
(1994) 02 P&H CK 0126

In the Punjab And Haryana At Chandigarh

Case No : Crml. Miscellaneous No. 306-M of 1993

Jagbir Singh

APPELLANT

Vs

The State of Haryana

RESPONDENT

Date of Decision : 11-02-1994

Acts Referred:

Commissions of Inquiry Act, 1952 — Section 6
Criminal Procedure Code, 1973 (CrPC) — Section 164, 311, 482
Penal Code, 1860 (IPC) — Section 201, 302, 34, 364

Citation : (1995) 1 ILR (P&H) 137 : (1994) 2 RCR(Criminal) 89

Hon'ble Judges : Harmohinder Kaur Sandhu, J

Bench : Single Bench

Advocate : Baldev Singh, for the Appellant; S.S. Gill, AAG, assisted by, P.V. Santoshi, for the Respondent

Final Decision : Allowed

Judgement

Harmohinder Kaur Sandhu, J.—On the statement of Daya Nand son of Jug Lal a resident of village Mitha Thal, District Bhiwani case F.I.R. No. 211 dated 19th September, 1991 was registered at Police Station, Sadar, Bhiwani, u/s 364 read with Section 34 I.P.C. During the investigation of the case dead body of Manoj Kumar was recovered and the offence was converted to Section 302 I.P.C After completion of the investigation charge-sheet was presented against the Petitioner and Umed Singh brother of the Petitioner. They were charged for offences u/s 302/34 and 201 I.P.C. and 7 witnesses were examined. On 1st May, 1992 examination-in-chief of Daya Nand complainant was recorded when the case was adjourned at the instance of counsel for the complainant who wanted to move an application to summon an enquiry file from Sub Divisional Magistrate, Bhiwani. Subsequently an application was moved by the public prosecutor for permission to produce evidence of a confession made by the Petitioner during an enquiry conducted by Sub Divisional Magistrate, Bhiwani. The application was opposed by the Petitioner but the learned Sessions Judge, Bhiwani passed order dated 20th October, 1992 summoning the record of the enquiry. The Petitioner has prayed

for quashing of the above said order by invoking the inherent powers of this Court u/s 482 Code of Criminal Procedure.

2. It was alleged in the petition that the impugned order summoning the enquiry tile and allowing the prosecution to examine and cross-examine the witnesses with regard to the statements recorded during the enquiry was illegal as the statements could not be looked into in view of the provisions of Section 6 of the Commission of Enquiry Act, 1952. The enquiry conducted by Sub Divisional Magistrate, Bhiwani was a fact-finding enquiry similar to the enquiry conducted by a commission under the Commission of Enquiry Act, 1952 and the provisions of said Act were applicable to the present case. The statements recorded during the enquiry were not admissible and could not be considered during the trial of a criminal case.

3. In the return filed by the Respondent it was alleged that the enquiry conducted by the Sub Divisional Magistrate, Bhiwani was conducted at the instance of the Deputy Commissioner, Bhiwani and the Sub Divisional Magistrate was not appointed as enquiry commission under the Commission of Enquiry Act. So, provisions of that Act were not applicable.

I have heard the counsel .for the parties.

4. This fact is admitted that during the investigation of the case registered against the Petitioner allegations of mala fides on the part of the police were before Deputy Commissioner, Bhiwani and the Deputy Commissioner directed the Sub Divisional Magistrate, Bhiwani to enquiry into the same. It was only a fact finding enquiry and the provisions of Section 6 of the Commission of Enquiry Act, 1952 were not applicable so far as the statements recorded during that enquiry were considered. Copy of the application which was made by the public prosecutor for producing enquiry report is not on the record of this file but the impugned order shows that application was moved u/s 311 Code of Criminal Procedure for permission to produce evidence regarding confession of the accused recorded by the Sub Divisional Magistrate during enquiry proceedings and the Sessions Judge summoned the record of the enquiry proceedings and observed that witnesses will be summoned for the purpose of cross-examination with respect to the enquiry lateron. This order is not proper. Confessional statement of an accused can be recorded by a Metropolitan Magistrate or a Judicial Magistrate in the manner provided in Section 164 of the Code of Criminal Procedure and it was not a case of the prosecution that any such confession of the accused was to be got proved. Any confession recorded after the commencement of investigation otherwise then in accordance with the provisions of Section 164 Code of Criminal Procedure is inadmissible in evidence. Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden. Even if some confession was recorded by the Sub Divisional Magistrate during enquiry proceedings that was inadmissible in evidence and enquiry record should not have been summoned for the purpose of proving that confession. The

impugned order is, therefore, liable to be quashed.

5. For the reasons recorded above I allow this petition and quash the order of Sessions Judge, Bhiwani dated 20th November, 1992. The Court will proceed to determine the case in accordance with law.