



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

CRIMINAL WRIT PETITION NO.49 OF 2025

1. Rahul S/o Kisan Jaybhaye,
Aged about 26 years, Occ: Labour,
R/o In front of Govt. Hospital,
Deulgaon Mahi, Tah. Deulgaonraja,
Dist. Buldhana (in jail)
2. Rahul S/o Ashok Bansode,
Aged about 23 years, Occ: Agriculturist,
R/o At Dhotra Nandai, Tah. Deulgaonraja,
Dist. Buldhana (in jail)
3. Namdeo S/o Pandharinath Bongane,
Aged about 23 years, Occ: Pvt. Job,
R/o At Dhotra Nandai, Tah. Deulgaonraja,
Dist. Buldhana (in jail)

.....PETITIONERS

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

The State of Maharashtra
Station Officer, Chikhli Police
Station Officer, Tah.Chikhli,
Dist. Buldhana.

.....RESPONDENT

Shri N.B. Kalwaghe, Advocate for petitioners.
Shri D.V. Chauhan, Senior Advocate–Public Prosecutor for
respondent/State..

CORAM: M.W. CHANDWANI, J.

RESERVED ON : 22.04.2025
PRONOUNCED ON : 11.07.2025

JUDGMENT:

1. **Rule.** Rule made returnable forthwith. Heard finally
with the consent of learned counsels for the parties.

2. The petition challenges the orders dated 08.10.2024 and 14.11.2024 passed by the learned Additional Sessions Judge, Buldhana in Sessions Trial No.24 of 2022 whereby, objections to the admissibility of the portion of testimony of PW4-Gajanan Laxman Ambhore raised during his examination-in-chief were overruled.

3. The petitioners are indicted for the offences punishable under Sections 302, 394, 201 read with Section 34 of the Indian Penal Code alongwith other provisions of the Arms Act. During trial, the prosecution sought to examine PW4-Gajanan Ambhore, a panch to various memorandum panchanamas and the demonstration panchanama as well. On 08.10.2024, when the testimony of PW4- Gajanan Ambhore was being recorded, the petitioners objected to the admissibility of some portion of the testimony with regard to the Demonstration Panchanama on the premise that it is hit by Section 25 of the Indian Evidence Act, 1872 (for short "**the Act**"). The objection was overruled by the trial Court. On 19.10.2024, when his further examination-in-chief was being recorded, the petitioners also objected to another portion of the testimony with regard to the demonstration on the same ground. The trial Court by another order dated 14.11.2024

overruled the said objection as well. Dissatisfied with rejection of the objections by the learned Additional Sessions Judge, this petition came to be filed.

4. Shri Kalwaghe, learned counsel for the petitioners strenuously argued that the demonstration panchanama by virtue of which the prosecution tried to show that the petitioners demonstrated the manner in which the crimes were committed by them does not qualify under Section 27 of the Act so as to make it admissible, since it does not lead to any discovery. According to him, the learned trial Court did not consider this aspect and has erroneously recorded the testimony of PW4-Gajanan Ambhore. The testimony of PW4-Gajanan where he states that the petitioners informed in his presence that they had committed the offence and they will demonstrate the acts done by them by escorting the panchas to the spot as well as the panchanama recording the demonstration made by the petitioners as to how they committed the offence is a confession hit by Sections 25 and 26 of the Act.

5. Shri Kalwaghe would submit that the learned trial Court relied on the portion of the decision in the case of *Pulukuri Kotayya and others Vs. King-Emperor*¹, which was in fact, the submission of the prosecution and not the findings of the Privy

1 1946 SCC OnLine PC 47

Council. On the contrary, the findings in the decision of ***Pulukuri Kotayya*** (supra) support the defence. According to him, a demonstration panchanama is not admissible in evidence and therefore, evidence in respect of the said panchanma should not have gone on record. To buttress his submissions, he seeks to rely on the decisions in the case of ***Pulukuri Kotayya*** (supra), ***Perumal Raja alias Perumal Vs. State, represented by Inspector of Police***¹ and the decision of this Court in the case of ***Ajikhhan Mohd. Khan Pathan Vs. State of Maharashtra***².

