

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.337 OF 2017

Umaima K. Chitalwala ... **Applicant/Petitioner**

V/s.

The State of Maharashtra ... **Respondent**

Mr. Sudeep Pasbola a/w. Mr.Bhaves Thakur, Mr. Karl Rustomkhan
i/b. Mr.Rahul Arote for the applicant/petitioner.

Mr.C.K. Talekar, Special Public Prosecutor for the respondent/State.

CORAM : A.M.BADAR J.

DATED : 11th JUNE 2018.

P.C. :

1. Heard.
2. Admit.
3. Heard forthwith finally, taking into consideration the nature of controversy involved in the instant revision application.
4. The revision petitioner is an accused facing trial of Crime No.125 of 2007 of offences punishable under Section 304 Part II, 337, 228 of the Indian Penal Code (IPC) vide Sessions Case No.193 of 2009. The said crime was registered on the basis of report lodged by Vijay P. Shinde, the then Assistant Police Inspector.

5. The subject matter of the said crime is caving in the portion of building known as "Ali Mohammed Mansion" situated at Maulana Shoukat Ali Road, Grant Road, Mumbai which has resulted in death of two persons. The revision petitioner/accused is the director of M/s. N. Lukmanji Mithaiwala Pvt. Ltd. which was having sweetmeat shop on the ground floor of that building.

6. On 28th September, 2017, the revision petitioner/accused in Sessions Case No.193 of 2009 had lodged the FIR which resulted in registering Crime No.189 of 2007 for the offences punishable under Sections 451, 457, 380 read with 34 of IPC. The FIR was containing allegations of house trespasser and theft at the said building. Vijay Shinde the then API had investigated that crime and adduced evidence as the Investigating Officer in Regular Criminal Case bearing No.329/PW/2011 before the learned Metropolitan Magistrate, Mumbai. That Criminal Case is already disposed of.

7. The Revision Petitioner/accused in Sessions Case No.193 of 2009 moved an application in the said Sessions case seeking for permission to produce certified copy of deposition of Vijay Shinde recorded in Regular Criminal Case No.329/PW/2011 by the learned Metropolitan Magistrate on record of the Sessions Case. Deposition of Vijay Shinde was recorded in Criminal case No.329/PW/2011, he was being examined as the Investigating Officer of the said crime. By the impugned order dated 27th April, 2017, the learned Additional Sessions Judge, City Sessions Case, Greater Bombay, Mumbai was pleased to reject the said application seeking permission to produce certified copy of deposition of PW1 Vijay Shinde recorded in CC No.329/PW/2011

with the following reasoning as found in the paragraph 6 of the impugned order;

“6. Retired API Vijay Shinde deposed in that proceeding as the investigating officer, while in the present matter he is the informant. In the earlier proceeding the alleged incident took place on 28/09/2007, while in the present matter the alleged incident is of 23/06/2007. Therefore, the statement on oath of the same witness is in respect of altogether different crime, different in time and registered on the basis of the information given by the different person. Therefore, the statement on oath in the earlier proceedings cannot be termed as a former statement of the same witness. So it cannot be used for corroboration or contradiction as envisaged under Section 145 and 157 of the Indian Evidence Act.”

8. I heard Shri Pasbola, learned Advocate appearing for the revision petitioner / accused in Sessions Case No.193 of 2009. He criticizes the impugned order by submitting that the learned Trial Court has virtually committed patent error of law by limiting former statement of witness to the subject crime by totally ignoring mandate of section 145 of the Indian Evidence Act. As against this the learned Public Prosecutor contended that the former statement of the witness has understood under Section 145 of the Indian Evidence Act is a statement recorded in the very same crime reflected in the chargesheet of the said crime and no other statement of such witness can be construed as the former statement of the witness. In submission of the learned Public Prosecutor the statement recorded in other proceedings does not amount to former statement of the witness.

9. The position of law is clearly stated in Section 145 of the Evidence Act which needs to be reproduced and reads thus;

“145. Cross-examination as to previous statements in writing.—A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.”

