of Article 20 are premature and this could only have been found after the reports were produced in courts.

E 7. Shri Siddharth Luthra, learned ASG vehemently opposed the prayer and submitted that the production of these reports is pointless in view of the law laid down by this Court in *Selvi & Ors. v. State of Karnataka* (2010) 7 SCC 263, wherein such reports are held to be inadmissible in evidence. F The learned ASG further submitted that the timing of the application and the stage at which it was made clearly shows that the applications are vexatious and intended to delay the proceedings which are at a concluding stage. In support of his contention, Shri Luthra relied on sequence of events which G according to him show that the petitioners have at every stage tried to delay the proceedings by making one application after the other. The learned counsel further submitted that even the present special leave petition is delayed in view of the fact that it is preferred on the file on 18.9.2013 against the judgment of the Allahabad High Court which was passed on 19.7.2013. The H

DR. RAJESH TALWAR AND ANR. v. C.B.I. AND ANR. 509
[S.A. BOBDE, J.]

order of the trial Court was, in fact, passed on 18.6.2013. **A**

8. Shri Lalit, learned Senior counsel for the petitioners submitted that the petitioners have been occupied in the trial and could not challenge the order of the High Court earlier.

9. After considering the rival submissions on this point, we find no merit in the contention on behalf of the petitioners that they could not have approached this Court earlier. There is no reason why the petitioners ought to have waited from 19.7.2013 to 17.9.2013 to approach this Court and allowed the trial to proceed even further. We make this observation in the background of the observation of the High Court that even the initial applications were made at a stage where the prosecution evidence had been concluded and the defence had entered and almost concluded its evidence. In fact, the petitioners had, without raising any objection that the reports and documents allegedly proved by the witnesses have not been supplied to them or made part of the Court record, participated in the examination and cross-examination of two witnesses. We might note that criminal courts are not obliged to accede to the request made by any party to entertain and allow application for additional evidence and in fact, are bound in terms of Section 233(3) Cr.PC. to refuse such request if it appears that they are made in order to vex the proceedings or delay the same. It is also pertinent to mention here that the learned Trial Judge who has been conducting the trial is likely to retire very soon. Relevant part of the Trial Court proceedings as well as Trial Court's orders thereto are given as under: **B**
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a. Accused filed application dated 22.07.2013 in Trial Court for adjournment to produce their defence witness. They moved application dated 06.8.2013 in Trial Court for direction to CBI to produce document, Tabulated chart etc. **G**

b. Trial Court passed order dated 12.08.2013 rejecting the application for supplying of tabular charts. **H**

- A c. Accused moved application dated 02.09.2013 in Trial Court to call PW-6 Dr.B.K.Mahapatra, CFSL, Bio Division, to file an affidavit.
- B d. Trial Court passed order dated 03.09.2013 rejecting the prayer to call upon Dr.B.K.Mahapatra to file affidavit.
- e. Trial Court passed order dated 03.09.2013 directing the accused to produce the defence witnesses from foreign country on the next date or through video conferencing.
- C f. Accused moved application dated 07.09.2013 for adjournment to produce defence witness from foreign country.
- g. Accused moved application dated 12.09.2013 in Trial Court for exhibiting documents.
- D h. Accused moved application to recall Dr. B.K. Mahapatra for his further cross examination.
- i. Seventh DW examined.
- E j. Accused filed another application for re-examination of DW-7 (Dr.Andrei Semikhodskii).
- k. Trial Court dismissed the aforesaid application for re-examination of Dr.B.K.Mahapatra and posted the case for final arguments i.e stage of 233 Cr.P.C. is crossed.
- F It may be pertinent to note that petitioners took 04 months to produce 7 DWs after the closing of statement u/s 313 Cr.PC. On 25.09.2013 case was fixed for final arguments but accused moved applications u/s 233 Cr.PC.
- G l. Accused moved application U/s 233 Cr.P.C. dated 26.09.2013 in Trial Court to send physical exhibit Khukri abroad for re-examination.
- H m. Trial Court passed order dated 28.09.2013 dismissing the aforesaid application.

n. Accused moved application U/s 233 Cr.P.C. dated 30.09.2013 in Trial Court to file disclosure statements of Krishna, Vijay Mandal and Rajkumar. Case adjourned to 1.10.2013 for objections and arguments on the application. Petitioners moved another application U/s 233 Cr.P.C. dated 30.09.2013 in Trial Court for summoning witnesses of IOs of CBI, UP Police and private persons as defence witnesses. Case adjourned to 1.10.2013 for objections and arguments on the application.

o. On 1.10.2013, petitioners did not argue the applications and one lawyer informed the court that their counsel is ill and obtained adjournment.

10. This Court in *Selvi J. Jayalalithaa & Ors. v. State of Karnataka & Ors.* (Writ Petition (Crl.) No.154 of 2013) decided on 30.9.2013, after referring to its earlier judgments in *Smt. Triveniben v. State of Gujarat*, AIR 1989 SC 1335; *Zahira Habibullah Sheikh (5) v. State of Gujarat*, AIR 2006 SC 1367; *Capt. Amarinder Singh v. Parkash Singh Badal & Ors.*, (2009) 6 SCC 260; *Mohd. Hussain @ Julfikar Ali v. State (Govt. of NCT of Delhi)*, AIR 2012 SC 750; and *Natasha Singh v. CBI*, (2013) 5 SCC 741, dealt with the issue of fair trial observing:

"Fair trial is the main object of criminal procedure and such fairness should not be hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society. Thus, fair trial must be accorded to every accused in the spirit of right to life and personal liberty and the accused must get a free and fair, just and reasonable trial on the charge imputed in a criminal case. Any breach or violation of public rights and duties adversely affects the community as a whole and it becomes harmful to the society in general. In all circumstances, the courts have a duty to maintain public confidence in the administration of justice and such duty is to vindicate and uphold the 'majesty of the law' and the courts cannot turn a blind eye to vexatious or oppressive

A conduct that occurs in relation to criminal proceedings.

B Denial of a fair trial is as much injustice to the accused as is to the victim and the society. It necessarily requires a trial before an impartial judge, a fair prosecutor and an atmosphere of judicial calm. Since the object of the trial is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities and must be conducted under such rules as will protect the innocent and punish the guilty. Justice should not only be done but should be seem to have been done. Therefore, free and fair trial is a sine qua non of Article 21 of the Constitution. Right to get a fair trial is not only a basic fundamental right but a human right also. Therefore, any hindrance in a fair trial could be violative of Article 14 of the Constitution.

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E Article 12 of the Universal Declaration of Human Rights provides for the right to a fair trial what is enshrined in Article 21 of our Constitution. Therefore, fair trial is the heart of criminal jurisprudence and, in a way, an important facet of a democratic polity and is governed by rule of law. Denial of fair trial is crucifixion of human rights."

F 11. Thus, from the afore-stated facts, it is evident that petitioners have been adopting dilatory tactics on every moment. The impugned order was passed on 19.7.2013. This petition was filed after about two months.

G 12. In view of the above, we are of the considered opinion that facts and circumstances of the case do not warrant any interference. The special leave petition is accordingly dismissed.

K.K.T.

SLP dismissed.

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