

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 1285 OF 2023

Jitendra Sukhlal Fulpagare .. Petitioner
Versus
The State of Maharashtra .. Respondent
...

Mr. P.R. Arjunwadkar, for the petitioner.
Mr. Y.M. Nakhawa, APP for the State.
Ms. Sushma Patil, PI, ACB, Thane.

CORAM: BHARATI DANGRE, J.
DATED : 13th APRIL 2023

P.C:-

1 In continuation of the order dated 11/4/2023, the learned APP, on instructions of Ms. Sushma Patil, who has been instructed by the Investigating Officer to assist the learned APP make a specific statement that, when the post trap statement of the accused was recorded, he was in custody of the Investigating Officer.

 If this is the position, in that case, this document is as good as a statement under Section 161 and cannot be read in evidence as it is not admissible and is hit by Section 25 of the Code of Criminal Procedure.

2 However, the learned Judge, while exhibiting the document has made the following endorsement:-

“Subject to para 25 of Exhibit 67 deposition”.

When I have perused the deposition of the Investigating Officer PW-5, it can be noticed that the said paper has been produced through the Investigating Officer, who deposed as under:

*“I gave one paper to the accused for offering his explanation about the said amount of Rs. 5000/-. The accused gave his explanation in his own writing. I obtained the signatures of the two panchas on the said paper. The said paper is marked as **Exh.69.**”*

3 The moment the document was exhibited, the counsel for the accused raised an objection that it cannot be exhibited as a ‘proved document’ as even the photo copy of the said paper is not supplied to the accused, by the prosecution.

The learned APP specifically submitted that he will argue on the point of admissibility of the post trap statement of the accused in his final argument.

4 This is a specific reason why the learned Judge while exhibiting the document has made it subject to para 25 of the deposition, where the objection is specifically recorded.

5 Exhibiting a document is distinct from its admissibility. Merely because a document is exhibited, do not

lead to an inference that it is admissible in evidence, and only when a document is proved through the procedure as per the Indian Evidence Act, it becomes admissible in law.

There are certain categories of statements contemplated under the Code of Criminal Procedure, which *per se* are not admissible in law and prima facie it appear that this is one such document.

However, since the trial court has not concluded upon the admissibility of the document, but has merely exhibited it, I leave it to the discretion of the learned Judge, with all the contentions of the accused being kept open to be argued that the said document is not admissible in law.

By upholding the aforesaid order, the writ petition is dismissed.

(SMT. BHARATI DANGRE, J.)