

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**C.R.M-M No.16953-2014 (O&M)
Date of Decision : 17.11.2015**

Radhe Shyam

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Parminder Singh, Advocate
for the petitioner.

Mr. Chetan Sharma, AAG, Haryana.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

The present petition has been filed under Section 482 Cr.P.C. for quashing of Kalendra under Section 180 IPC, lodged under DDE No.7 dated 12.08.2012, registered at Police Station Indri, District Karnal and order dated 04.03.2013 (P-4), order dated 30.04.2014 (P-5).

As per the said Kalendra, it has been alleged that during his custody neither any gun belong to his father was recovered nor he signed any statement before the police or put his signatures on the confessional statement. Thereafter the petitioner moved an application for discharge which had been declined by order dated 30.04.2014. The petitioner has challenged both the Kalendra and this order.

The primary contention of the learned counsel for the petitioner is that the police could not force the petitioner to sign on confessional statement as it is a direct violation of Articles 20(3) of the Constitution of India as well as Section 162(1) of Cr.P.C. and his refusal to sign it does not render him liable under Section 180 IPC. In this connection, he has relied upon the judgement of the Hon'ble Supreme Court in the matter of ***“Mahabir Mandal and others Vs. The State of Bihar”, 1972 AIR (SC) 1331*** wherein it was held as follows :-

“30. Coming to the case of Kasim we find that there is no reliable evidence as may show that Kasim was present at the house of Mahabir on the night of occurrence and took part in the disposal of the dead body of Indira. Reliance was placed by the prosecution upon the statements alleged to have been made by Kasim and Mahadeo accused at the Police Station in the presence of Baijnath P.W. after Baijnath had lodged report at the Police Station. Such statements are legally not admissible in evidence and cannot be used as substantive evidence. According to section 162 of the Code of Criminal Procedure, no statement made by any person to a Police Officer in the course of an investigation shall be signed by the person making it or used for any purpose at any enquiry or trial in respect of any offence under investigation at the time when such statement, was made. The only exception to the above rule is mentioned in the proviso to that section. According to the proviso, when any witness is called for the prosecution in the enquiry or trial, any part of his statement if duly proved, may be used by the accused and with the permission of the Court by the prosecution, to contradict such witness in the manner provided by Section 145 of the Evidence Act and when any part of such statement is so used any part thereof may also be used

*in the re-examination of such witness for the purpose only of explaining any matter referred to in his cross-examination. The above rule is, however, not applicable to statements falling within the provisions of Clause 1 of Section 32 of the Evidence Act or to affect the provisions of Section 27 of that Act. It is also well established that the bar of inadmissibility operates not only on statements of witnesses but also on those of the accused [see **Narayan Swami v. Emperor**, AIR 1939 PC 47]. Lord Atkin, in that case, while dealing with Section 162 of the, Code of Criminal Procedure, observed ;*

"Then follows the Section in question which is drawn in the same general way relating to "any person." That the words in their ordinary meaning would include any person though he may thereafter be accused seems plain. Investigation into crime often includes the examination of a number of persons none of whom or all of whom may be suspected at the time. The first words of the Section prohibiting the statement if recorded from being signed must apply to all the statements made at the time and must therefore apply to statement made by a person possibly not then even suspected but eventually accused."

Reference may also be made to Section 26 of the Evidence Act, according to which no confession made by any person while he is in the custody of a Police Officer, unless it be made in. the immediate presence of a Magistrate, shall be proved against such person. There is nothing in the present case to show that the statements which were made by Kasim and Mahadeo accused on September 18, 1963 at the Police Station in the presence of Baijnath resulted in the discovery of any incriminating material as may make them admissible under Section 27 of the Evidence Act. As such, the aforesaid statements must be excluded from consideration."

Learned Assistant Advocate General is not in a position to cite any contrary judgment.

In the circumstances, it has to be held that Kalendra and the order rejecting the prayer for discharge are illegal and are accordingly quashed.

The petition is allowed.

Since the main case has been decided, the pending criminal miscellaneous application, if any, also stands disposed of.

November 17, 2015

Pooja Sharma-I

**(AJAY TEWARI)
JUDGE**