6. Conversely, Shri Chauhan, learned Senior Advocate-Public Prosecutor, vehemently objected to the submissions made by the learned counsel for the petitioners. According to him, though the learned Additional Sessions Judge relied on the portion of the argument of the prosecution presuming it to be the verdict of the Privy Council but the ultimate findings of the learned trial Court overruling the objection of the petitioners are legally correct. He further submitted that discovery of a fact pursuant to the information received is admissible under the provisions contained in Section 27 of the Act which is an exception to the general rule.

1 2024 SCC OnLine SC 12

2 2023 SCC OnLine Bom 2035

7. Having heard the learned counsels for the respective parties and having gone through the record, it is revealed that PW4-Gajanan Ambhore, whose deposition was being recorded by the trial Court, is a panch witness to various panchanamas including the demonstration panchanama dated 30.11.2021. After deposing about other articles which were recovered prior to 30.11.2021, this witness proceeded to depose about the memorandum panchanama dated 30.11.2021. He deposed that the petitioners had informed in his presence that on 16.11.2021, they had been to Anand Electronics and they are willing to demonstrate the acts committed by them by visiting the spot of incident. The counsel for the petitioners objected to this portion of the deposition contending that it is not admissible in evidence since it is done in presence of the police. The learned Additional Sessions Judge by order dated 08.10.2024 overruled the objection holding that this is not a confession.

8. Likewise, in para 24 of the testimony, PW4- Gajanan Ambhore further deposed as to how the petitioners informed and demonstrated to the police the manner in which they committed the crime. This portion of his testimony was also objected to by the petitioners contending that it is hit by Section 25 of the Act. The

learned Additional Sessions Judge by order dated 14.11.2024 overruled this objection as well.

9. In the impugned order dated 14.11.2024, the learned Additional Sessions Judge opined that weapons and other articles have been recovered at the instance of the petitioners vide seizure panchanma Exhs.84, 25 and 86 and the prosecution wants further evidence with regard to the manner in which the accused persons have committed the offence. The learned Additional Sessions Judge quoted some portion of the judgment of ***Pulukuri Kotayya*** (supra) which is reproduced as under:

“In this case, therefore, where the statement is that a stick and a spear have been hidden, once they are discovered you can then bring in any part of that statement which shows how, when and in what circumstances that spear and stick were used and by whom they were used in the commission of offence. ...”

Relying on the above portion of the decision in the case of ***Pulukuri Kotayya*** (supra), the learned Additional Sessions Judge further opined that the observation in the decision by the Judges mentioning ‘when’, ‘in what circumstances’ and ‘by whom’ are significant words appearing in such observations which indicate that the prosecution is entitled to bring the evidence in order to establish the fact as to ‘when’, ‘in what circumstances’ and

‘by whom’ the offence in question was committed and therefore, the demonstration panchanama is not hit by Section 25 of the Act.

10. With the assistance of the learned counsel for the petitioners as well as the learned Senior Advocate-Public Prosecutor for the respondent/State, I have gone through the decision of *Pulukuri Kotayya* (supra) rendered by the Privy Council. What has been quoted by the learned Judge is the submission of the prosecution and not the observations made by the Privy Council.

11. It is a settled position of law that Sections 25 and 26 of the Act make a confession made by an accused of an offence to a police officer while he is in custody inadmissible unless it is made before a Magistrate. Whereas, Section 27 is an exception to Sections 25 and 26 of the Act. It makes the information given by an accused to police admissible, only if it leads to discovery of a distinct fact. Section 27 of the Act runs as under:

“27. How much of information received from accused may be proved.—Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.”

12. Undoubtedly, Section 27 of the Act is an exception to Sections 25 and 26 of the Act and makes the information given by an accused of an offence to a police officer whether it is a confession or otherwise admissible, provided that the said information is followed by discovery of a distinct fact in consequence of the information received from the accused. The basic idea embedded in this section is the doctrine of confirmation by subsequent event. The doctrine is found on the principle that, if any fact is discovered on the strength of any information received from an accused, such a discovery is a guarantee that the information supplied by the accused is true.

