

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

CRIMINAL REVISION APPLICATION NO. 117 OF 2020

The State of Maharashtra,
through Police Station Officer,
Police Station, Aheri, District -
Gadchiroli.

.... **APPLICANT**

VERSUS

1) Avinash Balasaheb Tagad,
Aged about 28 years,
Occupation – Service,
R/o Shirala, Tahsil – Pathardi,
District – Ahmadnagar.

2) Sunil Hanmantu Yemulwar,
Aged about 30 years,
Occupation – Labour.

3) Vinod Bhumayya Jillewar,
Aged about 22 years,
Occupation – Labour.

Both R/o Ward No.3, Aheri,
Tahsil – Aheri, District – Gadchiroli.

.... **NON-APPLICANTS**

Mrs. Kalyani Deshpande, Addl.PP for the applicant,
Mr. R.K. Tiwari, Counsel for the respondents.

CORAM : ROHIT B. DEO, J.

DATE OF RESERVING THE JUDGMENT : 23-07-2021

DATE OF PRONOUNCING THE JUDGMENT : 16-09-2021

JUDGMENT

The State is in revision challenging the order dated 30-7-2020 rendered by the learned Additional Sessions Judge, Gadchiroli in Sessions Case 17/2016 whereby the learned Additional Sessions Judge accepted the objection taken by the accused to the admissibility of alleged confession made to PW 23-Madhukar, on the premise that such confession is hit by Section 25 of the Indian Evidence Act ("Act" for short), since the witness is a policeman.

2. Relevant facts are few and brief.

a) The non-applicants are facing trial for offences punishable under Sections 302, 201 and 404 read with Section 34 of the Indian Penal Code.

b) The prosecution case is that non-applicant 1-Avinash Tagad murdered his wife on 24-2-2015, and with the assistance of non-applicants 2 and 3 destroyed the evidence by disposing of the body. Non-applicant 1-Avinash Tagad was then PSI at Aheri. PW 23-Madhukar was attached to the Naxal Cell and was acquainted with Avinash Tagad. PW 23-Madhukar deposed that on 24-2-2015 non-applicant 1-Avinash Tagad disclosed that he murdered his wife. This

part of the testimony was objected to on the touchstone of the provisions of Section 25 of the Act, which reads thus :-

“25. Confession to police officer not to be proved – No confession made to a police officer, shall be proved as against a person accused of any offence ”

3. The learned Additional Sessions Judge accepted the objection and relying on certain decisions, *inter alia* of the Hon’ble Supreme Court, held that confession to police officer is hit by Section 25 of the Act irrespective of the fact that the accused was not in custody, and that he was not even an accused when the confession was made.

4. The learned Additional Public Prosecutor Mrs. Kalyani Deshpande would contend that the confession was voluntary and made since the accused was acquainted with the witness and is not hit by the rigor of Section 25 of the Act.

5. In my considered view, there is no error whatsoever in the view taken by the learned Additional Sessions Judge. Considering the legislative intent underlying the provision, the expression “police officer” cannot be restricted to a police officer, who is connected with the investigation nor is the embargo on the admissibility confined to a

confession made to a police officer actually discharging duty as police officer. It would suffice to note the observations of the Hon'ble Supreme Court in ***The State of Punjab v. Barkat Ram, AIR 1962 SC 276***, which read thus :

“19. The police officer referred to in S. 25 of the Evidence Act, need not be the officer investigating into that particular offence of which a person is subsequently accused. A confession made to him need not have been made when he was actually discharging any police duty. Confession made to any member of the police of whatever rank and at whatever time, is inadmissible in evidence in view of S. 25.”

6. It would be apposite to notice the view of the Privy Council in ***Pakala Narayana Swami v. Emperor, AIR 1939 Privy Council 47***. Lord Atkin speaking for the Privy Council observes that Section 25 of the Act covers a confession made to a police officer before any investigation has begun or otherwise in the course of an investigation.

7. The decision in ***The State of Punjab v. Barkat Ram*** is followed by the decision of the Full Bench of the Gauhati High Court in ***Bircha Kurmi v. State of Assam*** and the Chief Justice J. Chelameswar (as His Lordship was then) emphasizes that the police officer need not be the officer investigating the particular offence in which the accused is involved and the confession need not have been made to an officer

actually discharging any duty, for the rigors of Section 25 of the Act to come into play. In the light of the well settled position, there is no merit in the challenge to the decision of the learned Additional Sessions judge who ruled against the admissibility of the confession made by non-applicant 1-Avinash Tagad to PW 23-Madhukar, who admittedly is a police officer, albeit also an acquaintance of the accused.

8. The criminal revision is dismissed.

JUDGE

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