
(2022) 10 BOM CK 0139

In the Bombay High Court

Case No : Criminal Revision Application No. 152 Of 2022

Navneet And Others

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 20-10-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 227
Indian Penal Code, 1860 — Section 34, 302
Evidence Act, 1872 — Section 27

Citation : (2022) 10 BOM CK 0139

Hon'ble Judges : Anil S. Kilor, J

Bench : Single Bench

Advocate : Piyush Shukla, Shamsi Haider

Final Decision : Allowed/Disposed Of

Judgement

Anil S. Kilor, J

1. In the present revision application a challenge is raised to the order dated 29th December, 2021 passed by learned Additional Sessions Judge-8, Nagpur in Sessions Trial No. 305 of 2021 vide order below Exh.31, rejecting the application filed under Section 227 of Code of Criminal Procedure for discharge.

2. The case of the prosecution in brief is that on 17th November, 2021 one Dharmendra Bharti lodged a complaint that his son Vishal during the night intervening 11th November, 2020 and 12th November, 2020 had gone out with accused Mithun Koche, however, he did not return home during the whole night. In the morning 12th November, 2020 around 9.30 am when the daughter of the informant made a phone call on the mobile of the deceased, it was picked up by the police officials who informed her that the deceased was found in unconscious state under the bridge of Pandhurna – Kalmeshwar bye-pass on Kolar river. In the hospital, he was declared brought death. Accordingly, the crime was registered for the offence punishable under Section 302 read with Section 34 of Indian Penal Code against the accused Mithun Koche. During the investigation,

memorandum under Section 27 of the Indian Evidence Act was recorded, wherein the accused Mithun Koche disclosed the name of the applicants and alleged that at the relevant time the applicants were presents with him at the spot of incident. Thereupon, the applicants were arrayed as accused.

3. During the investigation, nothing incriminating against the applicants was found. Thus, only basis to arraign the applicants as accused is memorandum under Section 27 of the Indian Evidence Act. In the said memorandum, the accused no.1 has stated that while they were on the bridge, exchange of hot words took place between the deceased and the accused no.1 and in the same he gave a push to the deceased because of which he fell down from the bridge. He states that at that time the applicants were sitting in the car and after the deceased fell down from the bridge, he went to the applicants and informed them about the incident. Thereupon, they reached to the deceased and found him lying in the pull of blood, therefore, they fled away.

4. Thereafter, the chargesheet was filed. Thereupon, application under Section 227 of the Code of Criminal Procedure was moved by the applicants for discharge which came to be rejected vide impugned order dated 29th December, 2021. The same is impugned in the present proceeding.

5. I have heard the learned counsel for the applicants and learned Additional Public Prosecutor.

6. Learned counsel for the applicants submits that except the memorandum under Section 27 of Evidence Act, there is no other material showing any involvement of the applicants. It is submitted that even if the statement of memorandum is accepted, it is clear that no role is attributed to the applicants and there is nothing to show any involvement of the applicants in the alleged offence.

7. It is submitted that without considering the material on record and law in relation to nature of statement of memorandum under Section 27 of the Evidence Act, the learned trial Court has rejected the application.

8. It is further submitted that tendency on part of the Prosecuting Agency in getting the entire statement recorded rather than only that part of the statement which leads to the discovery of facts is deprecated by the Hon'ble Supreme Court of India in the case of Venkatesh alias Chandra and another Vs. State of Karnataka 2022 SCC Online SC 765. Accordingly, he prays for discharge of the applicants.

9. On the other hand, learned Additional Public Prosecutor supports the impugned order and submits that learned trial Court has rightly rejected the application of the applicants filed under Section 227 of the Code of Criminal Procedure, for discharge of the applicants.

10. In the backdrop of the above referred rival submissions of both the parties, I have perused the application and the chargesheet, alongwith the reply filed by

the State.

11. The Hon'ble Supreme Court of India in the case of Venkatesh alias Chandra and another Vs. State of Karnataka (supra) while dealing with the parameters of Section 27 of Evidence Act has held thus:

20. Before we consider the merits of the matter, some of the features of the present case which we have found to be quite disturbing must be noted and deliberated upon. The Trial Court in paragraphs 27 to 30 of its judgment extracted voluntary statements of the appellants. First and foremost, going by the parameters of Section 27 of the Evidence Act 4 only so much of information which relates distinctly to the facts thereby discovered can be stated to have been proved. The extent and ambit of said provision as well as applicability thereof were considered by the Privy Council in Pulukuri Kotayya and Ors. v. King-Emperor as under:

10. Section 27, which is not artistically worded, provides an exception to the prohibition imposed by the preceding section, and enables certain statements made by a person in police custody to be proved. The condition necessary to bring the section into operation is that discovery of a fact in consequence of information received from a person accused of any offence in the custody of a Police officer must be deposed to, and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved. The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence; but clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate.

