

HON'BLE DR.JUSTICE B.SIVA SANKARA RAO

Crl.R.C.No.183 of 2017

ORDER :

The revision petitioner is the accused in Sessions Case No.130 of 2015 on the file of the District & Sessions Judge at Karimnagar for the offences punishable under Sections 498-A, 302 and 201 I.P.C., which is outcome of Crime No.149 of 2014 of III Town Police Station, Karimnagar. After investigation, the Police filed charge-sheet, which was taken cognisance by the learned committal Magistrate and the case was committed to the Court of Sessions and after framing of charges from the pre-charge hearing, trial commenced. It is in the course of trial, P.Ws.1 to 9 were examined, on behalf of the prosecution, and Exs.P1 to 13 and Exs.M.O.1 were marked.

2. As per the charge-sheet, L.Ws.13 and 14 were cited as mediators to the so called disclosure panchanama of the accused leading to alleged discovery of facts within the meaning of Section 27 of the Indian Evidence Act. The prosecution not chosen to examine the said mediators and after the closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. and after defence evidence, the matter is while coming for arguments, the prosecution filed the application under Section 311 Cr.P.C. in Crl.M.P.No.1515 of 2016 to recall P.W.9 - I.O. for exhibition of the so called mediators panchanama. Since the same was allowed on

09-01-2017 by the impugned order, the accused maintained the revision. The impugned order reads that as per the version of the prosecution, due to inadvertence, mediators panchanama of the disclosure of accused leading to discovery of facts was not exhibited and sought to accept the recall of P.W.9 as it is essential. The accused contended saying that the so-called panchanama is hit by Section 25 of the Indian Evidence Act and is inadmissible. The Court ultimately held in the impugned order by referring to the respective contentions that the relevancy of panchanama can be decided from the arguments of both sides and at present marking the confession panchanama in the evidence is essential in ordering for recall of P.W.9.

3. The contentions in the grounds of revision vis-à-vis oral submissions of the learned counsel for the accused revision petitioner are that the Sessions Judge ought to have seen that there is no admissible portion within the meaning of Section 27 of the Evidence Act to mark and exhibit the so called confessional panchanama which could have been accepted through mediators and their non-examination is with no explanation and the impugned orders saying no prejudice would be caused to the accused is no answer to allow when the same is hit by Section 25 of the Evidence Act and thereby sought for allowing the revision setting aside the impugned order.

4. The counsel drawn attention of this Court to the expression of the Privy Council in the case of *Kottaya Vs. Emperor*¹ the relevant portion of the judgment at para 10 speaks that the condition necessary to bring Section 27 of the Evidence Act as an exception to Section 25 of the Act though not artistically worded to exhibit certain supplements made by the accused in police custody to prove it is to be shown of discovery of a fact in consequence of information received from the person of any offence in the custody of a police officer sought to depose by a witness of so much of information as relates distinctly to the fact thereby discovered that may be proved as if a fact is actually discovered in consequence of information of the accused in custody, there must be some guarantee to afford to the information as true and that can be safely allowed to be given in evidence to that extent of the information admissible depending upon the exact nature of fact to discover to which such information is required to relate; the fact discovered cannot be equivalent to the object produced as fact discovered embraces the place from which the object is produced beyond knowledge of accused as to this, and the information given must relate distinctly to this fact, like the fact that the knife is concealed in the house of the informant to his exclusive knowledge of the seizure from the disclosure to prove as very relevant.

¹ AIR (34) 1947 Privy Council 67

5. There is no dispute on the proposition. In the other decision placed reliance in *Siddique Vs. State of Kerala*² where particularly at para 10 observations in *Kottaya* supra reproduced.