10. In the case in hand, the former statement of witness Vijay Shinde was recorded before the Metropolitan Magistrate, Mumbai which is sought to be used by the defence i.e revision petitioner for contradicting Vijay Shinde who happens to be the First Informant in the Sessions Case No.193 of 2009 wherein his evidence is being recorded. What was required to be examined by the learned Trial Court for deciding the said application is to ascertain whether such former statement is relevant to the matter in question. The former statement of the witness can be totally different statement recorded in different proceedings. What is required is to ascertain whether it is relevant to the matter in question pending for adjudication before the Court. Scope of Section 145 of Evidence Act cannot be restricted to construe those statements as former statements of the witness which are recorded in the crime which is subject matter of the trial before the Court.

11. The view taken by the Trial Court is as such patently illegal. Shri Pasbola, learned Advocate appearing for the Revision Petitioner / accused has rightly placed reliance on paragraph 3 of judgment in the matter of ***The President, Shishu Vihar Bhagini Mandal, Hyderabad and another v. Yellaiah***¹ which reads thus;

“3. In this case the previous statement is the evidence given by

¹AIR 1969 Andra Pradesh 148

P.W.1 before the Court of Small Causes. It is no doubt true that under the provisions of the Small Cause Courts Act it was not obligatory on the part of the Court to record the statement in full and then read it out to the witness and obtain his signature thereon. Under the provisions of that Act, it is enough if the notes of the evidence are reduced into writing by the Judge of the Small Cause Court. Merely because the statement is not recorded in full or it is not read out or his signature obtained thereon, I fail to see how such a record of evidence could be excluded from the meaning of the word "statement" appearing in Section 145. It is a statement which though not in the hands of the witness himself, yet it is a statement which has been reduced into writing by the Judge of the Small Cause Court. Such a statement therefore can be put to the witness under Section 145 for the purpose of contradicting him. It cannot be in doubt that the previous statement may be letter, account books, written statement or even depositions. In the case of depositions they can either be in the form of fully recorded statements by the Court or notes made of the statement under the provisions of the Small Cause Courts Act. I do not therefore see as to why a statement, which was reduced into writing, in the form of notes by a Court of Small Causes cannot come within the ambit of Section 145. I am of the view that any evidence taken in a summary case including a small cause case may be admissible upon the conditions and for the purposes described in Section 145 of the Evidence Act. Unless otherwise compelled by any authority, I am inclined to hold that such a statement falls within the purview of Section 145 of the Evidence Act. I do not therefore agree with the learned Chief Judge that the defendants could not put questions under Section 145 with reference to those previous statements of P.W.1 with a view to contradict him under Section 145 of the Indian Evidence Act."

12. Similarly reliance is rightly placed on paragraph 15 of the judgment of Punjab and Haryana High Court in the matter of State of

Punjab v. Sh.Vishwajit Singh and others² which reads thus;

“15. Faced with this situation Mr.Kaushal has argued that the former statement of Dr.Ali was recorded by the order of the Court which had no jurisdiction. Therefore it could not be used even for the purpose of contradiction or corroboration or shaking his credit. I am not impressed with this argument. The statement of a person does not cease to be his statement merely because it was written in the aforementioned circumstances. Even if the Court had not passed the order for recording the statement and the statement would have been recorded, such a statement could be made use of for the purposes of Ss.145, 155 and 157 of the Evidence Act. Consequently I reject the submission of Mr.Kaushal.”

13. In view of the foregoing discussion as the learned Trial Court has merely rejected the application on the ground that the former statement of witness is recorded in the different crime and registered on the basis of information given by different persons without undertaking exercise to ascertain whether such a former statement is relevant to the matter in question or not, the same cannot be sustained. Therefore the order;

:: ORDER ::

- (i) The Criminal Revision Application is allowed.
- (ii) The impugned order dated 27th April, 2017 passed by the learned Additional Sessions Judge in City Sessions Case, Greater Bombay below Exh.95 is quashed and set aside.

(A.M.BADAR J.)

² AIR 1987 Punjab and Haryana 126