Normally the section is brought into operation when a person in police custody produces from some place of concealment some object, such as a dead body, a weapon, or ornaments, said to be connected with the crime of which the informant is accused. Mr. Megaw, for the Crown, has argued that in such a case the "fact discovered" is the physical object produced, and that any information which relates distinctly to that object can be proved. Upon this view information given by a person that the body produced is that of a person murdered by him, that the weapon produced is the one used by him in the commission of a murder, or that the ornaments produced were stolen in a dacoity would all be admissible. If this be the effect of section 27, little substance would remain in the ban imposed by the two preceding sections on confessions made to the police, or by persons in police custody. That ban was presumably inspired by the fear of the Legislature that a person under police influence might be induced to confess by the exercise of undue pressure. But if all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its

effect. On normal principles of construction their Lordships think that the proviso to s. 26, added by s. 27, should not be held to nullify the substance of the section. In their Lordships view it is fallacious to treat the "fact discovered" within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate-distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that "I will produce a knife concealed in the roof of my house" does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added "with which I stabbed A" these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."

21. As was observed by the Privy Council the words - with which I stabbed A were inadmissible since they did not relate to the discovery of knife in the house of the informant. Applying this logic, only that part of the statement which leads to the discovery of certain facts alone could be marked in evidence and not the entirety of the statement. Coming to the instant case and going by the principle and the illustration highlighted by the Privy Council, out of the statement of accused No.1, only the following portion except the words printed in italics would be admissible and can be marked in evidence:

"....If I am taken there, I will show the spot where we committed murder, and we will show the place where we have thrown the knife and the rod. And we will show the shop in which we sold the jewelleryes."

22. The expression where we committed murder must not come on record. Similarly, all the earlier facts narrated in the statement about past history which are in the nature of self-implication, would be inadmissible as amounting to a confession made to a Police Officer. All the statements namely, Exhs. P-21 to P-24 must be read accordingly.

23. We must observe that we have repeatedly found a tendency on part of the Prosecuting Agency in getting the entire statement recorded rather than only that part of the statement which leads to the discovery of facts. In the process, a confession of an accused which is otherwise hit by the principles of Evidence Act finds its place on record. Such kind of statements may have a direct tendency to influence and prejudice the mind of the Court. This practice must immediately be stopped. In the present case, the Trial Court not only extracted the entire statements but also relied upon them.

12. As observed in the above referred judgment that "fact discovered" within Section 27 of Evidence Act, embraces the place from which the object is

produced and the knowledge of the accused as to this, and the information given must relate-distinctly to this fact, therefore, the tendency on part of the Prosecuting Agency in getting the entire statement recorded rather than only that part of the statement which leads to the discovery of facts is deprecated by the Hon'ble Supreme Court of India.

13. In this case, the prosecution is relying upon the statement of accused no.1 under Section 27 of the Evidence Act to show the involvement of the applicants. The prosecution has considered the said memorandum under Section 27 of Evidence Act as confessional statement and using the same for the purpose more than discovery of facts.

14. Nothing has been pointed out from the chargesheet other than the said statement under Section 27 of Evidence Act to show the involvement of the applicants in the alleged offence.

15. Furthermore, even if the said statement is considered on its face value, it is evident that at the relevant time when the accused no.1 gave push to the deceased because of which he fell down from the bridge, the applicants were not present there, but they were sitting in the four wheeler and even they were not knowing about such incident till the time when it was informed by the accused No.1.

16. In the circumstances, in absence of any incriminating evidence against the applicants and in view of the fact that memorandum under Section 27 of Evidence Act recorded at the instance of accused no.1, cannot be used for the purpose to show involvement of the applicants, I am of the opinion that the learned trial Court has committed grave error in rejecting the application under Section 227 of the Code of Criminal Procedure and thereby denying discharge to the applicants. Accordingly, I pass the following order.

i. Criminal revision application is allowed.

ii. Order dated 29th December, 2021 passed by learned Additional Sessions Judge-8, Nagpur in Sessions Trial No. 305 of 2021 vide order below Exh.31 is hereby quashed and set aside;

iii. Applicants i.e. accused no.1 - Navneet S/o Mohan Bagahe and accused no.2 - Amit S/o Devidas Hanote in Sessions Trial No. 305 of 2021 are hereby discharged for the offence punishable under Section 302 read with Section 34 of Indian Penal Code;

iv. Criminal revision application is disposed of.