



Cr1.A.No.855 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2025

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

and

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

Cr1.A.No.855 of 2025

G.Karthikeyan

.. Appellant

Vs.

Union of India Rep. by
Deputy Superintendent of Police,
National Investigation Agency,
Branch Office, Chennai
(RC-06/2023/NIA/DLI)

.. Respondent

Prayer: Appeal filed under Section 21(1) of the National Investigation Agency Act, to set aside the impugned order passed by the Trial Court in Cr1.M.P.No.4 of 2024 dated 19.03.2025 in Spl.SC.No.64 of 2023 on the file of the learned Principal Sessions Judge, Puducherry.

For Appellant : Mr.B.William

For Respondent : Mr.E.V.Chandru @ Mr.E.Chandrasekaran,
Special Public Prosecutor

JUDGMENT

(Judgment of the Court was made by **V.LAKSHMINARAYANAN, J.**)

The present appeal invokes Section 21(1) of the National



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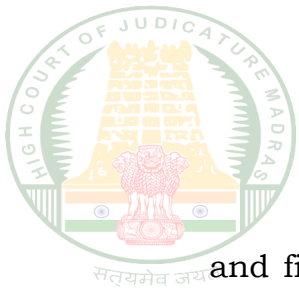
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Investigation Agency Act. It has been preferred against the order passed by the learned Principal Sessions Judge, Puducherry in M.P.No.4 of 2024 in Spl.S.C.No.64 of 2023 dated 19.03.2025.

2. The petitioner is the sixth accused in the case. He is facing trial for the alleged offences under Section 120B, 201 r/w 34 of Indian Penal Code, Section 27(1) of Arms Act, 1959, Sections 3 and 4 of Explosive Substances Act, 1908, and Sections 16, 18 and 20 of Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as “UAPA”).

3. The origin of the case is Crime No.72 of 2023 on the file of the Villianur Police Station, Puducherry. The complaint came to be registered on 26.03.2023. It commenced investigation for offences under Sections 147, 148 & 302 of IPC read with Section 3 of Explosive Substances Act, read with section 149 of Indian Penal Code. Subsequently, by an order dated 28.04.2023, the investigation stood transferred to the National Investigation Agency, New Delhi. The investigation was taken up and an alteration report was filed on 19.05.2023, invoking the provisions of UAPA. Union of India also passed an order sanctioning the same on 20.09.2023.

4. The National Investigation Agency completed the investigation



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and filed a final report on 21.09.2023. It listed 195 witnesses in the charge sheet, out of whom, LW16 to LW29 were designated as “protected” witnesses. In the list of witnesses, LW38, LW48, LW58, LW59, LW135 to LW142, LW145 to LW150, LW152 to LW154, LW166, and LW180 to LW195 have been shown. Their statements under Section 161 have not been recorded. Hence, the appellant filed an application invoking Section 148 and 158(c) of Bharatiya Sakshya Adhiniyam, 2023, calling upon the Court to delete the aforesaid witnesses.

5. The short and simple plea of the appellant is as the statement of these witnesses have not been recorded under Section 161 of the Code of Criminal Procedure, the National Investigation Agency Act cannot show them as witnesses in the case.

6. The learned Principal Sessions Judge received this application as M.P.No.4 of 2024 and ordered notice to the respondent.

7. The respondent filed a detailed counter. According to them, one Punitha, wife of Senthil Kumaran lodged a complaint on 26.03.2023 with the Villianur Police. In the complaint, she alleged that her husband, Senthil Kumaran, had been done to death by six assailants, who came on three motorcycles at 21.30 hours. The



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manner in which the attack had taken place caused terror to the public and in the surrounding areas. It added the respondent had filed a final report under Section 173 of Criminal Procedure Code and that the copies of the charge sheet, along with all the relied upon documents were furnished to the accused as required by Section 207 of Criminal Procedure Code. They pleaded that the purpose of filing the petition was only to delay the pre-trial proceedings.

8. The respondent pointed out that the appellant had sought for unredacted copies of the protected witnesses. They urged that invoking the provisions of Section 17 of the National Investigation Agency Act r/w Section 44 of the UAPA, the agency had obtained previous permission of the court before redacting the details with respect to the protected witnesses and the material objects. They urged that the charges had been framed on 14.08.2024 and the respondent is ready to proceed further. In order to prevent the case from progressing, the present application came to be filed.

9. The learned Trial Judge took up the application for disposal. He pointed out that Section 180 of BNSS (the New Avatar of Section 161 of Cr.P.C.) does not call upon the Police to mandatorily reduce into writing the statement of the person examined. He further held that since the Investigating Officer had stated that the statements of



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the witnesses whom he had orally examined was not reduced into writing, the petitioner is not entitled to seek for the deletion of those witnesses. Consequently, he dismissed the same. Hence, this appeal.

