

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Criminal Application [APL] No. 909 of 2016
[The State of Maharashtra, Civil Lines Police Station, Akola Vs.
Laxman Dadarao Athwale & others]

Office Notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

Court's or Judge's orders

Mr. T. A. Mirza, Addl. Public Prosecutor for applicant-State.
 None for the non-applicants.

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CORAM : A. S. CHANDURKAR, J.

DATE : 06^h October, 2017

By this application filed under Section 482 of the Criminal Procedure Code, 1973 [for short, "the Code"], the State has challenged the order dated 14th October, 2016 passed by the learned Additional Sessions Judge, Akola, upholding the objection that was raised on behalf of the defence counsel with regard to evidence sought to be led by the prosecution at the said trial.

The respondents herein are facing trial in Sessions Trial No. 229 of 2014 for the offences punishable under Sections 302, 201, 120-B and Section

34 of the Indian Penal Code. The prosecution while leading its evidence proposed to examine two witnesses so as to prove the Memorandum under Section 27 of the Evidence Act [for short, “the said Act”]. At that stage, the Counsel for the respondents raised an objection that what was stated in the Memorandum was not discovered during the course of execution of the Panchanama. As the Memorandum and Panchanama were inadmissible in evidence, it was contended that such evidence may not be permitted to be led. This application was opposed and by the impugned order, the learned Judge of the Sessions Court upheld said objection.

Shri T. A. Mirza, learned Addl. Public Prosecutor, submitted that the Sessions Court committed an error in upholding the objection that was raised by the defence counsel. The impugned order resulted in the prosecution being prevented from examining its witnesses and if at all after recording evidence, it was found that some portion of that evidence was inadmissible, the same could always be excluded from consideration. He referred to the Full Bench judgment of this Court in **Pulukuri Kottaya Vs. King-Emperor** [1946 LawSuit(Bom) 116] as well as the judgment of the Honorable Supreme Court in **Bahadul alias Ghanshyam Padhan Vs. State of Orissa** [(1979) 4 SCC 346]. It was, thus, submitted that the impugned order was liable to be set aside.

The non-applicants have been duly served and despite grant of sufficient opportunity, they have not chosen to contest the proceedings. Hence, with the assistance of learned Addl. Public Prosecutor, I have perused the material placed on record and I have given due consideration to his submissions.

The provisions of Section 27 of the said Act were the subject-matter of consideration by the Full Bench in *Pulukuri Kottaya* [supra]. It has been held that Section 27 provides an exception to the prohibition imposed by the preceding Sections and enables certain statements made by a person in police custody to be proved. The conditions necessary to bring the said Section into operation is the discovery of a fact in consequence of the information received from a person accused of any offence while in the custody of a Police Officer. So much of the information that relates distinctly to the fact thereby discovered may be proved. This legal position has been further considered in *Bahadul alias Ghanshyam Padhan* [supra].

As per the Memorandum executed under Section 27 of the Evidence Act, the respondent no.1 is stated to have led the investigating agency to the place where the deceased was assaulted after which his body was buried and his clothes were burnt. As per the Panchanama prepared, certain clothes and a skull were found. When the prosecution intended to examine the witnesses to

the Panchanama, an objection raised was that an attempt was being made to prove a confession made before the police which was hit by Section 25 of the Evidence Act.

I find that at the stage when the witnesses on the Panchanama were yet to be examined, it would be premature to hold that the recovery sought to be brought on record did not come under the purview of Section 27 of the Evidence Act and, therefore, evidence could not be permitted to be adduced in that regard. On the other hand, after evidence is led by the prosecution, it is always open for the trial Court to consider that evidence in the light of the settled legal position after which the trial Court could give such importance to that evidence which is required to be given in law. Preventing the prosecution from examining the Panch witnesses on the supposition that such evidence would not be admissible under Section 27 of the Evidence Act would amount to prejudging the case and also causing prejudice to the case of the prosecution. The impugned order is, therefore, liable to be set aside.

Accordingly, the order dated 14th October, 2016 passed below Exh.74 in Sessions Trial No. 229 of 2014 is set aside. It is open for the prosecution to examine the witnesses to the Panchanama. It is clarified that the entire evidence led by the prosecution shall be considered in accordance with law and the trial Court

shall be free to take into consideration such evidence which is admissible in law while deciding the case.

The application is allowed in aforesaid terms and disposed of.

Judge

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