

(2021) 09 BOM CK 0037

In the Bombay High Court

Case No : Criminal Writ Petition No.376 Of 2019

Rajesh Mahadev Kunte

APPELLANT

Vs

Rahul Rajeev Gandhi And Others

RESPONDENT

Date of Decision : 20-09-2021

Acts Referred:

Constitution Of India, 1950 — Article 20(3)
Code Of Criminal Procedure, 1973 — Section 294, 294(i)
Evidence Act, 1872 — Section 63, 74, 76, 77
Indian Penal Code, 1860 — Section 500

Citation : (2021) 09 BOM CK 0037

Hon'ble Judges : Revati Mohite Dere, J

Bench : Single Bench

Advocate : Niteen Pradhan, Shubhada Khot, Amarendra Mishra, Sudip Pasbola, Kushal Mor, S. S. Hulke

Final Decision : Dismissed

Judgement

Revati Mohite Dere, J

1 Heard learned counsel for the parties.

2 By this petition, the petitioner has impugned the order dated 10th September 2018 passed by the learned Judicial Magistrate First Class, Bhiwandi, Mumbai, below Exhibit 61 in Summary Criminal Case No. 2425/2014, by which the learned Judge rejected the petitioner's (original complainant's) application seeking to exhibit the transcript copy of the respondent No. 1's speech under Section 294 of the Code of Criminal Procedure (`Cr.P.C').

3 Learned counsel for the petitioner (original complainant) states that pursuant to the criminal complaint instituted by the petitioner, in the Court of the learned Judicial Magistrate First Class, Bhiwandi, Mumbai, process was issued as against the respondent No. 1. He submits that the petitioner had filed the said criminal complaint relying on a CD containing the speech of respondent No. 1, which,

according to the petitioner, was defamatory. Learned counsel for the petitioner submits that pursuant to the order issuing process as against the respondent No. 1, the respondent No. 1 preferred a writ petition in this Court and sought quashing of the said criminal complaint instituted against him. He submits that to the said writ petition i.e. Writ Petition No. 4960/2014, the respondent No. 1 annexed a transcript copy of the speech (taken from the CD annexed to the criminal complaint). Learned counsel submits that the said writ petition was dismissed by this Court and that the said order was confirmed by the Apex Court. Learned counsel for the petitioner submits that thereafter, the petitioner filed an application in this Court and sought certified copy of the writ petition as well as the annexures annexed thereto and on receipt of the said certified copy of the writ petition and annexures thereto, filed an application before the trial Court under Section 294 Cr.P.C, with a prayer for exhibiting the said writ petition and the annexures thereto. According to the learned counsel for the petitioner, the respondent No. 1 admitted the writ petition and not the annexures, since the annexures were the documents of the complainant. Learned counsel relied on the verification statement of the respondent No. 1 in the writ petition at page 31, signed by the respondent No. 1, affirming the contents of paragraph Nos. 1 to 10 as true and correct. He submits that the affidavit in support of the petition was affirmed before a Notary Public and is a part of the certified copy supplied by the Registry of the High Court and as such, the writ petition alongwith its annexures, can be read in evidence with the aid of Sections 76, 77 and 63 of the Evidence Act. Learned counsel submits that the High Court proceedings being judicial proceedings, records thereof are public documents within the meaning of Section 74 of the Evidence Act and that certified copies of such public documents issued under the relevant High Court (Appellate Side) Rules, can be produced in proof of the contents of the public documents under Sections 76 and 77 of the Evidence Act. He submits that the writ petition in question was part of the judicial proceedings and annexures thereto were relied upon by the respondent No. 1, whilst arguing his case, seeking quashing of the proceeding pending before the trial Court and as such, the petition and the annexures thereto, were intended to be read and perused by the High Court, at the time of hearing of the said petition. According to the learned counsel, the writ petition alongwith its annexures form a consolidated pleading, both on facts and law and that the same cannot be separated or segregated when presented in judicial proceedings under Section 294 Cr.P.C. He further submits that the writ petition contains the pleadings based on the annexures to the writ petition and therefore, is an integral part of the "document" and that it also contains the transcript of the speech and that the same has been admitted by the respondent No. 1 even before the Apex Court. According to the learned counsel for the petitioner, the certified copies of the record issued duly by the Registry under Chapter XIII of the High Court (Appellate Side) Rules, are therefore, admissible in evidence, in relation to the contents thereof, as mandated by Section 76 and as such, can be tendered as evidence under Section 77 of the Evidence Act. Learned counsel submits that the learned Judge erred in not considering that the certified copy of

