

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 967 OF 2017

Pratim alias Peter Mukerjea.	... Petitioner.
Versus	
Union of India & anr.	... Respondents.

WITH

CRIMINAL WRIT PETITION NO. 1059 OF 2017

Indrani P. Mukherjea.	... Petitioner.
Versus	
Union of India & anr.	... Respondents.

Mr. Shrikant Shevade a/w. Mr. Anoop Pandey, Ms. Veena Shah, Ms. Sushmita Sherigar i/b. Mr. Amit P. Ghag, advocate for petitioner in WP 967/17.

Mr. Sudeep Pasbola a/w. Mr. Ayaz Khan i/b. Ms. Gunjan Mangla, advocate for petitioner in WP 1059/2017.

Mr. Sandesh Patil, advocate for respondent-CBI.

Mr. V.V. Gangurde, APP for State.

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : MAY 3, 2017**

P.C.:

1 Heard the learned Counsel for the Petitioner and the learned Counsel for the respondent at length.

2 Rule. Rule made returnable forthwith with the consent of the parties.

3 The Petitioners herein are original accused Nos. 4 and 2 respectively in Special Case No. 117 of 2015 pending before the learned Special Judge, CBI, Mumbai.

4 The trial has commenced. The prosecution has chosen to examine the Investigating Officer in Crime No. 34 of 2015 as prosecution witness No. 1. In the course of recording his substantive evidence, the witness Mr. Ganesh Dalvi has deposed before the Court that on 21/8/2015 at about 4 p.m. when he was on patrolling duty and had reached Amrut Building, Khar, he had noticed one person moving around in suspicious circumstances. That he was attempting to flee from the spot upon observing police van and therefore, the said person was apprehended. The said person was taken to the police station and the concerned police officer had immediately called for two panchas. Upon taking search of that person and enquiring

with him, he had disclosed his name as Shyamvar Rai. It was seen that he was carrying one unlicensed pistol of 7.65 mm and 3 live cartridges. He had also disclosed that he had no licence and therefore, he was arrested on the spot and panchanama was prepared accordingly.

5 The police officer has further proceeded to depose that in the course of interrogation, he was given an option as to whether he intends to disclose any fact within his knowledge. The officer has further proceeded to depose that in the presence of panchas, the accused in Crime No. 34 of 2015 had disclosed certain facts not relevant to crime No. 34 of 2015.

6 At that juncture, the Counsel for the defence had objected and had brought it to the notice of the Court that it would not be appropriate and admissible if the police officer has to depose about what was disclosed by the accused in Crime No. 34 of 2015 before the panchas, as the said accused is an approver in Crime No. 406 of 2015

which was investigated by CBI and other persons have been arraigned as accused for having committed offences punishable under section 302, 201 read with 34 of the Indian Penal Code. It was also brought to the notice of the learned Sessions Judge that Shyamvar Rai happens to be an approver and therefore, the disclosure statement made by him while in police custody cannot be proved by the Investigating Officer in Crime No. 34 of 2015 as P.W. 1 was not a party of investigating team in Crime No. 406 of 2015.

7 The learned Sessions Judge had turned down the said objections and has recorded the finding that the said panchanama was recorded in Crime No. 34 of 2015 and therefore, the investigating officer can prove the said statement. The Court cannot be oblivious of the fact that there were panchas to the memorandum as well as to the recovery of the pistol and 3 cartridges in Crime No. 34 of 2015 and the same can be proved by the independent witnesses i.e. the panchas. It ought to be considered that section 100 of the Code of Criminal Procedure, 1973 would be relevant and therefore, the

statement, which was recorded in the presence of the police officer cannot be proved through the police officer.

8 Learned Sessions Judge has thereafter, recorded a finding that the memorandum of panchanama dated 22/9/2015, though it appears as a statement by the accused under section 27 of the Evidence Act in C.R. No. 34 of 2015, is actually an information to the police regarding offence in the present matter. This would be an irrelevant observation for the simple reason that the witness who happens to be the police officer cannot prove the disclosure statement, as it would be hit by section 25 of the Evidence Act. Suffice it to say that P.W. 1 could have only deposed before the Court that in the course of interrogation it had transpired that the accused had committed another offence, on the basis of which Crime No. 406 of 2015 is registered after four days.

9 The learned Sessions Court was of the opinion that he was only allowing the portion from the panchanama/statement, which relates

to receiving of information in connection with cognisable offence without taking note of names of specific accused in the matter. In fact, the said portion, which was being considered as admissible cannot be proved through police officer, who was investigating the said crime.

10 Needless to reiterate that any incriminating statement made by an accused to a police officer is inadmissible in evidence as contemplated under section 25 of Indian Evidence Act. The defence had filed an application below Exh. 133 and had submitted before the Court that they intend to challenge the order.

11 Respective defence counsel have drawn attention of this Court to the portion of the memorandum panchanama, which is being taken on record by the learned Special Judge through substantive evidence of P.W. 1. Any inculpatory statement made by an accused to the police while in police custody would be inadmissible. Only that

portion of the statement leading to recovery of an object used in the commission of offence would be admissible in evidence.

12 All that can be proved at this stage is that P.W. 1 had arrested the said person in Crime No. 34 of 2015 and that he was being interrogated under the Indian Arms Act. In panchanama the incriminating disclosure made by the accused would be hit by section 25 of the Indian Evidence Act and that cannot be considered as admissible.

13 The learned Counsel for the respondent submits that the accused can be convicted by virtue of section 8 of Indian Evidence Act. This Court cannot be oblivious of the fact that Special Case No. 1175 of 2015 is not only against Shyamavar Rai, but it is against some other accused. In fact, Shyamavar Rai, who is an accused in Crime No. 34 of 2015 is an approver in the present case and therefore, the said material cannot be taken on record and appreciated under section 8 of the Indian Evidence Act at this stage.

9 It is in view of this, Writ Petitions are allowed in terms of prayer clause (b). Rule is made absolute in the above terms. Writ petitions are disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)