
(2008) 09 BOM CK 0046

In the Bombay High Court

Case No : Criminal Application No's. 2234 of 2007, 405, 1240, 1241, 1275 and 866 of 2008

Sampatrao R. Arvelli and Another etc.

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 15-09-2008

Acts Referred:

Constitution of India, 1950 — Article 19, 20

Citation : (2009) CriLJ 457 : (2009) 5 RCR(Criminal) 607

Hon'ble Judges : A.H. Joshi, J

Bench : Single Bench

Advocate : Anil Mardikar and V.M. Deshpande, for the Appellant; V.A. Thakre, Assistant Public Prosecutor, for the Respondent

Judgement

A.H. Joshi, J.—Rule. Rule is made returnable forthwith and heard finally by consent of parties.

2. In all these matters, a common Question of Law is agitated. Therefore, though the applicants are involved in various offences, the issue, in question, arising from orders of different Courts is one and the same. Hence, on hearing together, applications are decided by this common order.

3. By impugned orders, the permission for Narco Analysis, Brain Mapping and other analogous tests has been granted. The said permission is under challenge.

4. Reliance is placed on copy of proceedings of record of Hon'ble Supreme Court in the case of K. Venkateswara Rao v. State of A.P. (Coram S.B. Sinha & Markandey Katju, JJ.) dated 20th November, 2006, and copy of order dated 29th February, 2008 passed by this Court in Criminal Writ Petition No. 2429/07 (R.M. Savani v. State of Mah.) (Coram : Bilal Nazki & S.A. Bodbe, JJ.).

5. Purpose of reliance is that a broader question as to whether in absence of consent/willingness of the accused/witness, who is subjected to the Narco Analysis, Brain Mapping or similar tests, the same should be undertaken by order

of Court.

6. The record of proceedings of Hon"ble Supreme Court indicates that in that case learned Senior Advocate appearing for the prosecution has made a statement of suspending the tests.

7. Admittedly, there is no stay in the said case or a general-Stay order prohibiting undertaking of said tests.

8. In the proceedings before Division Bench of this Court as well, there is no stay granted in particular, i.e. the said case, or in general.

9. The matters at hand are of general importance and larger interest. Article 20 and Article 19, which guarantee fundamental right and are resorted to as a shield for seeking protection against alleged tests, which is not a physical invasion, but an intellectual invasion, will prima facie come within the bracket of reasonable restriction on fundamental rights.

10. Moreover, this question is not finally rule so far, and upon being ruled, will be governed by effect of Narco Analysis or Brain Mapping, or all tests of like nature when conducted.

11. Here is a tie between silencing constitutionally available individual right and prerogative of State to investigate and use, for that purpose, modern medico-forensic aides for larger good of larger number of persons - the community on the whole whose such individual is a member.

12. In larger interest, it is felt necessary that this modern scientific invention based on anesthetic drugs already in use over decades and electro gram and similar systems already used for over decades and safe enough needs to be allowed, as an aid in the process of investigation and retrieval of data and information stored in the memory of the person concerned.

13. In this background, larger interest should outweigh the individual liberties and fundamental rights and balance can be struck by considering the perspective of reasonable restrictions.

14. Hence in absence of a direct prohibitory precedent or order, this Court find no reason as to why the tests sought to be undertaken through the impugned orders should be prohibited.

15. Legal consequences of the results flowing therefrom, such as admissibility of evidence procured by such tests etc., would be taken care of by trial Court in the course of process of trial.