

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side

Present:

Justice Bibhas Ranjan De

C.R.R. 123 of 2018

With

IA No: CRAN 1 of 2018 (Old No. CRAN 927 of 2018)

Avishek Singhal

Vs.

The State of West Bengal

For the Petitioner

:Mr. Rajdeep Mazumder, Adv.

Mr. Moyukh Mukherjee, Adv.

Mr. Koustav Lal Mukherjee, Adv.

Ms. Sayanti Podder, Adv.

Mr. Sarthak Mondal, Adv.

For the State

:Mr. Sandip Chakrabarty, Adv.

Heard on

: 21.03.2024, 23.03.2024

Judgment on

:03.05.2024

Bibhas Ranjan De, J.

1. The instant revision application has been preferred with a prayer for quashing of the proceedings in connection with G.R. Case no. 145(1) 09 arising out of Mirik Police Station case no. 58/09 dated 08.08.2009 under Sections 411/413/414/468/471 of the Indian Penal Code (for short IPC) presently pending before the Court of Ld. Additional District and Sessions Judge, Kurseong, Darjeeling.

Brief facts:-

2. The course of action has been initiated by the Police of Panighata Out Post under Mirik Police Station on the basis of a suo moto written complaint lodged by one Rajen Tamang, ASI of Panighata Police Post. From the said complaint it appears that on 07.08.2009 at about 20:25 hours acting on source information ASI Rajen Tamang of Panighata Out Post under Mirik Police Station raided the home of one Gopi Pradhan and found one Santro Car bearing registration no. WB77/7757. He had an information that the said vehicle was a stolen one which was kept concealed in the house of said Gopi Pradhan under Mirik Police Station for its clandestine disposal. On demand, Gopi Pradhan could

produce only a receipt of Motor Vehicle Department, Darjeeling and one driving licence in his name issued by R.T.O. Manipur. During interrogation, Gopi Pradhan broke down and admitted that the car was stolen and it was obtained from one Ebucha Singh of Imphal West Police Station for consideration of Rs. 30,000/-. He further admitted that he was about to dispose of the vehicle with the assistance of his associates of Siliguri and Bhakti Nagar area who dealt in stolen vehicle by preparing fake documents. Gopi Pradhan was arrested and the said vehicle was seized along with other documents relating to the said vehicle by preparing necessary seizure list.

- 3.** On the basis of the said suo moto FIR the then in-charge of Panighata Out Post forwarded the same to the OC of Mirik Police Station, and on receipt of the same Mirik Police Station Case No. 58 of 2009 dated 08.08.2009 under Sections 414/411/468/471 of the IPC was started. But, subsequently the case was assumed by CID West Bengal for investigation and upon completion of the same the I.O. of CID Siliguri submitted the charge sheet against 11 accused persons including the petitioner under Sections 411/413/

414/468/471 of the IPC, showing two accused persons including the petitioner as absconder.

Argument advanced:-

4. Ld. Counsel, Mr. Rajdeep Mazumder, appearing on behalf of the petitioner has argued before this court that only on the allegation statement of co-accused prosecution submitted charge sheet against the petitioner and that was not further substantiated by any cogent evidence to support the statement of co-accused.

5. Mr. Mazumdar, in support of his contention, relied on the following cases:-

- ***Dipakbhai Jagdishchandra Patel vs. State of Gujarat and another*** reported in ***(2019) 16 Supreme Court Cases 547***
- ***Suresh Budharmal Kalani alias Pappu Kalani vs. State of Maharashtra*** reported in ***(1998) 7 Supreme Court Cases 337***

6. Ld. Counsel, Mr. Sandip Chakrabarty, appearing on behalf of the State relied on the evidence collected during investigation and produced the case diary before this court for consideration.

Cases relied on :-

7. In **Dipakbhai** (supra) Hon'ble Supreme Court laid down the following principles:-

“24. Undoubtedly, this Court has in Suresh Budharmal Kalani [Suresh Budharmal Kalani v. State of Maharashtra, (1998) 7 SCC 337 : 1998 SCC (Cri) 1625] , taken the view that confession by a co-accused containing incriminating matter against a person would not by itself suffice to frame charge against it. We may incidentally note that the Court has relied upon the judgment of this Court in Kashmira Singh v. State of M.P. [Kashmira Singh v. State of M.P., (1952) 1 SCC 275 : 1952 SCR 526 : AIR 1952 SC 159 : 1952 Cri LJ 839] We notice that the observations, which have been relied upon, were made in the context of an appeal which arose from the conviction of the appellant therein after a trial. The same view has been followed undoubtedly in other cases where the question arose in the context of a conviction and an appeal therefrom. However, in Suresh Budharmal Kalani [Suresh Budharmal Kalani v. State of Maharashtra, (1998) 7 SCC 337 : 1998 SCC (Cri) 1625] , the Court has proceeded to take the view that only on the basis of the statement of the co-accused, no case is made out, even for framing a charge.

