

ऋषभ कपूर
RISHABH KAPOOR
महानगर दण्डाधिकारी-03
Metropolitan Magistrate-03
केन्द्रीय जिला कमरा नं. 150
Central District, Room No. 150
तीस हजारी न्यायालय, दिल्ली
Tis Hazari Courts, Delhi

State Vs. Rajender Singh Rawat

FIR No. 132/2020

PS: I.P Estate

16.07.2020:

Present: Sh. Vakil Ahmad, Ld. APP for State (through VCC over Cisco Webex)

SI Yogendra Kumar (through VCC over Cisco Webex)

Matter is heard through VCC over CISCO Webex Application at 1:01 PM.

Arguments heard. Record perused.

This order shall dispose off application seeking permission for obtaining blood samples of accused Rajender Singh Rawat for DNA profiling, moved by applicant IO/SI Yogendra Kumar.

It is submitted that accused Rajender Singh Rawat is undergoing judicial custody in present case. It is further submitted that matter is at the stage of investigation and potency test of accused was done on 23.06.2020. It is further submitted that blood samples are required to be collected for his DNA profiling.

IO/SI Yogendra Kumar further submits that accused is lodged in Central Jail No.4, Tihar, Delhi and his blood sample is required to be taken at RML Hospital, Delhi.

At this juncture, it becomes pertinent to mention that Hon'ble Supreme Court in the case of **State of Bombay v. Kathi Kalu Oghad & ors AIR 1961 SC 1808** held that:

When an accused person is called upon by the Court or any other authority holding an investigation to give his finger impression or signature or a specimen of his handwriting, he is not giving any testimony of the nature of a 'personal testimony'. The giving of a 'personal testimony' must depend upon his volition. He can make any kind of statement or may refuse to make any statement. But his finger impressions or his handwriting, in spite of efforts at concealing the true nature of it by dissimulation cannot change their intrinsic character. Thus, the giving of finger impressions or of specimen writing or of signatures by an accused person, though it may amount to furnishing evidence in the larger sense, is not included within the expression 'to be a witness'.


16/07/2020.

Thus the court established that, giving of fingerprint or collection of **any other evidence of 'private nature'** does not essentially attract the maxim *nemo debet prodere seipsum*, i.e., no one can be required to be his own betrayer; as the latter would mean that a person has produced knowledge through his own volition that would establish his guilt, either by way of undue influence, coercion or threat or not.

In the light of authority discussed above, it can be said that it is no more *res integra* that tests in nature of DNA test etc. constitutes any other evidence of private nature which is not self incriminating evidence and thus not prohibited by doctrine of self incrimination under article 20(3) of Indian Constitution. Even otherwise also, in rape cases, the collection of blood samples of accused for DNA profiling, is permitted for investigation purposes u/s 53 of Cr.PC. Accordingly, the present application is allowed with a direction to concerned Jail Superintendent to ensure production of accused Rajender Singh Rawat for collection of his blood samples for DNA profiling, before concerned doctor RML Hospital.

Application is disposed off.

Scanned copy of this order is being sent to Sh. Manoj Kumar (Assistant Ahlmad) through whatsapp/email for transmitting the same to the applicant IO/SI Yogendra Kumar and concerned Jail Superintendent through all permissible modes including email, for compliance.

Scanned copy of the order be also sent to Computer Branch for uploading on Delhi District Court Website.



(RISHABH KAPOOR)

MM-03 (Central), THC, Delhi

16.07.2020

State Vs. Arvind (Superdari Application.)

FIR No.330/2018

u/s 420/468/471 IPC

PS IP Estate

16.07.2020

Present: Ld. APP for State (through VCC over Cisco Webex)

Sh. Hem Vashisht Ld. Counsel for applicant (through VCC over Cisco Webex)

Ms. Kanchan, Deputy Manager SBI, ACGR Building Branch (through VCC over Cisco Webex)

IO/SI Naveen Kumar (through VCC over Cisco Webex)

Matter is heard through VCC over CISCO Webex Application at 2:08 PM.

Scanned copy of reply from complainant bank is received through email id of court. Copy of same has also already been supplied to counsel for complainant, electronically.

Arguments heard. Record perused.

This order shall dispose off the application for release of **vehicle bearing no. DL-8CAE-0550** on superdari, in favour of **applicant Arvind Kumar Sharma**.

It is averred that applicant is the registered owner of vehicle in question and same is no more required for purposes of investigation. With these averments prayer is made for release of vehicle on superdari.

In reply filed by IO/SI Naveen Kumar, the objection qua release of vehicle is raised, stating that the applicant has purchased vehicle with amount of loan obtained by him on the basis of forged PAN Card and as such he is not having any no due clearance certificate till date, therefore the vehicle cannot be released to him.