13. The history of case laws on the subject unfolds divergent views and approaches. The divergence was mainly on the issue as to whether the facts contemplated by Section 27 of the Act are only physical/material objects or mental facts disassociated from the recovery of physical object.

14. The Privy Council way back in the year 1946-47 in the decision of ***Pulukuri Kotayya*** (supra) which has been described as a *locus classicus* has explained what is meant by the phrase ‘fact discovered’ used in Section 27 of the Act. The relevant extracts from para 10 of the decision is reproduced as under:

“Clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which in such information is required to relate.”

Elucidating the scope of this section, the Privy Council speaking through Sir John Beaumont said :

“Normally the section is brought into operation when a person in police custody produces from some place of concealment some object, such as a dead body, a weapon, or ornaments, said to be connected with the crime of which the informant is accused.”

15. The Privy Council, while discussing the majority view taken in the case of ***Sukhan Vs. Emperor***¹ that the expression ‘fact’ in Section 27 of the Act should be restricted to a material object, extended the expression ‘fact’ from discovery of object to the extent that it also covers mental facts which must relate to the object recovered. The relevant portion of the decision is reproduced as under:

“.....In their Lordships' view it is fallacious to treat the "fact discovered" within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact.....”

16. Indisputably, the decision in the case of ***Pulukuri Kotayya*** (supra) is an authority for the proposition ‘discovery of

¹ AIR 1929 Lah 344

fact'. The Privy Council after discussing a series of decisions observed that discovery of a fact cannot be restricted to an object produced or found. It includes the place from which the object was produced, knowledge of the accused as to it, provided that the information given relates distinctly to the object discovered.

17. Later in the year 1972, the Supreme Court in the case of *Himachal Pradesh Administration Vs. Shri Om Prakash*¹ has observed that information furnished by the accused that he purchased the dagger from a witness and thereafter, pointing the witness out cannot be termed to be discovery of a fact within the meaning of Section 27 of the Act; particularly in view of the fact that, even when the accused took the police to the said witness and pointed the witness out, the dagger was not recovered consequent to such information. The Supreme Court repelling the argument of the prosecution has observed that a 'witness' cannot be said to be discovered if nothing is found or recovered from him as a consequence of the information furnished by the accused and the information which discloses the identity of the witness without recovery of the object will not be admissible under Section 27 of the Act. What makes the information leading to the discovery of the witness admissible is the discovery from him of the thing sold

1 1972 (1) SCC 249

to him or hidden or kept with him which the police did not know until the information was furnished to them by the accused.

18. The controversy is put to the rest, in the decision of the Supreme Court in the case of ***State (N.C.T. Of Delhi) vs Navjot Sandhu@ Afsan Guru***¹ wherein, after discussing various decisions of the Privy Council and the Supreme Court in the cases of ***Sukhan Vs. Emperor*** (*supra*), ***Pulukuri Kotayya*** (*supra*), ***Mohd. Inayatullah Vs. State of Maharashtra***², ***State of Maharashtra Vs. Damu***³ and ***Shri Om Prakash*** (*supra*) the Supreme Court accepted the submission of the defence and affirmed that a fact discovered within the meaning of Section 27 of the Act must be some concrete fact to which the information directly relates. The Supreme Court in explicit words has observed that, the fact discovered should refer to a material / physical object and not to a pure mental fact relating to a physical object disassociated from the recovery of the physical object.

19. In a recent decision of the Supreme Court in the case of ***Perumal Raja alias Perumal*** (*supra*), while discussing the scope of Section 27 of the Act, it has been observed that the factum of

1 2005 SCC OnLine SC 1132

2 (1976) 1 SCC 828

3 (2000) 6 SCC 269

discovery combines both the physical object as well as the mental consciousness of the informant accused in relation thereto.

