

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petitions for Special Leave to Appeal (Crl) Nos.5447-5448/2009
(From the judgment and order dated 24/06/2009 in CRLMC No.1218/2009,WP
No.8273/2009 of The HIGH COURT OF KERALA AT ERNAKULAM)

SISTER SHERLY & ORS. Petitioner(s)

VERSUS

C.B.I.& ORS.ETC. Respondent(s)
(With appln(s) for stay and permission to file additional documents and
office report)

Date: 30/10/2012 These Petitions were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE D.K. JAIN
HON'BLE MR. JUSTICE JAGDISH SINGH KHEHAR

For Petitioner(s) Mr. Romy Chacko, Adv.
Mr. Varun Mudgal, Adv.

For Respondent(s) Ms. Bina Madhavan, Adv.
Ms. Praseena E. Joseph, Adv.

Mr. A.S. Chandhiok, ASG
Ms. Anitha Shenoy, Adv.
Ms. Padma Lakshmi, Adv.
Mr. Alok Kumar, Adv.
Ms. Shaheen Parveen, Adv.
for Mr. Arvind Kumar Sharma, Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.
The appeals are allowed in terms of the signed order.

| (VINOD LAKHINA) | | (KUSUM GULATI) |
| COURT MASTER | | COURT MASTER |

(SIGNED ORDER IS PLACED ON THE FILE)

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.1727-1728 OF 2012
[Arising out of Special Leave Petition (Criminal) Nos. 5447-5448
of 2009]

SISTER SHERLY & ORS. ...APPELLANTS

VERSUS

ORDER

Leave granted.

These appeals, by special leave, are directed against order dated 24th June, 2009, passed by the High Court of Kerala at Ernakulam in CRL.M.C. NO.1218 of 2009 and W.P.(C) No.8273 of 2009 (Q). By the impugned order, the High Court has dismissed the writ petition, preferred by the appellants, objecting to their being subjected to a 'Narco analysis test'.

The main ground urged in the writ petition was that 'narco analysis test' was violative of Articles 19, 20(3) and 21 of the Constitution of India, and, therefore, a suspect/accused can not be subjected to such a test without his or her consent.

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Having heard learned counsel for the parties, we are of the opinion that the issue raised in the present appeals is no more res integra. A three judge bench of this Court in Selvi and others versus State of Karnataka [(2010) 7 SCC 263], on a detailed analysis of the constitutional provisions as also Section 161(2) of the Code of Criminal Procedure, 1973, has concluded thus:

"262. In our considered opinion, the compulsory administration of the impugned techniques violates the "right against self-incrimination". This is because the underlying rationale of the said right is to ensure the reliability as well as voluntariness of statements that are admitted as evidence. This Court has recognised that the protective scope of Article 20(3) extends to the investigative stage in criminal cases and when read with Section 161(2) of the Code of Criminal Procedure, 1973 it protects accused persons, suspects as well as witnesses who are examined during an investigation. The test results cannot be admitted in evidence if they have been obtained through the use of compulsion. Article 20(3) protects an individual's choice between speaking and remaining silent, irrespective of whether the subsequent testimony proves to be inculpatory or exculpatory. Article 20(3) aims to prevent the forcible "conveyance of personal knowledge that is relevant to the facts in issue". The results obtained from each of the impugned tests bear a "testimonial" character and they cannot be categorised as material evidence.

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263. We are also of the view that forcing an individual to undergo any of the impugned techniques violates the standard of "substantive due process" which is required for restraining personal liberty. Such a violation will occur irrespective of whether these techniques are forcibly administered during the course of an investigation or for any other purpose since the test results could also expose a person to adverse consequences of a non-penal nature. The impugned techniques cannot be read into the statutory provisions which enable medical examination during investigation in criminal cases i.e. the Explanation to Sections 53, 53-A and 54 of the Code of Criminal Procedure, 1973. Such an expansive interpretation is not feasible in light of the rule of "ejusdem generis" and the considerations which govern the interpretation of statutes in relation to scientific advancements. We have also elaborated how the compulsory administration of any of these techniques is an unjustified intrusion into the mental privacy of an individual. It would also amount to "cruel, inhuman or degrading treatment" with regard to the language of evolving international human rights norms. Furthermore, placing reliance on the results gathered from these techniques comes into conflict with the "right to fair trial". Invocations of a compelling public interest cannot justify the dilution of constitutional rights such as the "right against self-incrimination".

264. In light of these conclusions, we hold that no individual should be forcibly subjected to any of the techniques in question, whether in the context of investigation in criminal cases or otherwise. Doing so would amount to an unwarranted intrusion into personal liberty. However, we do leave room for the voluntary administration of

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the impugned techniques in the context of criminal

justice provided that certain safeguards are in place. Even when the subject has given consent to undergo any of these tests, the test results by themselves cannot be admitted as evidence because the subject does not exercise conscious control over the responses during the administration of the test. However, any information or material that is subsequently discovered with the help of voluntarily administered test results can be admitted, in accordance with Section 27 of the Evidence Act, 1872."

In light of the aforesaid authoritative pronouncement, the stand of the appellants deserves to be accepted. Consequently, the appeals are allowed and the impugned order is set aside.

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(D.K. JAIN, J.)

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(JAGDISH SINGH KHEHAR, J.)

NEW DELHI
OCTOBER 30, 2012