

In the court of Additional Sessions Judge, 1st Court, Uluberia, Howrah.
Special case No.29/2019
Present : Bhaskar Bhattacharjee
(JO Code: WB 640)

No.58, dated 04.02.2022

This day is fixed for production, consideration of charge and hearing of the petition dated 09.02.2021. Accused Hamid Ali Khan @ Bapi has not been produced from J/C due to Covid-19 pandemic. Only custody warrant has been produced.

Ld. Special P.P in-charge Mr. Manas Kumar Das is present by filing hazira.

Ld. Advocate appearing for the accused person is also present.

The Local Civil and Criminal Bar Association has adopted a resolution dated 21.01.2022 considering rapid spread of third wave of COVID 19 along with panic of advent of “Omicron” and “Delta” thereby resolving that all evidence in all cases/suits (Civil and Criminal) including framing of charge in all cases and Final Argument (after evidence) in all cases/suits/Appeals (Civil and Criminal) will remain suspended till 15.02.2022 except compromise cases, evidence of exparte matter and exparte arguments except of where both parties present and agreed. The local Civil and Criminal Bar Association also requested to the Ld. Court not to pass any adverse order for not taking any steps or due to the absence of the Ld. Advocates and litigants.

The petition dated 09.02.2021 filed on behalf of the accused praying for fresh DNA test by any super standard and qualified laboratory in India by not accepting the present DNA report and the same is taken up for hearing.

Perused the petition and the case record as well as the CD.

Heard both sides. Considered.

Ld. Advocate appearing for the accused/petitioner prayed for rejecting the present DNA test report by way of giving direction for fresh DNA test report and unfolded his argument in the following manner, inter alia, :-

- (a) that the said report does not indicate in which place the said sealed parcels/packets for testing were kept on and from the date of receiving the same i.e. on 07.05.2019 till the date of commencement of testing;
- (b) that no reflection on the report that in which place and under whose control after day to day completion of alleged testing the parcels /packets were kept;
- (c) that the report is totally baseless, illegal, unjustified, fabricated and manufactured one.

On the other hand Ld. Special P.P in-charge Mr. Manas Kumar Das in opposing the prayer of the accused has contended that there is no reason to disbelieve the DNA test report as the same has been prepared by a scientific officer, being a Government official duty, of the Central Forensic Science Laboratory, Kolkata. He further contended that the petition is not maintainable at this stage and prayed for rejection of the same.

I have heard the Ld. Advocate appearing for the accused/petitioner and the Ld. Special P.P in-charge with rapt attention and paged through the materials in the case diary and the record, particularly the DNA test report dated 30.09.2020.

It appears from perusal of the record that the accused has assailed the DNA test report touching upon its various factual and evidential aspects, despite the fact that the trial of the case has not yet commenced. As a matter of fact, the accused has urged this court to take note of points canvassed by him. The points raised by the defence are those which the accused might have raised, had the trial began. In fact, the points raised by the defence is nothing but the points of defence of the accused vis-a-vis the DNA test report.

Now the question is – can an accused person assailed a report before it is brought in evidence by the prosecution?

Answer to this must be in the negative. In **state of Orissa vs DN Padhi, 2005 SCC (Cri) 1185**, the Hon’ble Supreme Court has been pleased to hold that the accused has no right to raise any point of defence before trial and not permissible even at the stage of framing of charge. Unless the trial begins, there is no scope for the accused to challenge any report of the expert collected during investigation. The exercise of the accused at this stage is a futile one and has to be rejected.

Hence, the petition date 09.02.2021 filed by the accused/petitioner is rejected on contest without cost.

Return CD.

Fixing 09.03.2022 for production and consideration of charge.

Accused be remanded to J/C till date.

Dictated and corrected by me.

Sd/-
Additional Sessions Judge,
1st Court, Uluberia, Howrah.

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