10. We heard Mr.B.William for the appellant and Mr.E.V.Chandru @ Mr.E.Chandrasekaran, learned Special Public Prosecutor for National Investigation Agency.

11. Mr.William urged that unless and until a person is examined under Section 180 of BNSS and his statement is reduced into writing, the said person cannot be produced before the court as witness. For the said proposition, he relied upon a judgment of Karnataka High Court in ***Chemansab v. The State of Karnataka, 2021 (1) KCCR 610***. Mr.William urged that if Section 161 statements are reduced into writing, it will help the appellant to file an application for discharge or for quash. He urged that he would be entitled to rely upon Section 161 statements for the aforesaid purpose.

12. Per contra, Mr.E.V.Chandru urged that the word used under Section 180 is “may” and not “shall” and therefore, a discretion is given to the Investigating Officer, whether to reduce the statement into writing or not. He adds that Section 180(3) gives the discretion to the police officer to reduce the statements into writing and only if he



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resorts to it, he is bound to give copies of the same to the accused. He relies upon the judgment of the Supreme Court in ***Zahira Habibulla H Sheikh and another v. State of Gujarat and others, AIR 2004 SC 3114*** and that, of a Division Bench of the Kerala High Court in ***P.A.Shaduly @ Haris v. State represented by Superintendent of NIA, Kochi in Cr1.A.No.359 of 2017, dated 11.04.2017*** to press home his point.

13. We have carefully considered the submission of both sides and gone through the records.

14. The purpose of recording a statement under Section 180 of BNSS is to aid the investigation agency in their investigation. It allows the officer to question individuals, who, he or she feels, are acquainted with the facts and circumstances of the case. It is an exercise to collect information, facts and potential evidence relating to the offence being investigated. It is entirely left to the discretion of the Investigating Officer to examine anyone, who had knowledge, either directly or indirectly, about the crime. It could be an eye-witness to the incident, relatives of the deceased or of the accused. The purpose of conducting such an enquiry is to get a wholesome picture and an insight into the manner in which the offence had taken place.

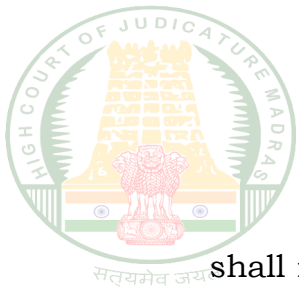


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15. The statement under Section 161 of Cr.P.C enables the Police to establish motives, identify potential accused, and reconstruct events. A statement recorded under Section 161 is not a substantial piece of evidence. A bare perusal of the provision shows that a Police officer is not bound to reduce the statement into writing. This is because the Section reads that a Police Officer “may”, and it does not state that the Police Officer “shall” record the statement in writing. The statement recorded under Section 161 can be used only for the purpose of contradicting a witness in terms of Section 145 of the Evidence Act by the accused, and by the prosecution with the leave of the Court, and for the purpose of re-examination of witnesses, if necessary.

16. A careful analysis of Section 161 of Cr.P.C and Section 180 of BNSS makes it clear that it is not mandatory that the statement of a witness should be reduced into writing. It is permissible under law to reduce the statement into writing, but it is entirely left to the discretion of the investigating officer. The Section does not impose a legal obligation on the officer to record statement. As already pointed out, it is only for the purpose of contradiction, and the absence of a written statement does not invalidate the witness testimony or even the investigating process. Section 180(3) of BNSS is clear that the officer “may” reduce a statement into writing, and if he does so, he

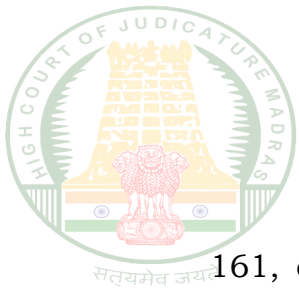


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shall make a separate and true record of the statement. Law does not prohibit oral examination and recording of statements.

17. Whenever the Parliament wanted a statement to be recorded and writing, it has directed to that effect. An example is the statement recorded under Section 164 of Cr.P.C. A statement recorded under Section 164 can be proved only by the record itself, and oral evidence to that effect has been held to be inadmissible. Similarly, under Section 4(2)(d) of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989, a duty has been imposed on a public servant to record the statement of victims or witnesses. In a stark distinction to the word “may” used in Section 161 of Cr.P.C. and 180 of B.N.S.S., Section 4(2) uses the word “shall”. This is an indicator that the Parliament never intended for an investigating officer to mandatorily reduce into writing, the statement of witnesses. Another provision is Section 32 of the Indian Evidence Act, 1872, which reveals that a statement of a person recorded under Section 161 could be treated as dying declaration after his / her death. Of course, it is subject to a statement falling within the four corners of Section 32(1).