the writ petition filed by the respondent No. 1 in this Court alongwith its annexures was one composite "public document" and as such, ought to have exhibited the entire writ petition alongwith its annexures under Section 294 Cr.P.C. Learned counsel relied on the judgments in the cases of Md. Akbar and Anr. v. State of A. P. 2002 Cri.L.J. 3167, J. Shiva Shankar v. Deputy Superintendent of Police and Ors. 2002 Cri.L.J. 3168 and K. K. Manchanda & Anr. v. SD Technical Services P. Ltd. RA 320/2008 in CM (M) 1205/2007 dated 1/7/2009.

4 Learned counsel for the respondent No. 1 opposed the petition. Learned counsel for the respondent No. 1 has also tendered written submissions on behalf of the respondent No. 1, which were taken on record during the course of hearing, on 11th August 2021. According to the learned counsel for the respondent No. 1, it is a cardinal principle of criminal jurisprudence that the prosecution must stand on its own legs in a criminal trial, and that the said principle, cannot be given a go-by. Learned counsel for the respondent No. 1 submits that the transcript of the contents of the 'CD', annexed by the petitioner (original complainant) to his complaint before the trial Court, was annexed to the writ petition by the respondent No. 1, as the respondent No. 1 had challenged the order issuing summons to him. Learned counsel for the respondent No. 1 submits that the CD of the speech made by the respondent No. 1 was annexed by the petitioner (original complainant) himself, to the criminal complaint, as one of its annexures, pursuant to which, the transcript of the said CD was annexed by the respondent No. 1 to his writ petition, which was filed for quashing of the order issuing process. He submits that since the CD is a document relied upon by the petitioner (original complainant), the transcript/translation of the said CD made by the respondent No. 1, will have to be proved by the petitioner during trial, in accordance with law. He further submits that the respondent No. 1 cannot be compelled to admit or deny any document and that any such direction to an accused, to do so, would clearly violate Article 20(3) of the Constitution of India. Learned counsel in this regard relied on the judgment of the Division Bench of this Court in the case of State of Maharashtra v. Ajay Dayaram Gopnarayan & Ors. 2014 (2) Bom. (Cri.) 40 and the case of Niwas Keshav Raut v. State of Maharashtra 2015 (4) Bom. C.R. (Cri.) 397 , in support of his submission. He submits that the petitioner/original complainant cannot be absolved of his duty to prove his case as against the respondent No.1/accused. Learned counsel for the respondent No. 1 vehemently denies that the writ petition alongwith its annexures, together forms a composite "public document". He further submits that infact, it was not permissible for the learned Judge to recall or review his earlier order, inasmuch as, when the petitioner filed an application (Exhibit 58) under Section 294 Cr.P.C, the learned Magistrate vide its order dated 12th June 2018, had only exhibited the writ petition (without annexures) and the affidavit in support of the writ petition and as such, the learned Judge could not have entertained the second application (Exhibit 61) praying that the transcript annexed to the writ petition, be exhibited. He submits

that there is no merit in the petition and that no grounds are made out for interfering with the impugned order. Learned counsel relied on the judgments in the case of Om Prakash Berlia & Anr. v. Unit Trust of India & Ors. AIR 1983 Bom. 1, Anvar P. V. v. P. K. Basheer & Ors. (2015) 1 SCC (Cri) 24, Geeta Marine Services Pvt. Ltd. & Anr. v. State & Anr. AIR 2009 Cri. L. J. 910 and Nilesh Dinkar Paradkar v. State of Maharashtra 2011 (3) JCC 1972 (SC) in support of his submissions.

