
(1986) 03 GAU CK 0011
In the Gauhati High Court
Case No : Criminal Revision No. 91 of 1979

Shri Debabrata Choudhury

APPELLANT

Vs

Haricharan Kalita

RESPONDENT

Date of Decision : 03-03-1986

Acts Referred:

Commissions of Inquiry Act, 1952 — Section 6
Evidence Act, 1872 — Section 145

Citation : (1986) 1 GLR 393

Hon'ble Judges : R.K. Manisana Singh, J

Bench : Single Bench

Advocate : P.C. Katakya, J.M. Choudhury and S.M. Choudhury, for the Appellant;
P.G. Barua, for the Respondent

Final Decision : Allowed

Judgement

Manisana, J.—This revision petition arises from the order dated 22.3.79 passed by the learned Judicial Magistrate, Kamrup, Gauhati in Case No. 3060 of 1975. The Petitioner who is one of the accused in that case filed an application before the learned Judicial Magistrate, Kamrup, Gauhati for calling for the statements of the witnesses Harekrishna and four others who were examined before the Emergency Excess Enquiry Authority for using the same u/s 145 of the Evidence Act. The learned Magistrate rejected the prayer holding that the documents cannot be called for in view of Section 6 of the Commission of Inquiry Act, 1952 for short the "Act": hence the revision petition before this Court.

2. Mr. P.C. Katakya, learned Counsel has drawn my attention to a decision of a Division Bench of our High Court reported in (1982) 1 GLR 431, State of Assam v. Suprabhat Bhadra. In that case it has been held that Section 6 of the Act does not prohibit the use of the statement made before the Commission for limited purpose of contradiction u/s 145 of the Evidence Act. In this view of the matter the order of the learned Magistrate cannot be allowed to stand.

3. The decision in the said case is an authority on the proposition that the

statements of witnesses before the Commission can be used for the purpose mentioned in Section 145 of the Indian Evidence Act in a trial. The decision does not lay down that the Court can order the production of statements of witnesses before the Commission for inspection of a party in order to find out if there is any statement which can be used for the purpose of Section 145. Section 6 of the Act shows that a person gives statement before the Commission under a guarantee that no statement made by him in the course of giving evidence before the Commission shall subject him to, or be used against him in, any civil or criminal proceedings except a prosecution for giving false evidence by such statement. Keeping in view the guarantee u/s 6 of the Act to a witness before the Commission, the power of the Court is to be exercised based on sound and reasonable principles. Be that as it may, the jurisdiction of the Court to order the production of any document is to be exercised in the case where the Court is satisfied that the production of any document will be necessary or desirable for the purpose of trial or other proceedings.

4. For the foregoing reasons, the petition is allowed and the impugned order dated 22.3.79 passed by the learned judicial Magistrate, Kamrup, Gauhati in Case No. 3060/79 is set aside; and the case is sent back to the Judicial Magistrate, Kamrup, Gauhati to dispose of the petition in the light of Section 145 of the Indian Evidence Act and the above observation. I would like to request the learned Magistrate to dispose of the petition within a month from the receipt of the records.

5. With the above direction and observation the petition is disposed of.