

(2023) 07 DEL CK 0117

In the Delhi High Court

Case No : Civil Writ Petition No. 6399 Of 2023

Ashwini Kumar Upadhyay

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 03-07-2023

Acts Referred:

Constitution of India, 1950 — Article 226

Code Of Criminal Procedure, 1973 — Section 154, 174

Indian Penal Code, 1860 — Section 326A, 326B, 354, 354A, 354B, 354C, 354D, 376, 376A, 376B, 376C, 376D, 376E, 509

Citation : (2023) 07 DEL CK 0117

Hon'ble Judges : Satish Chandra Sharma, CJ;Subramonium Prasad, J

Bench : Division Bench

Advocate : Chetan Sharma, Anurag Ahluwalia, Kritagya Kumar Kait, Amit Gupta, Saurabh Tripathi, Aakarsh Srivastava, Santosh Kumar Tripathi, Arun Panwar, Kartik Sharma

Final Decision : Dismissed

Judgement

1. The instant Public Interest Litigation has been filed under Article 226 of the Constitution of India for a direction to the Police to subject a complainant to undergo scientific tests like Narco Analysis, Polygraphy and Brain mapping during the investigation to prove the allegation and only then record his/her statement in order to control fake cases to secure right to life, liberty, dignity and speedy justice.

2. A perusal of the Writ Petition shows that the present Writ Petition has been preferred by the Petitioner when he came across a case wherein a complaint was filed against a journalist under the SC-ST Act though the complainant and the accused did not know each other. According to the Petitioner, the journalist has been harassed and humiliated and had the complainant undergone a brainmapping test before the start of the investigation, the journalist would not have to undergo the humiliation or arrest. It is stated by the Petitioner that with the growth of technology, scientific tests like Narco Analysis, Polygraphy and

Brain Mapping, etc., can be used to wipe out fake cases. It is stated that such techniques are used in developed countries like USA, China, Singapore etc. but they are not being used in our country.

3. At the outset it can be said the present petition is completely misplaced. Section 154 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Cr.P.C") provides as to how an FIR is to be recorded. Section 154 of the Cr.P.C also lays down the procedure for recording an FIR in case the information is given by a woman against whom an offence under Section 326A, 326B, 354, 354A, 354B, 354C, 354D, 376, 376A, 376B, 376C, 376D, 376E or 509 of the Indian Penal Code, 1860 is alleged to have been committed or attempted. After a complaint is reduced to writing in the format as prescribed under Section 154 of the Cr.P.C, the police starts investigating the offence. The Cr.P.C also lays down as to how the investigation has to be conducted and how the statements of witnesses, including the complainant, etc. are to be recorded.

4. It is well settled that courts do not interfere with the investigation as investigation is purely the domain of investigating agency. The prayer which is sought for by the Petitioner in the present PIL, if accepted, can result in further humiliation of the complainant, more so if the complainant is a lady for whom special protection/provisions have been made in the Cr.P.C. It is for the investigating agencies to uncover the truth.

5. The issue regarding the reliability of brain mapping test, polygraph test, Narco analysis, lie detector tests, etc. is still under lot of debate and a writ of mandamus can certainly not be passed by the Courts to the authorities to conduct such tests in order to ascertain the veracity of the complainant.

6. In *Selvi v. State of Karnataka*, (2010) 7 SCC 263, the Apex Court has held as under:

"50. It is also important to be aware of the limitations of the "narcoanalysis" technique. It does not have an absolute success rate and there is always the possibility that the subject will not reveal any relevant information. Some studies have shown that most of the drug-induced revelations are not related to the relevant facts and they are more likely to be in the nature of inconsequential information about the subjects' personal lives. It takes great skill on part of the interrogators to extract and identify information which could eventually prove to be useful. While some persons are able to retain their ability to deceive even in the hypnotic state, others can become extremely suggestible to questioning. This is especially worrying, since investigators who are under pressure to deliver results could frame questions in a manner that prompts incriminatory responses. Subjects could also concoct fanciful stories in the course of the "hypnotic stage". Since the responses of different individuals are bound to vary, there is no uniform criteria for evaluating the efficacy of the "narcoanalysis" technique.

55. At the Federal level, the US Court of Appeals for the Ninth Circuit dealt with a similar issue in *Lindsey v. United States* [237 F 2d 893 (9th Cir 1956)] . In that case, the trial court had admitted a psychiatrist's opinion testimony which was based on a clinical examination that included psychological tests and a sodium pentothal induced interview. The subject of the interview was a fifteen-year-old girl who had been sexually assaulted and had subsequently testified in a prosecution for rape. On cross-examination, the credibility of the victim's testimony had been doubted and in an attempt to rebut the same, the prosecution had called on the psychiatrist. On the basis of the results of the clinical examination, the psychiatrist offered his professional opinion that the victim had been telling the truth when she had repeated the charges that were previously made to the police. This testimony was admitted as a prior consistent statement to rehabilitate the witness but not considered as substantive evidence. Furthermore, a tape recording of the psychiatrist's interview with the girl, while she was under narcosis, was also considered as evidence. The jury went on to record a finding of guilt. When the case was brought in appeal before the Ninth Circuit Court, the conviction was reversed on the ground that the defendant had been denied the "due process of law". It was held that before a prior consistent statement made under the influence of a sodium pentothal injection could be admitted as evidence, it should be scientifically established that the test is absolutely accurate and reliable in all cases. Although the value of the test in psychiatric examinations was recognised, it was pointed out that the reliability of sodium pentothal tests had not been sufficiently established to warrant admission of its results in evidence. It was stated that "Scientific tests reveal that people thus prompted to speak freely do not always tell the truth." [Cited from Andre A. Moenssens [52(4) *The Journal of Criminal Law, Criminology and Police Science* 453-458 (November-December 1961)] (1961) at pp. 455-56.]" (emphasis supplied)

7. Similarly, in *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra*, (2005) 5 SCC 294, the Apex Court has observed as under:

"74. Furthermore, the admissibility of a result of a scientific test will depend upon its authenticity. Whether the brain mapping test is so developed that the report will have a probative value so as to enable a court to place reliance thereupon, is a matter which would require further consideration, if and when the materials in support thereof are placed before the court."

8. If, after investigation, the police finds that no case is made out against the accused, the Police can file a closure report under Section 174 Cr.P.C. The Constitution provides for special provisions for an accused. In case of a false complaint there are other remedies which are available in law. In view of the above, a complainant definitely cannot be forced to go through deception detection tests such as brain mapping test, polygraph test, narco analysis, lie detector tests, etc. to ascertain the veracity of the complaint before the investigation starts against the accused.

9. The Petitioner has also handed over the 277th Report of the Law Commission. A perusal of the said Report shows that even the Law Commission has not recommended that a complainant must undergo scientific tests like Narco Analysis, Polygraphy, Brain mapping, etc. to ascertain the veracity of the complaint. The Report only states that there has to be a more effective mechanism and special legal provisions to adequately compensate an accused who is a victim of wrongful prosecution. This certainly does not mean that a victim or a complainant must be forced to undergo scientific tests like Narco Analysis, Polygraphy and Brain mapping and satisfy the police that the complaint is genuine before the investigation starts.

10. With these observations, the petition is dismissed, along with the pending application(s), if any.