18. Section 162 of Cr.P.C. prohibits the use of the statements made by witnesses recorded by the investigation agency under Section



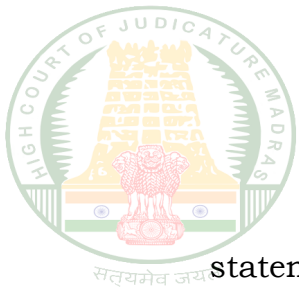
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161, except for the limited purpose of contradiction as indicated in that very Section. The purpose of Section 145 of the Evidence Act, which was heavily relied upon by Mr. William, is clear. It is intended to contradict a witness as regards his previous statements, when reduced into writing. At that time, the attention of the witnesses is called to those specific portions which are used for the purpose of contradiction. While recording the deposition of a witness, a trial court has to ensure only that part of the statement given to the Police, which is intended to contradict the witness, is brought to the attention of the witness.

19. In a criminal trial, the witnesses can be examined by the defence also. As rightly contended by Mr. Chandru, if the plea of Mr. William is accepted that all witnesses must give prior statement before they are examined, then the persons examined as defence witnesses too would suffer from the same disability. That being the position of law, we find absolutely no reason in the submissions made by Mr. William.

20. Insofar as the second plea that a Section 161 statement will enable him to file a quash petition is concerned, we feel that this statement too, is misplaced. In fact, this position is no longer res integra. The Allahabad High Court had referred to Section 161



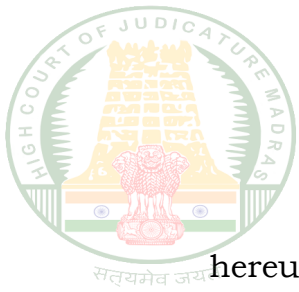
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statements, and had quashed the proceedings initiated against certain accused. On an appeal to the Supreme Court, the court held that the High Court had committed a manifest error in placing reliance upon Section 161 statements for the purpose of quashing the same. See, **Rajendra Singh v. State of Uttar Pradesh (2007) 7 SCC 378**. This view has been reaffirmed by the Supreme Court in **Rajeev Kourav v. Baisahab, (2020) 3 SCC 317** (Paragraph 10).

21. The authorities cited by Mr.William, instead of supporting the statements made by him, goes against him. The Karnataka High Court had held in Paragraph 26 of the said judgment that even without recording the statement of a witness under Section 161(3) of the Code, the witness can be examined before the court. The court pointed out that the evidence of such a witness has to be appreciated very carefully, and the evidence of such witness carry less value and credibility.

22. As rightly contended by Mr.E.V.Chandru, the Supreme Court in **Zahira Habibulla's** case had pointed out that it is not obligatory on part of the Police Officer to record any statement made to him and that, he may do so, if he feels, it is necessary. This very issue had been gone into in **P.A.Shaduly's** case. A similar plea as taken by Mr.William was rejected. The relevant portions are extracted



hereunder:

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“16. In the present case, according to the prosecution, all those 38 witnesses have discharged certain official duties and the prosecution is relying on their evidence as official witnesses. So definitely there may be certain documents pertaining to the duties discharged by them in their official capacity. The learned counsel for the appellant has no case that he has not received the documents relied on by the prosecution. In fact, Section 161 Cr.P.C will not make any distinction, whether the witness is an ordinary witness or an official witness. It is also significant to note that statements recorded under the provisions of Section 161 Cr.P.C is not admissible in evidence, except for the limited purpose as provided in section 157 of the Evidence Act. Section 145 of Evidence Act lays down the procedure for contradicting a witness by drawing his attention to the part of his previous statement. It is the duty of the court to sift the chaff from the grain and to find out the truth. But for the same it is not mandatory to have a recorded previous statement of the witnesses who were examined before the court.

...

18. The upshot of the above discussion is that under Section 161(3) Cr.P.C it is not obligatory on the police officer to record the statement of all the witnesses examined by him during the course of investigation. But if he exercises his discretion of reducing the statements into writing and the prosecution purposes to examine that witness in



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court, the accused it entitled to get the copy of the statement and prosecution is bound to furnish it to the accused. The failure to comply with the requirements of section 161(3) may affect the credibility to be attached to the evidence of the witnesses. But it does not render the evidence as inadmissible and it will not destroy the fabric of the prosecution case. The legitimate object of the prosecution is not to secure a conviction, but to see that justice is done in a proper manner. Doubtless, the probative value of the evidence tendered by such witnesses is left open, which could be challenged by the appellant at the appropriate time and before the appropriate forum in accordance with law.”

23. We respectfully agree with the view set forth above.

24. In the light of the above discussion, the criminal appeal stands dismissed.

(M.S.R., J)

(V.L.N., J)

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Index : Yes / No

Internet : Yes / No

Neutral Citation : Yes / No

Speaking order/Non speaking order



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To

- 1.The Deputy Superintendent of Police,
National Investigation Agency,
Branch Office, Chennai
- 2.The Principal Sessions Judge, Puducherry
- 3.The Public Prosecutor,
High Court, Madras.

M.S.RAMESH, J.
and

V.LAKSHMINARAYANAN, J.



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