

CrL.R.C.(MD)No.835 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.08.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

CrL.R.C.(MD)No.835 of 2025

and

CrL.M.P.(MD)No.8891 of 2025

Shalini

... Petitioner

-VS-

The State Rep. By,
The Inspector of Police,
N.I.B. C.I.D.,
Kanyakumari District.
(Crime No.2 of 2022)

... Respondent

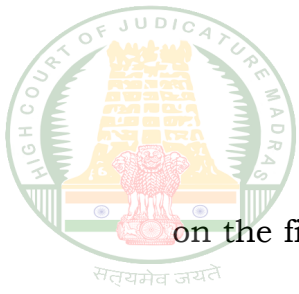
PRAYER : Criminal Revision Case is filed under Section 438 r/w. 442 of BNSS, 2023, to call for the entire records pertaining to the order passed by the learned I Additional Special Court for Trial of NDPS Act Cases, Madurai, in Cr.M.P.No.677 of 2025 in C.C.No.307 of 2024 dated 13.05.2025 and set aside the same and consequently direct the portion of the evidence mentioned in the aforesaid petition to be eschewed from treating the same as evidence.

For Petitioner : Mr.R.Anand

For Respondent : Mr.S.Ravi, Additional Public Prosecutor

ORDER

This Criminal Revision Case has been filed, challenging the order dated 13.05.2025 passed in CrL.M.P.No.677 of 2025 in C.C.No.307 of 2024



CrL.R.C.(MD)No.835 of 2025

on the file of the First Additional Special Court for trial of NDPS Act Cases, Madurai, dismissing the petition to eschew the testimony of P.W.2 in light of the judgment in ***Bipin Shantilal Panchal v. State of Gujarat and Another¹***.

Facts in brief:-

2.The petitioner and other accused are facing trial for offences under the NDPS Act, in respect of alleged possession and transportation of 210 kg of ganja. During the course of cross-examination of P.W.2, certain answers were elicited by the defence counsel which, according to the petitioner, were wholly outside the scope of his previous statements under Section 161 Cr.P.C., or his deposition in chief-examination. The petitioner and other accused filed CrL.M.P.No.677 of 2025 seeking to eschew the testimony of P.W.2 to the extent of those answers, contending that the law laid down in ***Bipin Shantilal Panchal²*** mandates that all questions should be recorded but admissibility or relevancy can be decided at the final stage. The learned Trial Court dismissed the application holding that contradictions cannot be manufactured by eliciting fresh answers in cross-examination and thereafter confronting the witness by asking whether such answers find place in his prior statement. The learned Trial Court

¹ (2001) 3 SCC 1

² Supra 1



relied on the later decision in ***Mohana Sundaram v. State***³. Aggrieved, the petitioner has filed the present revision.

Submissions :-

3.The learned counsel appearing for the petitioner submitted that the learned Trial Court erred in curtailing the right of cross-examination which is a valuable right guaranteed under Section 148 of the Bharatiya Sakshya Adhiniyam, 2023 (corresponding to Section 146 of Indian Evidence act, 1872). Under Section 149 of BSA, 2023 (corresponding to Section 148 Indian Evidence act, 1872,), a witness may be asked any question to test his veracity and shake his credit. The learned Trial Court cannot pre-judge the relevancy or admissibility at the stage of cross-examination. Reliance was placed on ***Bipin Shantilal Panchal v. State of Gujarat***⁴, where the Hon'ble Supreme Court held that the trial court should not interrupt cross-examination by ruling on admissibility but should mark the evidence subject to objections, leaving the issue to be decided at final stage.

4.The learned Additional Public Prosecutor for the respondent submitted that reliance on ***Bipin Shantilal Panchal***⁵ is misplaced since later judicial pronouncements have clarified that the learned Trial Courts must decide objections to improper questions at least before the deposition of the concerned witness concludes, so as to avoid prejudicial material

³ 2025 (1) LW (CrL) 375

⁴ Supra 1

⁵ Supra 1



remaining on record. The defence cannot create contradictions by eliciting new facts from a witness during cross-examination and thereafter asking whether such facts were stated earlier. Such an approach is not supported by law. Reliance was placed on ***Mohana Sundaram v. State***⁶, which in turn referred to ***Re: Inadequacies and Deficiencies in Criminal Trials***⁷, emphasising that objections must be decided at the appropriate stage and not deferred.

5. Heard the learned counsels on either side and carefully perused the materials available on record.

Statutory Framework :-

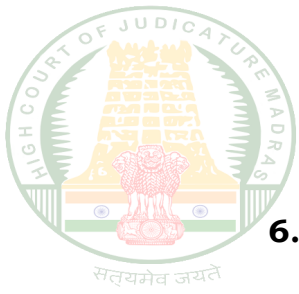
Bharatiya Sakshya Adhiniyam, 2023:-

6.1. Section 148 of BSA, 2023 (cross-examination as to previous statements) :

“A witness may be cross-examined as to previous statements made by him in writing or reduced into writing and relevant to matters in question, without such writing being shown to him, or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him”

