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KATHI DAVID RAJU

v.

THE STATE OF ANDHRA PRADESH & ANR.

(Criminal Appeal No.1186 of 2019)

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AUGUST 05, 2019

[ASHOK BHUSHAN AND NAVIN SINHA, JJ.]

Code of Criminal Procedure, 1973:

s.53 – FIR alleging obtaining of false caste certificate – During investigation, application by police for permission to conduct DNA Test of the accused/appellant and his mother and brother – Civil Court directed conducting of DNA Test – Application u/s.482 Cr.P.C., seeking quashing of the order of Civil Judge, dismissed by High Court – Appeal to Supreme Court – Held: Section 53 empowers the police to make request for conducting DNA Test – But in the present case, it was too early to request for DNA Test without carrying out substantial investigation – Therefore, order of Civil Judge was unsustainable.

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Allowing the appeal, the Court

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HELD: Section 53 Cr.P.C empowers the police authorities to request a medical practitioner to conduct examination of a person. Present is a case where without carrying out any substantial investigation, the police authorities had jumped on the conclusion that DNA test should be obtained. It was too early to request for conduct of DNA test without carrying out substantial investigation by the police authorities. The Additional Junior Civil Judge also failed to notice that in the investigation conducted by the Investigating Authority no such materials have been brought on the basis of which it could have been opined that conducting DNA test is necessary for the appellant on his mother and two brothers. Therefore, the order passed by the Additional Junior Civil Judge dated 22.01.2016 was unsustainable. The High Court committed error in not setting aside the said order in exercise of its inherent jurisdiction under Section 482 Cr.P.C. [Paras 11 and 12] [1049-F-H; 1050-A]

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal A
No.1186 of 2019

From the Judgment and Order dated 04.06.2018 of the High Court of Judicature at Hyderabad for the State of Telangana and The State of Andhra Pradesh in Criminal Petition No. 12458 of 2017

V. Sridhar Reddy, Abhijit Sengupta, Advs. for the Appellant. B

Mahfooz A. Nazki, Polanki Gowtham, Avinash Tripathi, Guntur Prabhakar, Ms. Perna Singh, Guntur Pramod Kumar, Prashant Chaudhary, Advs. for the Respondents.

The Judgment of the Court was delivered by C

ASHOK BHUSHAN, J.

1. Leave granted.

2. We have heard learned counsel for the parties.

3. This appeal has been filed against the judgment dated 04.06.2018 D
dismissing the application under Section 482 of the Code of Criminal Procedure (Cr.P.C.) filed by the appellant for quashing the order dated 22.01.2016 passed by the Additional Junior Civil Judge, Bapatla. The High Court by the impugned judgment has dismissed the application under Section 482, Cr.P.C. Brief facts giving rise to this appeal are:

4. Respondent No.2 filed First Information Report dated E
06.01.2016 under Sections 465, 468, 471 and 420 IPC against the appellant. The substance of the allegation in the FIR was that the appellant has obtained a fake Scheduled Caste certificate of caste 'Yanadi' whereas he belonged to 'Telanga' caste. It was further alleged that the F
appellant on the basis of caste certificate obtained employment and working as Additional Assistant Engineer in V.T.P.S. Electricity Generation Corporation. The original name of the appellant is 'Immadabathina Veeranjanyulu s/o Venkata Kotaiah'. The appellant has changed his name as 'Kathi David Raju son of Yedulcondalu'. It is further pleaded that two children of the appellant had also obtained fake G
caste certificate of 'Yanadi' caste. On the basis of FIR, the appellant was arrested on 11.01.2016 and sent for judicial remand. On 13.01.2016, an application was filed before the Additional Junior Civil Judge, Bapatla requesting that the Court may direct conducting of DNA test of the

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A appellant, the mother of the appellant and the two brothers of the appellant. The Additional Junior Civil Judge by order dated 22.01.2016 directed for conducting DNA test at the request made by the Station House Officer (SHO), Bapatla Town Police Station.

