

(2016) 10 DEL CK 0038

In the Delhi High Court

Case No : Crl. M.C. 3102 of 2016 and Crl. M.A. No. 13324 of 2016 (Stay).

Jasdeep Kaur Chadha - Petitioner @HASH State and Others

Date of Decision : 18-10-2016

Acts Referred:

Arms Act, 1959 — Section 25, Section 27, Section 54, Section 59
Criminal Procedure Code, 1973 (CrPC) — Section 482, Section 483
Evidence Act, 1872 — Section 145

Citation : (2016) 4 JCC 2438

Hon'ble Judges : P.S. Teji, J.

Bench : Single Bench

Advocate : Mr. Sanjay Abbot and Mr. Tanmaya Mehta, Advocates, for the Petitioner; Mr. Amit Chadha, Additional Public Prosecutor for the State with Inspector Satyawar, Crime Branch, for the Respondents

Final Decision : Dismissed

Judgement

P.S. Teji, J. - By this petition filed under Section 482 and 483 of Cr. P.C. the petitioner seeks to challenge the order dated 04.08.2016 passed by learned Additional Sessions Judge (South) Saket, Delhi in SC No. 44/2016.

2. In brief, a case registered under Section 147/148/302/307/325/365/368/395/397449/450/452/342/201/412/120-B/34 of IPC and Sections 25/27/54/59 of the Arms Act was registered vide FIR No. 497/2012 Police Station Mehrauli, Delhi, at the instance of the complainant - Nand Lal, who was the driver of the deceased Hardeep Singh Chadha. Petitioner is the wife of the deceased. She has preferred the present petition aggrieved by the order dated 04.08.2016 passed by learned Additional Sessions Judge vide which the prayer of the prosecution to confront PW-23 Nand Lal with the portions of the statements of PW-23 dated 19.04.2014, 13.05.2014 and 26.05.2014 given before Juvenile Justice Board was declined.

3. Learned counsel for the petitioner contended that the charge sheet in the case has been filed and the charges have been framed against the accused persons; trial is at the stage of prosecution evidence; 22 witnesses have been examined.

However, PW-23 resiled from his statement made under Section 161 of Cr.P.C. and turned hostile. It is further contended on behalf of the petitioner that PW-23 - Nand Lal is also a witness for the prosecution before the learned Juvenile Justice Board I, wherein the inquiry of one of the accused/ juvenile in conflict with law is being conducted in the same FIR and he turned hostile on 27.11.2015. Thereafter the learned Special Public Prosecutor sought permission of the learned Sessions Judge to confront the statement made by PW-23 on 19.04.2014, 13.05.2014 and 26.05.2014 before the learned Juvenile Justice Board I, wherein the witness has supported the case of the prosecution before the Juvenile Justice Board, which was objected to by the accused and after hearing the arguments on behalf of both the sides, the impugned order was passed.

4. Learned counsel for the petitioner contended that the impugned order dated 04.08.2016 has been passed by the learned Additional Sessions Judge relying on the judgment passed by Hon''ble Supreme Court in the case of State (NCT of Delhi) v. Mukesh, (2014) 15 SCC 661, which is not applicable to the facts of the present case and the same is distinguishable from the facts of the instant case. It is submitted that in the case of Mukesh (supra), the confrontation was with regard to the statement made on television after filing of charge sheet and the said judgment cannot be read in a manner so as to reduce the scope of section 145 of Indian Evidence Act.

5. Learned counsel for the petitioner relied on a judgment of Division Bench of the Jammu and Kashmir High Court in the case of Sher Chand v. State, 1983 Cri. LJ 1482, wherein it was held that a Court under Section 145 of the Evidence Act, for instance, is entitled to discredit a witness by taking into consideration his earlier contradictory statement, even though the same has been recorded by a person not authorised to do so by law. It is further held that "... Section 145 of the Evidence Act does not specifically exclude a previous contradictory statement recorded by a person or tribunal not having jurisdiction to record the same. Therefore, according the counsel for the petitioner, the judgment of Jammu and Kashmir High Court squarely applies to the facts of the present case. Learned counsel for the petitioner further relied on the judgment of the Karnataka High Court in the case of Bharatiya Samskkrithi Vidhyapith v. Sri G. Parthasarthy, AIR 1977 Kant 113 and submitted that there is no bar under Section 145 of the Indian Evidence Act to confront the witness only with the statements recorded under Section 161 Cr.P.C. and the evidence recorded before the Juvenile Justice Board-I is a substantive piece of evidence, therefore the prosecution has every right to confront PW-23 with such statements.

