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**(1989) 08 RAJ CK 0033**

**In the Rajasthan High Court**

**Case No :** Criminal Miscellaneous Application No. 723 of 1989

Shiv Ram

APPELLANT

Vs

State of Rajasthan

RESPONDENT

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**Date of Decision :** 21-08-1989

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 482  
Penal Code, 1860 (IPC) — Section 376

**Citation :** (1989) WLN 48

**Hon'ble Judges :** G.K. Sharma, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

G.K. Sharma, J.—This petition u/s 482, Cr.P.C. is preferred against the order dated 26-7-1989 passed by the Sessions Judge, Dholpur by which the application of the petitioner for seeking test identification parade was dismissed.

2. A FIR was registered u/s 376, IPC at Police Station, Kotwali, Dholpur and after completing the investigation, challan was submitted against nine persons including the petitioner. The petitioner contended before the learned Magistrate that his name has not been mentioned in the FIR and he was not with the persons who had committed this offence so the identification parade should be conducted for him. The Police got the identification parade conducted with regard to other eight accused persons but the present petitioner was not put to test in that identification parade. That application was rejected by the learned Magistrate. The petitioner was committed to the Court of Sessions and there also he moved similar application which was rejected by the Sessions Judge vide order dated 26-7-1989.

3. The learned Counsel for the petitioner argued that in the FIR the name of the petitioner was not mentioned and he was not among those persons who had committed this offence. The petitioner is ready to take the risk of being his identified in the identification parade but as he is sure about this fact that he was

not amongst those persons who had committed this offence, he had requested the court that identification parade for him be also conducted in support of his arguments he has relied on the case of Dargah and Ors. v. state of Rajasthan 1984Cr LR (Raj) 257 and Madan singh before the learned and Ors. v. State of Rajasthan 1983 Cr LR (Raj.) 14. This case was cited before the learned sessions judge also. the learned public prosecutor cited judge while relying on the case of the Hon"ble supreme court rejected the prayer of the petitioner.

4. Considered the arguments the Hon"ble supreme court has observed that there is no legal right to claim for test identification there is no rule of law that holding the test identification is a must though it might be a rule of prudence. It was also observed the test identification parade should be held specially when the accused persons definitely asserted that they were unknown to the prosecution witnesses either by name or by face and they requested the authorities concerned to have the test identification parade held keeping this observation the petitioner"s case is considered. The petitioner has definitely asserted that his name was not mentioned in the FIR and he is not known to the witnesses He is sure that in identification test he would not be identified by the victims so under such circumstances and as held by this Court in the case of Dargah and Ors. (supra) it would be justified by the Sessions Judge to accept the request of the petitioner. Actually the State should have put him for identification test along with other accused persons because in FIR the name Shiv Ram does not appear. It was an explanation by the prosecution that the victims had narrated the name in such manner that it would be Chavi Ram as well as Shiv Ram so this matter was with regard to the assent of the victim. The victim belongs to Bangladesh. They are not residents of India. They do not know the Indian language. Their language is Bangala so it might be possible that their assent of the names of Indian persons should be defective and in such circumstances it was more duty of the prosecution to get the identification test of this petitioner when there was difference in the assent in naming Shiv Ram. Apart from this fact when the petitioner himself prays for the test of identification and he is willing to take this risk there should not be any hitch to accept this request by the Sessions Court. He believes to undergo this risk or it learned Counsel that the case is pending at the stage of framing charge. Either the charge has been framed and in that case, evidence is yet to start. So, at present the case is at the initial stage.

5. Keeping in view all these facts, the petition is accepted and it is directed that the petitioner Shiv Ram should be pull for test identification by the victims. The date for identification test would be fixed by the Sessions Judge.