44. Such a person viz. person who is named in the FIR, and therefore, the accused in the eye of the law, can indeed be questioned and the statement is taken by the police officer. A confession, which is made to a police officer, would be inadmissible having regard to Section 25 of the Evidence Act. A confession, which is vitiated under Section 24 of the Evidence Act would also be inadmissible. A confession unless it fulfils the test laid down in Pakala Narayana Swami [Pakala Narayana Swami v. King Emperor, 1939 SCC

OnLine PC 1 : (1938-39) 66 IA 66 : AIR 1939 PC 47] and as accepted by this Court, may still be used as an admission under Section 21 of the Evidence Act. This, however, is subject to the bar of admissibility of a statement under Section 161 CrPC. Therefore, even if a statement contains admission, the statement being one under Section 161, it would immediately attract the bar under Section 162 CrPC.

51. *A confession made to a police officer is clearly inadmissible. The statement relied on by the respondent is dated 11-4-1996 and the appellant was arrested on 11-4-1996. This is pursuant to the FIR registered on 10-4-1996. The statement dated 11-4-1996 is made to a police officer. This is clear from the statement as also the letter dated 10-8-1996 (Annexure R-6) produced by the respondent. It is clearly during the course of the investigation. Even if it does contain admissions by virtue of Section 162 and as interpreted by this Court in V.C. Shukla [CBI v. V.C. Shukla, (1998) 3 SCC 410 : 1998 SCC (Cri) 761 : AIR 1998 SC 1406] , such admissions are clearly inadmissible.”*

8. In *Suresh Budharmal Kalani* (supra) the Hon’ble Apex Court observed as follows:-

“6. *Thus said, we may turn our attention to the confession made by Dr Bansal and Jayawant Suryarao. Under Section 30 of the Evidence Act, 1872, a confession of an accused is relevant and admissible against a co-accused if both are jointly facing trial for the same offence. Since, admittedly, Dr Bansal has been discharged from the case and would not be facing trial with Kalani, his confession cannot be used against Kalani. The impugned order shows that the Designated Court was fully aware of the above legal position but, surprisingly enough, it still decided to rely upon the*

confession on the specious ground that the prosecution was not in any way precluded from examining Dr Bansal as a witness in the trial for establishing the facts disclosed in his confession. This again was a perverse approach of the Designated Court while dealing with the question of framing charges. At that stage, the court is required to confine its attention to only those materials collected during investigation which can be legally translated into evidence and not upon further evidence (dehors those materials) that the prosecution may adduce in the trial which would commence only after the charges are framed and the accused denies the charges. The Designated Court was, therefore, not at all justified in taking into consideration the confessional statement of Dr Bansal for framing charges against Kalani.

7. *So far as the confession of Jayawant Suryarao is concerned, the same (if voluntary and true) can undoubtedly be brought on record under Section 30 of the Evidence Act to use it also against Kalani but then the question is: what would be its evidentiary value against the latter? The question was succinctly answered by this Court in Kashmira Singh v. State of M.P. [(1952) 1 SCC 275 : AIR 1952 SC 159 : 1952 SCR 526] with the following words:*

“The proper way to approach a case of this kind is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in

believing what without the aid of the confession he would not be prepared to accept.”

The view so expressed has been consistently followed by this Court. Judged in the light of the above principle, the confession of Suryarao cannot be called in aid to frame charges against Kalani in the absence of any other evidence to do so.”

9. Mr. Mazumder in course of his argument further relied on this judgment dated 18.11.2023 delivered by Ld. Additional Sessions Judge, Kurseong in connection with Sessions Case No. 91/2015 and whereby Ld. Judge acquitted 6 accused persons including Gopi Pradhan, Umesh Kumar Gupta and Sanjay Agarwal with the observation that the investigation officer of the case although seized different vehicles along with documents from different persons and places but he had no cogent evidence to connect those vehicles or the persons from whom those vehicles were seized with any stolen property or vehicle or with any such forged or manufactured document.
10. In this case, in course of the investigation, IO could manage one statement to be recorded by co-accused namely Ram Kumar Chhetri disclosing the name of the petitioner being an associate of Gopi Pradhan. During investigation,

one photocopy of loan agreement between the petitioner herein and Umesh Kumar Gupta was seized.

- 11.** Such evidence collected during investigation cannot be said to be a document for initiation of a criminal proceeding against the petitioner under Sections 411/413/414/468/471 of the IPC.
- 12.** Furthermore, statement of co-accused has no evidentiary value and not at all even admissible to frame charge against the accused in view of the principle laid down by the Hon'ble Apex Court.
- 13.** Hon'ble Apex Court consistently handed down the principle that confession by a co-accused containing incriminating material against a person would not by itself suffice to frame charge even. As a confession, which is made to a Police Officer again, would be inadmissible having regard to Section 25 of the Evidence Act.
- 14.** Above all nothing was recovered from the residence of the petitioner and fact that there is no other cogent evidence on the basis of which strong suspicions could be made.
- 15.** In the above conspectus, I am unable to refuse the prayer for quashing of the proceeding against this petitioner.

- 16.** In the result, the proceedings in connection with G.R. Case no. 145(1) 09 arising out of Mirik Police Station case no. 58/09 dated 08.08.2009 under Sections 411/413/414/468/471 of the Indian Penal Code stands quashed **against the petitioner only.**
- 17.** As a sequel, the Criminal Revisional application being no. CRR 123 of 2018 stands allowed.
- 18.** Case diary be returned.
- 19.** Interim order, if there be any, stands vacated.
- 20.** Connected applications, if there be any, stand disposed of accordingly.
- 21.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 22.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]