6. Coming to the other decision in *Indra Dalal Vs. State of Haryana*³ wherein considering the scope of Sections 25 to 27 of the Evidence Act from para 22 by reproduction of Section 27 held that this Section is in the form of proviso to Sections 25 and 26 of the Act which makes it clear that so much of such information which is received from a person accused of any offence, in the custody of a police officer, which has lead to discovery of any fact, may be used against the accused. Such information as given must relate distinctly to the fact discovered. By quoting the above principle on facts held the information provided by the appellant-accused in the confession statement not lead to any discovery thereby the contention is not covered by Section 27, but hit by Section 25 of the Evidence Act.

7. No doubt, from the above propositions what is the disclosure made by accused while in police custody if leads to discovery of a fact earlier not known but for from the disclosure which is within the knowledge of the accused there is an assurance to the fact to relate as true in carving out as an exception to any disclosure or confession before police is otherwise inadmissible under Section 25 to make it admissible as per Section 27 of the Evidence Act. Even Section 162 Sub-Section (2) Cr.P.C. speaks that Section 162 has no application to

² 2006 CRI.L.J. 1109

³ (2015) 11 Supreme Court Cases 31

the Section 27 of the Evidence Act. It is also the principle behind it saying no one can make a disclosure which incriminates him, unless there is truth, in which event, to consider from such a disclosure whether is it a confession or not leads to a fact discovered to make use of to that extent. Thus, only so much of information whether amounts to confession or not as relates distinctly to the fact discovered is admissible and not a rest as per the settled expressions. Thus, the fact discovered not only it mean the object produced but also to embrace the place from which it was produced and knowledge of the accused about it. Further, the use of word fact discovered is not confined to object produced as it is not the object, but from it what is discovered of the exclusive knowledge of accused and the disclosure of it and the discovery of the fact leading from the disclosure.

8. Once such is the case whether the impugned order any way requires interference is the question. No doubt in the order impugned it speaks the recall of P.W.9 to exhibit the disclosure statement, it does not mean to mark the entire statement and it does not mean accused has no right to raise objection on admissibility and relevancy of what is hit by Section 25 and what is saved by Section 27 for the Court to hear and consider. The other contention is that the mediators could have been examined rather than recall of P.W.9 who was already examined being I.O. to exhibit the disclosure statement.

9. In fact, for a disclosure statement by accused while in police custody to the extent leading to discovery of any fact within the

meaning of Section 27 of Evidence Act, no mediator's panchanama is even required, as such, any mediator's panchanama drafted of what is disclosed in their presence and what is discovered pursuant thereto the disclosure, there is no incumbent duty on the prosecution to examine the so called mediators. The Public Prosecutor is having absolute discretion to examine which witness among the prosecution witnesses cited to prove the case and if he gets any doubt that any of the witnesses not supporting the truth or exhibiting hostility to the truth, there is no compulsion to examine even such witness and seek permission for cross-examination under Section 154 of the Evidence Act invariably as it is one of the choices with prosecution to give up.

Thus, the non-examination of the mediators cannot be a ground to say that P.W.9 – I.O. cannot be recalled that too when it is the disclosure made before him during investigation of the case as a Police Officer and leading to discovery of fact from the disclosure to exhibit this statement to the admissible portion under Section 27 of the Act by shunning from exhibiting non-admissible portion hit by Section 25 of the Act. In fact, the accused are not helpless if at all they choose to examine the mediators, to call as defence witnesses, apart from any request to court by showing such necessity to call for as court witness with right of cross-examination to both sides.

10. Subject to these observations, while upholding the order of the lower Court by giving liberty to accused to raise any objection on admissibility and relevancy on the scope of Sections 27 and 25 of the

Evidence Act to mark subject to objection and to decide ultimately of the admissible and relevant portion only to consider under Section 27 of the Evidence Act, which recourse is proper to adopt as laid down by the Apex Court in ***Bipin Shantilal Panchal v. State of Gujarat***⁴.

11. Accordingly, the Criminal Revision Case is disposed of. No order as to costs.

12. Consequently, Miscellaneous Petitions pending, if any, shall stand closed.

08th February, 2017

Note : L.R. Copy to be marked.

B/O
skmr

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⁴ AIR 2001 SC 1158