⁶ Supra 3

⁷ (2021) 10 SCC 598



6.2.Section 149 of BSA, 2023 (questions lawful in cross-

examination):-

“When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend-

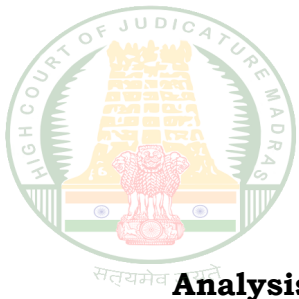
(a) to test his veracity; or

(b) to discover who he is and what is his position in life; or

(c) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him, or might expose or tend directly or indirectly to expose him to a penalty or forfeiture:

Provided that in a prosecution for an offence under section 64, section 65, section 66, section 67, section 68, section 69, section 70 or section 71 of the Bharatiya Nyaya Sanhita, 2023 or for attempt to commit any such offence, where the question of consent is an issue, it shall not be permissible to adduce evidence or to put questions in the cross-examination of the victim as to the general immoral character, or previous sexual experience, of such victim with any person for proving such consent or the quality of consent .”

6.3.Section 151 of BSA, 2023 (Court to decide when question shall be asked and when witness compelled to answer) - The section empowers the court to determine whether a question is proper, balancing the rights of cross-examination with preventing harassment or irrelevant questioning. (Corresponding provisions: Sections 145, 146, 148 of the Indian Evidence Act, 1872.)



Analysis:-

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7.1.Scope of Cross-Examination - Cross-examination is one of the most vital rights of the accused, intended to test the veracity of a witness and expose inconsistencies. The Supreme Court in ***State of Rajasthan v. Ani alias Hanif***⁸, observed that the learned Trial Judge cannot be a mute spectator during cross examination.

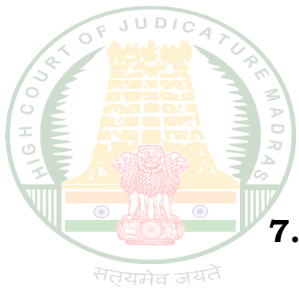
7.2.Contradictions and Omissions - Under Section 148 BSA, 2023, contradictions must be based on prior written statements. An omission may amount to a contradiction only if it is material and significant. Merely eliciting a new fact in cross-examination which was never stated in chief or 161 statement cannot be used to create a contradiction.

7.3.The Rule in Bipin Shantilal Panchal - In ***Bipin Shantilal Panchal***⁹, the Hon'ble Supreme Court held:

“Whenever an objection is raised during evidence-taking stage regarding admissibility of any material or item of oral evidence it is a better practice that the trial court record the objection and mark the objected document tentatively, subject to objection, leaving the issue for determination at the final stage. However, this ruling was not meant to allow irrelevant or improper questions to be forced on witnesses.

⁸ (1997) 6 SCC 162

⁹ Supra 1



7.4.Later Clarifications - In *Re: Inadequacies and Deficiencies in*

*Criminal Trials*¹⁰, the Hon'ble Supreme Court cautioned that deferring rulings on objections indefinitely can prejudice the trial and lead to confusion at appellate stage.

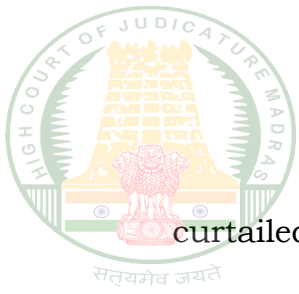
Application to the Present Case:-

8.The defence counsel elicited answers from P.W.2 regarding identification of ganja by smell and mode of travel to the scene of crime. These were new matters introduced during cross-examination, not contradictions with prior statements. The learned Trial Court was justified in holding that an investigating officer cannot be expected to anticipate such cross-examination questions in advance. The petitioners' reliance on ***Bipin Shantilal Panchal***¹¹ is misplaced, as that judgment does not permit manufacturing contradictions by eliciting new facts and then questioning whether they were stated earlier. The learned Trial Court correctly applied the principle that objections should be decided contemporaneously and irrelevant portions need not remain on record till final judgment.

9.Accordingly, the right of cross-examination under Sections 148 and 149 BSA, 2023, is not unlimited. It must be exercised within the framework of relevancy and fairness. The learned Trial Court has not

¹⁰ Supra 7

¹¹ Supra 1



CrL.R.C.(MD)No.835 of 2025

curtailed the petitioners' right of cross-examination but has only prevented creation of artificial contradictions. The order impugned does not suffer from perversity or illegality warranting interference under revisional jurisdiction. Thus, Criminal Revision Case fails and is dismissed. The learned Trial Court is directed to proceed with the trial of C.C.No.307 of 2024 expeditiously, uninfluenced by any of the observations herein, except to the extent necessary for deciding the present issue. No costs. Consequently, connected miscellaneous petition is closed.

28.08.2025

NCC :Yes/No
Index :Yes/No
Internet : Yes
Mrn

To

- 1.The Judge,
I Additional Special Court for Trial of NDPS Act Cases, Madurai.
- 2.The Inspector of Police,
N.I.B. C.I.D.,
Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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CrL.R.C.(MD)No.835 of 2025

L.VICTORIA GOWRI, J.

Mrn

CrL.R.C.(MD)No.835 of 2025

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