

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL) NO.435 OF 2021

Amol s/o Ashok Belsare,
Aged about 30 years,
R/o Jyoti Nagar, Jatharpeth,
Akola. **APPLICANT**

...V E R S U S...

State of Maharashtra, through
Police Station, Old City, Akola. **NON-APPLICANT**

Mr. Z.Z. Haq, Advocate for Applicant.
Mr. N.S. Rao, APP for Non-Applicant/State.

CORAM: **ROHIT B. DEO, J.**
DATE: **1st JULY, 2021.**

ORAL JUDGMENT:

Heard.

2. Rule.

3. With consent, the application is finally heard.

4. The applicant is arraigned as accused 1 in Sessions
Trial 157/2015 which is on going in the Court of the learned
Sessions Judge, Akola.

5. In the midst of the prosecution evidence, PW-6 Mr. Santosh Shirsat tendered in evidence a document purporting to be photocopy of the Aadhaar Card of the applicant accused. The applicant objected to the admissibility in evidence of the photocopy of the Aadhaar Card on the premise that the document is neither the original nor a certified copy.

6. Considering that the allegation is that the applicant accused produced the Aadhaar Card and tendered a photocopy while checking in hotel Giriraj, with the deceased, from the perspective of the prosecution as well as the defence, the document may be a significant material.

7. The learned Sessions Judge authored an elaborate order rejecting the objection to the admissibility in evidence of the Aadhaar Card observing thus:

3] It is submitted that, the xerox copy of extract of hotel register is marked Art.E as the original register not been produced. However, in respect of Aadhaar Card, the PW-6 deposed that, on 7.08.2014, from Amol Belsare had visited in Hotel and sought for accommodation in the room. Accordingly, the customer Amol Belsare produced xerox copy of his Aadhaar Card and put his cell phone and his signature thereof. Thereafter, the

PW-6 written entry No.593 dated 7.08.2014 and allotment of Room No.208 to the said customer Amol Belsare. Thereafter, the witness put his signature and Rubber Stamp of the Hotel. Since, the case of the Accused is not that, Shri Amol Belsare produced original copy of his Aadhaar Card while booking the room in Hotel Giriraj Palace and the Investigation Officer collected xerox copy of the said Aadhaar Card from Hotel Giriraj Palace. Therefore, objection raised by Accused Nos. 1 to 8 does not appear to be bonafide and hence, it is overruled and the copy of Aadhaar Card is exhibited on the basis of oral evidence of the PW-6. Accordingly, I proceed to pass following order:

ORDER

i] Exhibit-82 objection of exhibition of document is hereby rejected.

8. The learned counsel for the applicant Mr. Haq assails the rejection of the objection to the admissibility in evidence of the document *inter alia* on the ground that the objection could not have been decided at that stage, and what expected was a tentative marking of the document as exhibit and deciding the objection at the stage of final hearing. The objection is not that the Aadhaar Card is *per se* inadmissible. The objection in essence revolves on the mode of proof. Be that as it may, in the interest of expeditious trial, the Supreme Court has observed, *inter alia* in *Bipin Shantilal Panchal v. State of Gujarat* 2001 LawSuit(SC) 332, that unless the objection touches the deficiency of stamp duty, the

practice ought to be that the court can make a note of such objection, mark the objected document tentatively an exhibit subject to the objection and decide the objection at the stage of the final judgment. It would be apposite to note the observations of the Supreme Court in *Bipin Shantilal Panchal v. State of Gujarat* which read thus:

[14] When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the judge or magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document, the court has to decide the objection before proceeding further. For all other objections, the procedure suggested above can be followed.)

[15] The above procedure, if followed, will have two advantages. First is that the time in the trial court, during evidence taking stage, would not be wasted on account of raising such objections and the court can continue to examine the witnesses. The witnesses need not wait for long hours, if not days. Second is that the superior court, when the same objection is re-canvassed and reconsidered in appeal or revision against the final judgment of

the trial court, can determine the correctness of the view taken by the trial court regarding that objection, without bothering to remit the case to the trial court again for fresh disposal. We may also point out that this measure would not cause any prejudice to the parties to the litigation and would not add to their misery or expenses.

[16] We, therefore, make the above as a procedure to be followed by the trial courts whenever an objection is raised regarding the admissibility of any material or any item of oral evidence.

9. The articulation in *Bipin Shantilal Panchal v. State of Gujarat* was noted with approval by the Supreme Court in *State through Special Cell, New Delhi v. Navjot Sandhu @ Afshan Guru and others* (2003) 6 SCC 641.

10. In my considered view, it would be appropriate to quash the order impugned and direct the learned Sessions Judge to follow the practice consistent with the observations of the Supreme Court in *Bipin Panchal v. State of Gujarat* and *State v. Navjot Sandhu @ Afshan Guru and others*.

11. The order impugned is quashed.

12. The learned Sessions Judge shall proceed with the

recording of the evidence after tentatively marking the Aadhaar Card as exhibit and the objection shall be decided at the stage of judgment.

13. The trial is expedited.

14. The learned Sessions Judge is requested to conclude the trial as expeditiously as possible, and in any event within six months.

15. The Registry shall bring this order to the notice of the learned Sessions Judge within the next week.

16. The application is partly allowed in the aforesaid terms.

JUDGE