B 5. Aggrieved by the order dated 22.01.2016 passed by the Additional Junior Civil Judge, an application under Section 482, Cr.P.C. has been filed by the appellant in the High Court praying for quashing of order dated 22.01.2016 which has been dismissed by the High Court by the impugned judgment.

C 6. Learned counsel for the appellant contends that the learned Magistrate committed error in directing for conducting DNA test on insufficient grounds and material. The Investigation Authorities have not completed the investigation and as roving and fishing enquiry, they cannot be permitted to conduct DNA test on the appellant. It is further submitted that respondent No.2 is claimed to be an office bearer of fake association who due to personal ill-will against the appellant has lodged
D FIR questioning the caste certificate of the appellant. It is submitted that there is an enactment viz. The Andhra Pradesh (SC, ST and BCs) Regulation of Issue of Community Certificates Act, 1993 under which there is a provision for cancellation of false community certificate, provision of penalty and other relevant provisions. The FIR lodged by
E respondent No.2 was an act of malice and it was with an intent to harass the appellant.

F 7. Learned counsel appearing for the respondent submits that the police authorities had rightly requested the Court for permitting them to conduct DNA test since the allegations in the FIR have been made that the appellant is son of 'Venkat Kotaiah' whereas he claimed to be son of 'Yedulcondalu'. It is also submitted that Section 53 Cr.P.C. empowers the police officer to request for DNA test.

8. We have considered the submissions of the learned counsel for the parties and perused the record.

G 9. As noted above, the FIR was lodged on 06.01.2016 where the allegation against the appellant was of obtaining a false caste certificate of Scheduled Caste with a further allegation that he originally belonged to 'Telanga' caste. The appellant was arrested on 11.01.2016 and on 13.01.2016 itself, the SHO submitted an application in the Court of

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Additional Junior Civil Judge for permitting conducting of DNA test on A
which impugned order was passed. The impugned order itself noted the
following submission:-

“The learned APP submitted that the investigation not yet
completed and material evidence yet to be collected and also police
custody is required to complete the investigation. Further B
contended that the DNA test in between the accused No.1 and
mother of the accused No.1 along with family members of the
accused No.1 is most required to prove the blood relationship in
between the accused NO.1 and mother of parental relatives of
the accused NO.1. Hence, the learned APP request the court to C
allow the petition for examine respondent /accused for DNA test.”

10. There can be no dispute to the right of police authorities to
seek permission of the Court for conducting DNA test in an appropriate
case. In the present case, FIR alleges obtaining false caste certificate
by the appellant by changing his name and parentage. The order D
impugned itself notices that investigation is not yet completed and material
evidence are yet to be collected. The police authorities without being
satisfied on material collected or conducting substantial investigation have
requested for DNA test which is nothing but a step towards roving and
fishing enquiry on a person, his mother and brothers. It is a serious
matter which should not be lightly to be resorted to without there being E
appropriate satisfaction for requirement of such test.

11. It is the submission of learned counsel for the respondent that
Section 53 Cr.P.C empowers the police authorities to request a medical
practitioner to conduct examination of a person. There cannot be any
dispute to the provision empowering police authorities to make such a F
request. Present is a case where without carrying out any substantial
investigation, the police authorities had jumped on the conclusion that
DNA test should be obtained. It was too early to request for conduct of
DNA test without carrying out substantial investigation by the police
authorities. The Additional Junior Civil Judge also failed to notice that in
the investigation conducted by the Investigating Authority no such G
materials have been brought on the basis of which it could have been
opined that conducting DNA test is necessary for the appellant on his
mother and two brothers.

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A 12. We, thus, are of the view that the order passed by the Additional Junior Civil Judge dated 22.01.2016 was unsustainable. The High Court committed error in not setting aside the said order in exercise of its inherent jurisdiction under Section 482 Cr.P.C.

B 13. In result, we allow the appeal, set aside the impugned judgment and order passed by the High Court as well as the order of the Additional Junior Civil Judge dated 22.01.2016. It shall, however, be open for the Court concerned to consider the request for conducting DNA test on there being sufficient materials on record to take any such decision.

C 14. The appeal is allowed to the above extent.

Kalpana K. Tripathy

Appeal allowed.