

(2022) 11 CHH CK 0089
In the Chhattisgarh High Court
Case No : Criminal Revision No. 131 Of 2019

State Of Chhattisgarh

APPELLANT

Vs

Rakesh Chandrakar

RESPONDENT

Date of Decision : 25-11-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 173(8)
Indian Penal Code, 1860 — Section 201, 302, 376, 380, 450
Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 — Section 3(1)(xii), 3(2)(v)

Citation : (2022) 11 CHH CK 0089

Hon'ble Judges : Deepak Kumar Tiwari, J

Bench : Single Bench

Advocate : Lalit Jangde, YC Sharma, Pooja Lunia

Final Decision : Disposed Of

Judgement

IA No.1/2019

1. Heard on IA No.1, an application for condonation of delay in filing the revision.
2. On due consideration, the application is allowed and the delay is condoned.

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3. This petition has been directed against the order dated 2.8.2018 passed by the Special Judge (Scheduled Castes and Scheduled Tribes) Prevention of Atrocities Act (in short "the SC/ST Act"), Dhamtari (CG) in Special Sessions Trial No.26/2015, whereby, the application preferred by the prosecution for collecting the additional evidence in Crime No.106/2015 registered at Police Station Arjuni, District Dhamtari (CG), in Special Sessions Trial No.26/2015, pending in the Court of the Special Judge (SC/ST Act), Dhamtari (CG), has been disposed of observing that since Jitendra Kumar Dhruv (accused in other crime numbers) belongs to the ST category and the deceased-victim in the present case, also belongs to the Special Category, no direction can be issued against Jitendra

Kumar Dhruv, who is not a party in the aforesaid Special Sessions Trial, as the same is in the ambit of the SC/ST Act. Hence, the State was granted liberty to move appropriate application in accordance with law before the competent authority.

4. Learned counsel for the State would submit that the prosecution has filed charge sheet in connection with Crime No.106/2015 registered at Police Arjuni and Special Sessions Trial No.26/2015 is pending before the Special Judge (SC & ST Act), Dhamtari against respondent No.1 - Rakesh Chandakar for offence under Sections 201, 302, 376, 380 & 450 of the IPC read with Section 3(2) (v) and 3(1) (xii) of the SC & ST Act for committing murder and rape of the deceased-victim, who belonged to the Special Category. It is further averred that on 18.1.2018, after filing of the said charge sheet, during investigation, in connection with other Crime Nos.196/2017 and 207/2017, registered at the same Police Station Arjuni District Dhamtari, it has been revealed that Jitendra Kumar Dhruv, who is an accused in the aforesaid crime numbers, confessed not only about the other incidents but also made a confession about the present incident i.e. committing murder and rape of the deceased-victim. Thereafter, in the pending Special Sessions Trial No.26/2015, the prosecution moved an application by way of collecting additional evidence by way of conducting DNA test of Jitendra Kumar Dhruv. It is further averred that in all the three crime numbers mentioned above registered at Police Station Arjuni, the manner and mode of the commission of the crime was in the same pattern. In view of the above, he lastly submits that the trial Court ought to have allowed the application and has wrongly rejected the application stating that it was having no jurisdiction to decide the same. Hence, he prays to allow the revision and quash the impugned order.

5. Learned counsel for the respondent would support the contentions of learned counsel for the State and submit that the mother of respondent No.1 has also moved an application for fair investigation before the concerned Superintendent of Police. He further submits that on the same premises, respondent No.1 has also moved an application to discharge him from the charges considering the new development in the case, which the prosecution itself has filed.

6. Heard learned counsel for the parties and perused the documents annexed with the revision.

7. On being asked from learned counsel for the State as to in what manner, the State, without adding or giving an opportunity to Jitendra Kumar Dhruv, who is an accused in different crime numbers, filed such application seeking collection of additional evidence as against Jitendra Kumar Dhruv, he submits that the investigator is always at liberty to collect the evidence in different crime numbers which have been registered against an accused. He further submits that the Police has already collected the DNA profile of Jitendra Kumar Dhruv and it is required to be matched with the DNA profile of the deceased-victim, which has been collected during the course of investigation. He further submits that the

charge sheet has already been filed in the present case and the matter is pending before the concerned Special Judge (SC& ST) vide ST No.26/2015. The DNA sample with regard to accused Jitendra Kumar Dhruv, collected during investigation in other crime numbers, is also pending consideration before another Court and the said Court is competent to grant sanction for using such DNA profile in the present case.

8. Considering the peculiar facts and circumstances of the case particularly considering that during the course of investigation in different crime numbers, DNA profile of other accused Jitendra Kumar Dhruv has already been collected and in the present case also, the DNA samples and the articles have already been seized and the charge sheet has been filed against respondent No.1- Rakesh Chandrakar, this Court is of the view that for complete and fair investigation, in respect of any offence, the Investigation Officer is always at liberty to collect further evidence and the power of the police to conduct further investigation, after laying final report is recognised under Section 173(8) of the Code of Criminal Procedure and when a power under sub-section (8) of Section 173 is exercised, the Court ordinarily should not interfere with the statutory powers of the investigating agency and the court cannot issue directions to investigate the case from a particular angle or by a particular agency and the prosecution is always at liberty to collect further evidence in accordance with law for complete and fair investigation. Even there is no bar for the Investigation Agency to match the DNA profile of the deceased-victim with the DNA profile of any other accused, who has been arrested in a different crime number.

9. With the aforesaid observation, the revision is disposed of.

10. Let a copy of this order be sent to the concerned Court for necessary information and compliance.