In reply filed by complainant bank, it has been stated that vehicle in question was purchased by applicant from money advanced as car loan by complainant bank, on the basis of forged documents submitted by the applicant. It is further averred that the applicant is a willful defaulter who after obtaining the loan on the basis of forged documents, has not repaid the outstanding amount to bank and has rather fled away from his registered address to avoid his liability. It is further averred that the vehicle in question is hypothecated in favour of complainant bank, who is rightful owner thereof. With these averments prayer is made for dismissal of present application and for release of same in complainant's favour.


16/07/2020

It is not in dispute that vehicle in question was seized from applicant/accused Arvind Kumar Sharma and same is registered in his name. It is also undisputed that vehicle in question is hypothecated in favour of complainant bank.

The Hon'ble High court of Delhi in **Manjit Singh Vs. State in CrI. MC No. 4485 dated 10.09.2014** relying on the judgment of Hon'ble Supreme court of India in **Sunderbhai Amabalal Desai Vs. State of Gujarat 2002 (10) SCC 283** directed release of vehicle involved in accident/theft cases. However, in the present case the allegations against accused are that he has duped complainant bank and obtained loan of Rs. 7,64,064 on the basis of fabricated PAN Card, thereby committing offences u/s 420/468/471 IPC. Thus, it prima facie appears that alleged vehicle was purchased from cheated/duped amount. Admittedly, the loan amount sanctioned in favour of accused is yet to be paid by him. Besides, the complainant bank is also having a hypothecation over vehicle in question. The matter is pending investigation and charge sheet in present case is yet to be filed. In such circumstances, at this stage it is very difficult to prima facie say that accused is entitled to get release of the vehicle in question. Similarly, the rival claim of bank over the vehicle in question cannot be prima facie ascertained at this stage. In view of above reasons, the present application stands dismissed.

Application stands disposed off.

Scanned copy of this order is being sent to Sh. Manoj Kumar (Assistant Ahlmad) through whatsapp/email for transmitting the same to the Ld. Counsel for applicant, Deputy Manager of complainant/counsel for complainant and IO, electronically.

Scanned copy of the order be also sent to Computer Branch for uploading on Delhi District Court Website.


(RISHABH KAPOOR)

MM-03 (Central), THC, Delhi
16.07.2020

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RISHABH KAPOOR

महानगर दण्डाधिकारी-03

Metropolitan Magistrate-03

केन्द्रीय जिला कमरा नं. 150

Central District, Room No. 150,

तीस हजारी न्यायालय, दिल्ली

Tis Hazari Courts, Delhi

State Vs. Nageshwar Shah

PS: I.P Estate

16.07.2020:

Present: Sh. S.K Singh, Ld. Counsel for applicant (through VCC over Cisco Webex)

SI Sateynder Kumar (through VCC over Cisco Webex)

Matter is heard through VCC over CISCO Webex Application at 12:45 PM.

Arguments heard. Record perused.

This order shall dispose off application u/s 97 Cr.PC. for issuance of search warrant against missing person Nageshwar Shah, moved on behalf of applicant Jitender Kumar.

It is averred that mother of applicant namely Smt. Kiran Devi had lodged missing report regarding her missing husband Nageshwar Shah, vide DD No.18A dated 10.02.2004 at P.S I.P Estate. It is averred that till date, police has not informed the applicant regarding status of said missing report. With these averments prayer is made for issuance of search warrants regarding missing person Nageshwar Shah.

In reply filed under signatures of SI Sateynder Kumar, it has been stated that the record pertaining missing persons register for the year 2004 has been destroyed vide official orders and copies of same are enclosed.

Prior to delving into merits of the present application, let us briefly discuss the provisions of section 97 Cr.PC.

This provision postulates that any District Magistrate, Sub Divisional Magistrate or Magistrate of first class, having reason to believe that any person has been confined under circumstances that such confinement amounts to an offence, may issue such warrant directing search of said person.

From discussion made above, it perceives that search warrant u/s 97 Cr.PC. can only be issued by a magistrate upon having a reasonable ground regarding wrongful confinement of any person. However, on perusal of the application as well as copy of DD NO. 18A dated 10/02/2004 appended on record, it emerges that there are no allegations of wrongful confinement of alleged missing person Nageshwar Shah. If that be so, the present application appears to be not maintainable and same deserves dismissal.

The application is accordingly dismissed. It is clarified that the applicant is at liberty to lodge a fresh report regarding alleged missing person Nageshwar Shah, which shall be inquired into by the concerned SHO, in accordance with law.

Jitender Kumar
16/07/2020.

Application is disposed off.

Scanned copy of this order is being sent to Sh. Manoj Kumar (Assistant Ahlmad) through whatsapp/email for transmitting the same to the Counsel for applicant, SHO concerned electronically and also for compliance. Scanned copy of the order be also sent to Computer Branch for uploading on Delhi District Court Website.


(RISHABH KAPOOR)
MM-03 (Central), THC, Delhi
16.07.2020