20. The law as of today that emerges from the above said decisions is that, the expression 'fact discovered' used in Section 27 of the Act undoubtedly, is not restricted to a physical or material fact which can be pursued by senses and that it also includes a mental fact, provided that the mental fact must relate to recovery of the object which is discovered. To put it differently, for making the statement/information supplied by the accused of an offence to a police officer admissible in evidence, there must be discovery of a material object and only then the mental fact leading to the concealment or disposal of the object which is brought to light by the accused will be admissible under Section 27 of the Act. Anything merely related to the fact in general will not be admissible on its own. A mental fact which is not related to the recovery of the object/physical material will not constitute as facts discovered. Standalone mental facts disassociated from the discovery of object / material cannot be said to be a discovery of fact within the meaning of Section 27 of the Act.

21. Here, the information was supplied by the petitioners to PW4-Gajanan Ambhore by stating that they are going to

demonstrate in what manner the offence was committed. Subsequently, by demonstrating all the acts, they showed how they committed the offence. The prosecution claims that there is discovery of fact as to the manner in which the offence was committed. This argument does not sustain for more than one reasons. Firstly, there is no discovery of any object and the mental facts disclosed by the petitioners are not in respect of any object which is discovered consequent to the information given by them on 30.11.2021. Secondly, the word 'discovery' denotes discovery of something which is already in existence. Here, the facts which are claimed to be discovered were not readily available anywhere but, have been disclosed and demonstrated by the petitioners by visiting the spot of incident which was already known to the police. Lastly, the prosecution has come-up with a case that the incident was recorded in the CCTV footage. This means that the prosecution already knew the manner in which the offence was committed. Therefore, even if anything was discovered with regard to the manner in which the offence was committed, it will not be regarded as discovery of a distinct fact within the meaning of Section 27 of the Act. By no stretch of imagination, the demonstration by the petitioners showing the manner in which the

offence was committed can be said to be a fact discovered within the meaning of Section 27 of the Act.

22. It is apt to note here that the Division Bench of this Court in the case of ***Ajikh Khan Mohd.*** (supra), relied upon by the petitioners has observed while making a passing remark that the basic nature of a demonstration panchanama is inadmissible.

23. A similar situation also arose before the Gujarat High Court in the case of ***Ramkishore Bharatsinh Yadav Vs. State of Gujarat and another***¹ wherein, it has been observed as under:

“22. It is an admitted fact that at the time of making confessional statement during the process of pointing out and demonstration panchnamas, the appellant-accused was admittedly in the police custody. Moreover, considering the fact that nothing had been discovered or recovered through these panchnamas, we are of the opinion that the trial court, in considering these evidence for convicting the appellants-accused, has fell in error, since the same is inadmissible.”

24. To put it all together, a demonstration shown by an accused depicting the manner in which an offence is committed by him is hit by Section 25 of the Act and for the reasons stated above, it is not admissible even under Section 27 of the Act as an exception to Section 25 of the Act.

25. The learned Judge also observed that some part of the demonstration made by the petitioners which relates to the subsequent conduct of the petitioners is admissible in evidence under Section 8 of the Act. No doubt, subsequent conduct of an accused is relevant if it influences or is influenced by any fact in issue or relevant fact. However, the learned Judge failed to consider that the demonstration shown by the petitioners to the police as to their conduct is admissible against them under Section 8 of the Act only to the extent of its non-confessional portion. Meaning thereby, any evidence showing the conduct of an accused must first overcome the bar created by Section 25 of the Act and only then it can be relied upon under Section 8 of the Act. (*See: Bheru Singh Vs. State of Rajasthan*¹ and *Aghnoo Nagesia Vs. State of Bihar*²). In the present case, the entire demonstration panchanama is hit by Section 25 of the Act. Therefore, demonstration made by the petitioners to show the manner in which the offence was committed by them is not admissible under Section 8 of the Act even to show subsequent conduct.

26. To conclude, the learned Additional Sessions Judge has not considered these aspects and erroneously overruled the

1 1994 (2) SCC 467

2 1965 SCC OnLine SC 109

objection of the petitioners. Therefore, the orders dated 08.10.2024 and 14.11.2024 passed by the learned Additional Sessions Judge, Buldhana in Sessions Trial No.24 of 2022 are hereby set aside. The objections of the petitioners are sustained. Accordingly, the petition succeeds.

27. In view of the above, the petition is **allowed**. Rule is made absolute.

JUDGE

Wagh