5 Perused the papers. A few facts as are necessary to decide the petition are set-out hereinunder :

It is the petitioner's (original complainant's) case that on 6th March 2014, the respondent No. 1, in his speech, accused the members of the Rashtriya Swayamsevak Sangh ('RSS') as being the assassins of Late Shri. M. K. Gandhi. Pursuant thereto, the petitioner, on 18th March 2014, filed a criminal complaint in the Court of the learned Judicial Magistrate First Class at Bhiwandi, as against the respondent No. 1 for the alleged offence punishable under Section 500 of the Indian Penal Code. To the said complaint, the petitioner set-out the list of witnesses to be examined and the list of documents sought to be relied on. In the list of documents, two documents were set-out (i) CD containing speech of the respondent No. 1 telecast live from Zee 24 Taas (Marathi News Channel), and (ii) news readers. The learned Magistrate vide order dated 11th July 2014 issued process as against the respondent No.1. The respondent No. 1 challenged the said order of issue process in this Court, by filing Writ Petition No. 4960/2014 and sought quashing of the order issuing process/criminal complaint instituted against him. To the said petition, the respondent No. 1 annexed the transcript copy of the speech from the CD relied upon by the petitioner. The said petition was dismissed by this Court vide order dated 10th March 2015. Being aggrieved by the said order dismissing the writ petition, the respondent No.1 challenged the same in the Apex Court. The said SLP (Cri.) No. 3749/2015 was dismissed by the Apex Court in 2015.

6 On 12th June 2018, the petitioner filed an application (Exhibit 58) under Section 294 of Cr.P.C, in the trial Court and called upon the respondent No. 1 to admit or deny the genuineness and correctness of the certified copy of the writ petition (Writ Petition No.4960/2014) alongwith the annexures and affidavit thereto filed by the respondent No.1 in the Bombay High Court. The said application was filed, as according to the petitioner, the respondent No. 1 had not disputed the making of the speech and had infact, annexed the transcript of the speech to the petition. The trial Court called for the say of the respondent No. 1 on the said application. The respondent No. 1 gave the following say on the said application :

"The defence does not dispute the genuineness of the documents i.e. Cri. Writ Petition No. 4960/2014, except the Annexure which are document of the complainant".

Thereafter, on the same day i.e. 12th June 2018, the learned Judge, after hearing the parties, passed the following order :

"ORDER

Perused the application and say. Accused admitting only this document such as copy of Writ Petition No. 4960/2014 and Affidavit. Accordingly, this document is exhibited."

7 On the very same day i.e. 12th June 2018, after the aforesaid order was passed, the petitioner filed another application (Exhibit 61) and prayed that the document at Exhibit 'C' (transcript of speech) of the writ petition, be exhibited, as the same was annexed by the petitioner (original complainant) to the petition and is not the complainant's (petitioner's) document. The said application was resisted by the learned counsel for the respondent No. 1. In its say to the said application (Exhibit 61), it was stated that Exhibit 'C' is a transcript of the alleged speech of the respondent No. 1, on the basis of which, the complaint was filed by the complainant (petitioner); that the speech is recorded on a CD and filed by the complainant/police alongwith the police report and hence, undisputedly, is a document of the complainant (petitioner) and hence, the transcript/translation of such document would also be a document of the complainant and hence the said document is specifically denied; that the annexures to the writ petition particularly annexure 'C' is a document filed for the limited purpose of the writ petition (filed for quashing) and as such, cannot be construed as admission on behalf of the respondent No.1; that the said transcript produced at Exhibit 'C' (transcript of the alleged speech) on the basis of the CD being the document of the complainant (petitioner), it was for the petitioner to prove the same in Court during trial; and that the respondent No. 1 cannot be compelled to admit any document, even if such document was part of some other ancillary proceedings filed by the respondent No. 1 arising out of the same matter or a different matter. Accordingly, the advocate for the respondent No. 1 prayed for rejection of the said application.

8 The learned Judicial Magistrate First Class, Bhiwandi, vide order dated 10th September 2018, rejected the petitioner's application (Exhibit 61), after observing that the said application was not tenable. Learned Judge further observed that Exhibit 'C' of the writ petition filed by the respondent No. 1 in High Court, is a transcript of the alleged speech of respondent No.1-accused, which is recorded on a compact disc (CD) on the basis of which, the complaint was filed by the petitioner (complainant) and hence, it is the complainant's document. It is further observed that the Annexure 'C' is a document which was annexed to the writ petition for the limited purpose, i.e. for seeking quashing of the case and as such, cannot be construed as an admission on behalf of the respondent No.1-accused; that these being documents of the complainant, the same is required to be proved during trial and as such it is not necessary to obtain admission or denial of the said document under sub-section (i) of Section 294 Cr.P.C. It was further observed that the endorsement of admission or denial

made by the respondent No. 1-accused on the document filed by the petitioner was sufficient compliance of Section 294 Cr.P.C.

