

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO. 106 OF 2018**

Shri Deepak Naik, Indian National, 36
years of age, presently in judicial custody,
Central Jail Colvale, Bardez, Goa.

.... Petitioner

Versus

State, Through PP, High Court of Bombay
at Panaji

.... Respondent

Shri Arun De Sa with Shri Siddesh Shet, Advocates for the
Petitioner.

Shri S.R. Rivankar, Public Prosecutor for the Respondent.

CORAM:- C.V. BHADANG, J.

DATE:- 6th JULY 2018.

ORAL JUDGMENT:

Rule made returnable forthwith. The learned Public
Prosecutor waives service on behalf of the respondent. Heard
finally by consent of parties.

2. The petitioner, who is the accused before the learned
Children's Court in Special Case No. 126/2017, is challenging
the order dated 10.04.2018, by which, the learned Children's
Court, has exhibited a document styled as "suicide note", of the
victim at Exhibit-C/14. The learned Children's Court has
observed that the said document cannot be termed as a "dying
declaration", in as much as, PW-1 has survived. According to

the learned Magistrate, the said document can be considered as the previous statement of PW-1 and the same is taken on record, subject to the admissibility of the contents. The learned Children's Court has also observed that there is no bar on cross examination of PW-1, by the accused, on the contents of the said note, in as much as, the admissibility of contents of the said note, is subject to cross examination of PW-1. To this extent, the petitioner is not aggrieved by the impugned order.

However, in the subsequent part of the impugned order, the learned Children's Court has noted that it is not open for the accused to confront PW-1 with the contents of the note, in the manner as provided under Section 145 of the Evidence Act. It is this part, by which, the petitioner is aggrieved.

3. I have heard Shri De Sa, the learned Counsel for the petitioner and Shri Rivankar, the learned Public Prosecutor for the respondent.

4. Shri Rivankar, the learned Public Prosecutor, in all fairness, does not dispute that once, PW-1 is permitted to be cross examined on the document, there is no reason as to why, the contents of the same, cannot be confronted, under Section 145 of the Evidence Act.

5. It is evident that the document cannot be termed as “dying declaration”, as has been rightly held by the learned Children's Court. The learned Children's Court has found that the admissibility of the contents of the said note is subject to cross examination of PW-1. In such circumstances, there is no reason as to why, the petitioner cannot be allowed to confront PW-1 with the contents of the document at Exhibit-C/14.

6. In that view of the matter and in view of the concession as recorded on behalf of the respondent, the part of the impugned order, holding that it would not be open to the petitioner to confront PW-1 with the contents of the note at Exhibit-C/14, in the manner provided under Section 145 of the Evidence Act, is hereby set aside. The petitioner shall be permitted to cross examine PW-1 with the contents of the note at Exhibit-C/14 and shall also be permitted to confront PW-1 with the contents of the same.

In the result, the petition is allowed. Rule is made absolute in the aforesaid terms.

C. V. BHADANG, J.

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