

CASE NO.:
Appeal (crl.) 194 of 2004

PETITIONER:
Narinder Singh Bogarh

RESPONDENT:
State of Punjab

DATE OF JUDGMENT: 10/02/2004

BENCH:
N.Santosh Hegde & B.P.Singh.

JUDGMENT:
JUDGMENT

(Arising out of SLP(Crl.)No.1907 of 2003).

SANTOSH HEGDE, J.

Heard learned counsel for the parties.

Leave granted.

Based on a letter of request issued by the Government of Canada addressed to the Ministry of Home Affairs, Government of India, the Superintendent of Police, CBI, Chandigarh filed an application before the Court of Special Judicial Magistrate, CBI, Punjab, Patiala purporting to be under Section 166B of the Cr.P.C. (The Code) seeking directions to the appellant to make a statement and give blood samples for sending the same to the Canadian Authorities as desired by them in their letter of request. The said Magistrate by his order dated 21st of October, 2000 rejecting the objection of the appellant allowed the said application of the CBI. Being aggrieved by the said order of the trial court, the appellant moved the Addl. Sessions Judge, Patiala by way of a revision which came to be dismissed by an order dated 15th of March, 2001 and a Crl. Misc. Petition filed under Section 482 of the Code before the High Court for the States of Punjab and Haryana at Chandigarh also came to be dismissed, hence the appellant is before us in this appeal. Briefly stated the case of the CBI before the trial court was that the appellant was a suspect in the murder of one Smt. Saminder Kaur Bogarh who was murdered on 31.10.1986 in Vernon, British Columbia, Canada. During the course of investigation, the investigating agency found some blood which the said investigating agency believed was that of the appellant herein. Hence, for verifying the same, the Government of Canada, as stated above, sent a letter to the Ministry of Home Affairs, Govt. of India requesting the said Ministry through its agencies to interview the appellant and obtain on voluntary basis a statement of his and a sample of his blood for DNA analysis in a manner acceptable to the Canadian Court. As stated above, it was for the said purpose, the CBI moved the court in Punjab for necessary directions to the appellant which application of the CBI came to be allowed, as stated above.

Mr. R K Jain, learned senior counsel appearing for the appellant in this appeal contended that the request of the Canadian Government made to the Home Ministry, Govt. of India was to obtain the appellant's statement as also his blood sample on a voluntary basis and the same was not a request for obtaining the

said statement and blood-sample of the appellant under compulsion or under the authority of any Indian law which would permit the recording of statement and obtaining of blood samples under compulsion. He pointed out that under the Canadian Law, as it stood then, statements obtained under compulsion and blood samples obtained similarly will be of no use to the prosecution. This argument of the learned counsel is based on the fact that on an earlier occasion the Canadian Police Authorities had obtained such statement and blood sample under compulsion from the appellant which was rejected by the Canadian prosecuting agency who had opined that such compulsory collection of blood samples or recording of statement was impermissible under their law. Learned counsel further submitted it is because of that the Canadian Authorities under the present letter of request advisedly requested the Government of India to obtain the statement and blood samples of the appellant on a voluntary basis. It was further submitted that the appellant is not willing to give a voluntary statement nor is he willing to give voluntarily the sample of his blood as desired by the Canadian Authorities. The further contention of the learned counsel was that the courts below have failed to notice the true contents of the letter of request from the Canadian Government and wrongly invoking the provisions of Section 166B of the Code have compelled the appellant to make a statement as also give the sample of his blood.

Learned Addl. Solicitor General of India, appearing for the respondent-CBI, in our opinion, has fairly submitted that in view of the specific request of the Canadian Authorities to record the statement as well as collect the blood samples of the appellant voluntarily, it would be futile to get the same through an order of the court which would amount to compelling the appellant to make a statement and give his blood sample under compulsion which, according to said learned counsel, was not the request of the Canadian Authorities. Hence, on this aspect of the case he was at ad idem with learned counsel for the appellant. However, in regard to the interpretation of Section 166B of the Code, learned counsel for the respondent opposed the arguments addressed by learned counsel for the appellant.

Having perused the letter of request of the Canadian Authorities, we are in agreement with the contention of learned counsel for the appellant that the said request makes it specific that the statement as well as the blood sample of the appellant should be obtained voluntarily which would indicate that if the appellant is not willing to make any statement or give his blood samples, the CBI cannot take recourse to Section 166B of the Code because that is not the request of the Canadian Authorities. Therefore, we are of the opinion that the respondent in this case has exceeded his brief by invoking the provisions under Section 166B of the Code to record the statement as well as to collect the blood-sample of the appellant. The courts below have failed to notice this aspect of the case and proceeded to apply the provisions of Section 166B of the Code erroneously. Therefore, in our view, the impugned orders of the courts below are unsustainable in law.

Before concluding, we must record that both the counsel appearing for the parties have joined issue as to the correct interpretation of Section 166B of the Code but we do not think it necessary for us to decide that issue in this case since we have decided the case on facts i.e. on the basis of the contents of the letter of request issued by the Canadian Government.

For the reasons stated above, this appeal succeeds. The impugned orders of the courts below are set aside.

The appeal is allowed.

JUDIS