

(2010) 12 SC CK 0036

In the Supreme Court Of India

Case No : Criminal Appeal No. 1043 of 2002

Balasaheb @ Ramesh Laxman Deshmukh

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 07-12-2010

Acts Referred:

Constitution of India, 1950 — Article 20(3)
Criminal Procedure Code, 1973 (CrPC) — Section 161, 161(1)
Evidence Act, 1872 — Section 132

Citation : AIR 2011 SC 304 : (2011) 1 CTC 621 : (2011) 1 JCC 340 : (2011) 1 RCR(Criminal) 190 : (2011) 1 SCC 364 : (2011) 1 SCC(Cri) 1 : (2011) 1 UC 440

Hon'ble Judges : H. S. Bedi, J; Chandramauli Kumar Prasad, J

Bench : Division Bench

Advocate : M.Y. Deshmukh and Shivaji M. Jadhav, for the Appellant; Manisha Pitale, Sanjay V. Kharde, Asha Gopalan Nair and Vimal Chandra S. Dave, for the Respondent

Final Decision : Allowed

Judgement

Chandramauli Kr. Prasad, J.—The short but important question of law which falls for our determination in the present appeal is as to whether protection under Article 20(3) of the Constitution is available to the Appellant, who though not an accused in the police case in which he has been asked to depose as a witness but figures as an accused in the complaint case filed later on in relation to the same incident.

2. Bereft of unnecessary details, the facts necessary for determination of the aforesaid question are that informant Charudatta Pawar is alleged to have been assaulted by four persons in a Hotel in the night between 25th and 26th of April, 1996 and on the basis of the report given by him CR No. 102/1996 was registered at Chalisgaon Police Station. During the investigation the Appellant figured as a witness and his statement was recorded u/s 161 of the Code of Criminal Procedure. After investigation Chalisgaon Police Station submitted chargesheet against 4 accused persons named in the first information report on

24.5.1997. The said case, hereinafter referred to as the police case, is pending for trial before Judicial Magistrate, First Class, Chalisgaon. In regard to the same incident which is the subject matter of the trial in the aforesaid Police case, a complaint was filed impleading the Appellant herein besides five other persons as accused. Appellant figures as accused No. 6 in the complaint case and according to the allegation he conspired with other accused in commission of a crime. In this case, hereinafter referred to as the complaint case the Judicial Magistrate took cognizance of the offence and issued process by order dated 2nd February, 1998 against the four accused who were already charge sheeted in the police case and three other accused including the Appellant herein. By an order of the Bombay High Court dated 26th April, 1999 both the criminal cases i.e. police case and complaint case were directed to be tried and decided simultaneously. The Bombay High Court further directed the Magistrate in sesin of the trial to conclude the trial within stipulated time.

3. The Appellant filed an application before the learned Magistrate in sesin of the Police case objecting his examination as witness, inter alia, contending that in view of the Constitutional protection guaranteed under Article 20(3) of the Constitution of India, he cannot be compelled to be a witness in the case as he himself is an accused in relation to the same incident in the complaint case. The learned Magistrate by its order dated 5th September, 2000 allowed the application and observed that the prosecution cannot examine the Appellant as a witness in the Police case. The State of Maharashtra aggrieved by the aforesaid order filed Criminal Revision Application No. 268 of 2000 before the Bombay High Court which by its order dated 27th April, 2001 allowed the application and set aside the order of the learned Magistrate, inter alia, observing that no such blanket protection can be given to the Appellant. Relevant portion of the judgment of the High Court reads as follows:

10. To sum up, witness Balasaheb @ Ramesh Laxman Deshmukh is not an accused in CC No. 97/96 in spite of accusations against him in the deposition of complainant Charudatta (Esh.142) and admission of complainant dated 26.4.1996 (Exh.143) which are pieces of evidence relevant in C.C. No. 3/98, since he is not charged by the charge framed in that case. Therefore, even if he is compelled to depose as a witness in C.C. No. 97/96 that can not be said to be compulsion to give evidence against himself. Moreover, by virtue of proviso to Section 132 of Indian Evidence Act, he is protected from use of self incriminating statements against him, in any other proceeding including C.C. No. 3/98.

The blanket protection granted by Magistrate vide his order dated 5.9.2000 can do, therefore, be sustained.

4. Mr. M.Y. Deshmukh, learned Counsel appearing on behalf of the Appellant contends that the Appellant being an accused in the complaint case cannot be compelled to give evidence against himself in the Police case. It is pointed out that Article 20(3) of the Constitution contemplates that no person, accused of any offence, shall be compelled to be a witness against himself. It is emphasised

that the Appellant is not an accused in the Police case but in relation to the same incident in the complaint case he figures as an accused and, therefore, he is entitled to the protection under Article 20(3) of the Constitution. In support of the submission reliance has been placed on a decision of this Court in the case of Ramanlal Bhogilal Shah and Another Vs. D.K. Guha and Others, , and our attention has been drawn to paragraph 22 of the judgment which reads as follows:

22. The Additional Solicitor-General says that the Petitioner had not been specifically named as accused in the first information report and, therefore, he is not entitled to the protection under Article 20(3). We are unable to agree with him in this respect. The Petitioner was the General Manager of the United Commercial Bank and it was alleged in the grounds of arrest that the Petitioner was in charge of, or was responsible to the United Commercial Bank Ltd. for the conduct of the business of the said Bank, and that he failed to prove in course of his statements made u/s 19F before Shri D.K. Guha, Deputy Director of Enforcement that the contravention took place without his knowledge or that he exercised all due diligence to prevent the aforesaid contravention, as required u/s 23C of the Exchange Act.