6. To buttress his submissions, learned counsel for the petitioner relied on the judgment of Hon''ble Supreme Court in State of Kerala v. Babu & Ors.(1999) 4 SCC 621, wherein it was held that the case diary of another case can be summoned and the witness can be confronted with the statements recorded in that case diary and the plea of the prosecution was on a similar ground

therefore, the learned Sessions Judge ought to have allowed the prayer of the Special Public Prosecutor to confront PW-23 with the statement recorded before the learned Juvenile Justice Board-I.

7. I have heard the submissions of learned counsel for the petitioner and also gone through the impugned order dated 04.08.2016 passed by the learned Additional Sessions Judge.

8. After perusing the impugned order, this court observes that while arguing on behalf of the accused, the learned counsel have relied on the judgments in the case of *Mishi Mal v. State of M.P. & Ors.*, X Minor through Father Natural Guardian v. State & Ors., 2012 SCC Online Delhi 2174; *State (NCT of Delhi) v. Mukesh*, (2014) 15 SCC 661; *X Minor through Father natural Guardian v. State and Others*, 2012 CrL. LJ 4482, to oppose the prayer of the learned Special Public Prosecutor. This court observes that the learned trial court, after going through all the judgments relied upon by both the sides passed the impugned judgment, wholly based on the basis of the judgment of the Hon'ble Supreme Court in the case of *State (NCT of Delhi) v. Mukesh* (supra), dealing with section 145 of the Evidence Act, 1872.

9. For better appreciation and ready reference, extracts of section 145 of the Indian Evidence Act, 1872 is reproduced as under:-

"145. Cross-examination as to previous statements in writing. - 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. Cross-examination as to previous statements in writing.

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."

10. This court further observes that the impugned order also records that during the argument before the trial court, learned Special public prosecutor had not specified as to under which provisions of law he was seeking to confront PW-23 Nand Lal Mehto with the portions of statements off PW-23 dated 19.04.2014, 13.05.2014 and 26.05.2014 given before the Juvenile Justice Board, but it was obvious that he was invoking section 145 of Indian Evidence Act as there is no other provision under which a witness may be cross-examined/confronted with his previous statements made him in writing.

11. The learned Trial Court further recorded the relevant extracts from the

judgment in Mukesh (supra), which reads as under:-

"Having carefully considered the submissions made on behalf of the respective parties, we are inclined to hold that from the scheme of the Code of Criminal Procedure and the Evidence, it appears that the investigation and the materials collected by the prosecution prior to the filing of the charge sheet under Section 161 of the Code, are material for the purpose of Section 145 of the Evidence Act, 1872. The expression "previous statements made" used in Section 145 of the Evidence Act, cannot, in our view, be extended to include statements made by a witness, after the filing of the charge sheet. In our view, Section 146 of the Evidence Act also does not contemplate such a situation and the intention behind the provisions of Section 146 appears to be to confront a witness with other questions, which are of general nature, which could shake his credibility and also be used to test his veracity. The aforesaid expression must, therefore, be confined to statements made by a witness before the police during investigation and not thereafter."

12. The trial court further went on to record that since the statements were given by PW-23 Nandlal Mehtro before the Juvenile Justice Board on various dates, only after filing of the charge sheet in the present case, therefore, the same cannot be covered by the expression "previous statement made", as provided under Section 145 of the Indian Evidence Act.

13. In State of Haryana and Ors. v. Ch. Bhajan Lal and Ors., 1992 SCC Supl. (1) 335, which have been reiterated in a recent judgment of the Supreme Court in Criminal Appeal No. 773 of 2003, titled as Sundar Babu & Ors. v. State of Tamil Nadu decided on 19.02.2009, the extracts of which are reproduced hereunder:

"The parameters for exercise of power under Section 482 have been laid down by this Court in several cases. The Section does not confer any new power on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances, under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice.

It is neither possible nor desirable to lay down any inflexible rule, which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law, which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine, which finds expression in the section, which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "*quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest*" (when

the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action, which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice.

As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a *prima facie* decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage."

14. In the light of the facts of the present case, this court does not find any irregularity or infirmity in the impugned order. In addition, in view of the foregoing discussions on the principles relating to exercise of inherent powers under Section 482 of Cr.P.C., this Court does not find the present case being fit for exercising the inherent powers under Section 482 of Cr.P.C. in the present case. Finding no merit in the present petition, the present petition is dismissed.