9 Being aggrieved by the said order dated 10th September 2018, the petitioner has filed the aforesaid petition.

10 The submission of the learned counsel for the petitioner that Annexure C to the writ petition filed by the respondent No. 1 in this Court ought to have been exhibited under Section 294 Cr.PC, as it was relied upon by the respondent No.1, is wholly misconceived. It is a settled law that the prosecution must stand on its own feet in order to prove its case. Admittedly, the petitioner (original complainant) relied on certain documents including a CD containing the speech of respondent No. 1 in support of his complaint. It appears that when the respondent No. 1 filed a writ petition in this Court (Criminal Writ Petition No. 4960/2014), he annexed a transcript copy of the speech from the CD. Merely because the said transcript was annexed as Annexure 'C' to the petition, does not mean that the said document has been admitted by the respondent No.1, thereby absolving the petitioner from proving the same. It appears that the transcript of the said CD was annexed as annexure C for seeking quashing of the case, to show that no case was made out. The said CD is a document of the petitioner, which will have to be proved by the petitioner during the course of the trial in accordance with the law. Merely because the petitioner has obtained a certified copy of the petition alongwith the annexures, does not mean that the petitioner (complainant) can compel the respondent No. 1 to admit/deny Annexure 'C' to the said petition.

11 Learned counsel for the respondent No. 1 submitted that the Practice Note issued by this Court required that if any document is in a language other than English, typed copy of the translation in English of the contents must be produced alongwith the original document and that in the present case, the contents were not only on a CD but also were in Hindi, which necessitated the respondent No. 1 to produce a translated copy in English. Whereas, according to the learned counsel for the petitioner, since the respondent No. 1 had relied on the transcript, the said transcript Annexure 'C' to the writ petition was the respondent No.1's document.

12 The question that arises for consideration is whether, in the facts, the respondent No.1 can be compelled to admit Annexure 'C' i.e. transcript of the alleged speech, by taking recourse to the provisions of the Evidence Act. The answer is 'No'. The scope and import of Section 294 Cr.P.C is very clear i.e. to shorten the prosecution evidence and to ensure that certain documents when admitted by the accused, need not be proved by the prosecution. The legislative intent was not to bind the accused persons or compel them to admit or deny the genuineness of the documents produced by the prosecution. It is well settled that if an accused is compelled to deny or admit a document, it would be contrary to the constitutional mandate, inasmuch as, it would violate Article 20(3) of the Constitution of India. In the case of State of Maharashtra vs. Ajay

Dayaram Gopnarayan (Supra), this Court in para 28 has observed as under:

".... The intention of the Legislature was not to bind the accused persons or force him to admit or deny the genuineness of the documents produced by the prosecution that is why the court would not be justified in passing the order directing accused to admit or deny the documents, obviously since it would violate Article 20(3) of the Constitution of India."

Similarly, in Niwas Keshav Raut (Supra), this Court has, in para 11 observed as under :

".... Then it is not necessary for the accused, who is called upon to admit or deny the document, to choose either of these options and he may simply keep silence in respect of the document which may as well be an expression of his fundamental right under Article 20(3) of the Constitution of India which says that no person accused of any offence shall be compelled to be witness against himself. In case the accused chooses to deny the document or just remain silent in the regard, the document cannot be admitted in evidence and it would be required to be proved in accordance with law having regard to the right of the accused under Article 20(3) of the Constitution of India."

13 Thus, it is clearly evident that an accused cannot be compelled to admit/deny any document. The right of an accused to remain silent flows from the Article 20(3) of the Constitution of India and is sacrosanct in a criminal trial. No Court can compel or direct an accused to admit/deny any document. It is also not the intent of the legislature under Section 294 Cr.P.C.

14 As noted above, the CD is a document of the petitioner relied upon by him in the complaint and is also annexed to the list of documents. Merely because a document of the complainant (petitioner) is annexed to the petition filed by the respondent No. 1, would not make such a document a 'public document', obtained from whichever source, thus giving a complete go-by to the complainant (petitioner) from proving the same in accordance with law. As noted earlier, prosecution/complainant has to stand on its own feet and prove its case on its own steam.

15 As far as the judgments relied upon by the learned counsel for the petitioner are concerned, the same are in the fact situation of that case and would not be applicable to the case in hand.

16 Considering the aforesaid, there is no infirmity in the impugned order dated 10th September 2018 passed by the learned Judicial Magistrate First Class, Bhiwandi, Mumbai, below Exhibit 61 in Summary Criminal Case No. 2425/2014. The petition being devoid of merit, is dismissed.