5. At the first blush we were inclined to accept this submission but on a deeper scrutiny we find no substance in it and the decision relied on instead of supporting his case, goes against him. Protection under Article 20(3) of the Constitution does not extend to any kind of evidence but only to self-incriminating statements relating to the charges brought against an accused. In order to bring the testimony of an accused within the prohibition of constitutional protection, it must be of such character that by itself it tends to incriminate the accused. Appellant is not an accused in the Police case and in fact a witness, whose statement was recorded under Article 161 of the Criminal Procedure Code, and, therefore, not entitled to a blanket protection. However, in case of trial in the Police case answer to certain question if tends to incriminate the Appellant he can seek protection at that stage. Whether answer to a question is incriminating or otherwise has to be considered at the time it is put. Reference in this connection can be made to a decision of this Court in the case of The State of Bombay Vs. Kathi Kalu Oghad and Others, , wherein it has been held as follows:

In order that a testimony by an accused person may be said to have been self-incriminatory the compulsion of which comes within the prohibition of the constitutional provision, it must be of such a character that by itself it should have the tendency of incriminating the accused, if not also of actually doing so. In other words, it should be a statement which makes the case against the accused person at least probable, considered by itself.

6. We are of the opinion that for invoking the constitutional right under Article 20(3) a formal accusation against the person claiming the protection must exist. Simply because the Appellant figures as the accused in the complaint case, a blanket protection as claimed by him cannot be granted. Reference in this

connection can be made to a decision of this Court in the case of Raja Narayanlal Bansilal Vs. Maneck Phiroz Mistry and Another, , wherein it has been held as follows:

The effect of this decision thus appears to be that one of the essential conditions for invoking the constitutional guarantee enshrined in Article 20(3) is that a formal accusation relating to the commission of an offence, which would normally lead to his prosecution, must have been levelled against the party who is being compelled to give evidence against himself; and this conclusion, in our opinion, is fully consistent with the two other decisions of this Court to which we have already referred.

7. Referring to the decision of this Court in the case of Ramanlal Bhogilal Shah (supra), relied on by the Appellant, the same in spite of supporting his case goes against him which would be evident from the following paragraph of the said judgment:

24. Although we hold that the Petitioner is a person accused of an offence within the meaning of Article 20(3), the only protection that Article 20(3) gives to him is that he cannot be compelled to be a witness against himself. But this does not mean that he need not give information regarding matters which do not tend to incriminate him.

8. Mr. Deshmukh, then contends that the protection under Article 20(3) goes beyond the complaint case but shall cover the Police case also because Appellant is an accused in relation to the same incident and the trial is pending in the said case. Reliance has been placed on a decision of this Court in the case of Nandini Satpathy Vs. P.L. Dani and Another, , and our attention has been drawn to paragraph 57 of the judgment which reads as follows:

57. We hold that Section 161 enables the police to examine the accused during investigation. The prohibitive sweep of Article 20(3) goes back to the stage of police interrogation -- not, as contended, commencing in court only. In our judgment, the provisions of Article 20(3) and Section 161(1) substantially cover the same area, so far as police investigations are concerned. The ban on self-accusation and the right to silence, while one investigation or trial is under way, goes beyond that case and protects the accused in regard to other offences pending or imminent, which may deter him from voluntary disclosure of criminatory matter. We are disposed to read "compelled testimony" as evidence procured not merely by physical threats or violence but by psychic torture, atmospheric pressure, environmental coercion, tiring interrogative prolixity, overbearing and intimidatory methods and the like -- not legal penalty for violation. So, the legal perils following upon refusal to answer, or answer truthfully, cannot be regarded as compulsion within the meaning of Article 20(3). The prospect of prosecution may lead to legal tension in the exercise of a constitutional right, but then, a stance of silence is running a calculated risk. On the other hand, if there is any mode of pressure, subtle or crude, mental or

physical, direct or indirect, but sufficiently substantial, applied by the policeman for obtaining information from an accused strongly suggestive of guilt, it becomes "compelled testimony", violative of Article 20(3).

We do not find any substance in this submission of the learned Counsel and the decision relied on is clearly distinguishable.

9. As observed earlier the Appellant is not an accused in the Police case and in fact a witness whose statement was recorded during the course of investigation u/s 161 of the Code of Criminal Procedure. In the Police case he utmost can be asked to support the case of the prosecution but no question intended to incriminate him can be asked and in case it is done the protection under Article 20(3) of the Constitution shall spring into action. What question shall be put to this Appellant when he appears as a witness is a matter of guess and on that basis he does not deserve the blanket protection under Article 20(3) of the Constitution. Even at the cost of the repetition we may observe that in the Police case when he appears and asked to answer question, the answer whereof tends to incriminate him, he can refuse to answer the same pleading protection under Article 20(3) of the Constitution. In such eventuality the Court would decide the same. Therefore, at this stage the blanket protection sought by the Appellant is not fit to be granted.

10. As regards the authority of this Court in the case of Nandini Satpathy (supra) the same has no bearing in the facts and circumstances of this case. There the question was as to whether the protection under Article 20(3) of the Constitution shall apply at the stage of Police interrogation and in answer thereto this Court held that it shall go back to the stage of Police interrogation and not in Court only.

11. As the trial is pending since long, the learned Magistrate in sesin of the trial shall make endeavour to dispose of the same expeditiously, preferably within a period of six months from the date of receipt of a copy of this order.

12. In the result, we do not find any merit in the appeal and it is dismissed accordingly with the observation aforesaid.