

(2012) 09 GUJ CK 0019
In the Gujarat High Court

Case No : Criminal Revision Application No. 421 of 2011

State of Gujarat

APPELLANT

Vs

Dilavarbhai Javanbhai MIR and 1

RESPONDENT

Date of Decision : 13-09-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401

Citation : (2012) 09 GUJ CK 0019

Hon'ble Judges : M. R. Shah, J

Bench : Single Bench

Advocate : C.M. Shah, APP, for the Appellant; R.G. Chhara for Respondent(s): 1
- 2, for the Respondent

Judgement

Honourable Mr. Justice M.R. Shah

1. RULE. Shri R.G. Chhara, learned advocate waives service of notice of Rule on behalf of the respondents. In the facts and circumstances of the case and with the consent of learned advocates appearing on behalf of respective parties, present Criminal Revision Application is taken up for final hearing today. Present Criminal Revision Application u/s 397 read with Section 401 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "CrPC") has been preferred by the applicant herein - original complainant - State of Gujarat to quash and set aside the impugned order dated 06.07.2011 passed below Exh. 54 in Sessions Case No. 158 of 2010 by the learned Sessions Judge, Ahmedabad (Rural), by which the learned Sessions Judge has allowed the said application submitted by the respondents herein - original accused and refusing to grant the permission to the prosecution to examine the panch witness Nos. 32 and 33 on the ground that the panchnama produced at mark 10/14 is inadmissible in evidence.

2. It appears that there was a photography by the prosecution while making discovery panchnama at the instance of respondent No. 1 herein - one of the accused which was produced at mark 10/14. It appears that the prosecution wanted to examine the panch witness Nos. 32 and 33 - who prepared the

aforesaid panchnama/videography mark 10/14 and at that stage the respondents herein - original accused submitted the application Exh. 54 raising the objection against the prosecution examining those panch witness Nos. 32 and 33 on the ground that the panchnama produced at mark 10/14 is inadmissible in evidence as there can be alleged confession on the part of one of the accused i.e. respondent No. 1 herein. Unfortunately, the learned Sessions Judge accepted the said objections and by impugned order has allowed the said application Exh. 54 and refused to grant the permission to prosecution to examine the panch witness Nos. 32 and 33 by holding and observing that the panchnama produced at mark 10/14 is inadmissible in evidence.

2.1. Feeling aggrieved and dissatisfied with the impugned order passed by the learned Sessions Judge, Ahmedabad (Rural), the applicant - prosecution has preferred the present Criminal Revision Application.

3. Ms. C.M. Shah, learned Additional Public Prosecutor appearing on behalf of the applicant has vehemently submitted that as such the learned Sessions Judge has materially erred in allowing application Exh. 54 and restraining the prosecution to examine panch witness Nos. 32 and 33 by observing that the panchnama produced at mark 10/14 is inadmissible in evidence. It is submitted that when those panch witnesses were yet to be examined by the prosecution and the panchnama mark 10/14 was yet to be produced in the evidence, that was not the stage to consider the objection at this stage and to opine whether the panchnama mark 10/14 is admissible in evidence or not. It is further submitted that objection, if any, with respect to admissibility and/or inadmissibility of the panchnama at the most can be considered at the time when the same is produced in evidence and not prior thereto. It is further submitted that in a given case it may happen like the case on hand that even some portion of the panchnama/videography might be admissible in evidence and same might be considered as inadmissible evidence. It is submitted that in the present case the panchnama was prepared which is a discovery panchnama and the videography was done at the instance of one of the accused which is admissible in evidence. It is submitted that in any case the learned Sessions Judge has not properly appreciated the stage at which such objections were raised. It is submitted that unless and until the panchnama is produced on record during the course of evidence, the learned Judge was not required to consider whether such a panchnama is admissible in evidence or not. It is submitted that as such no such objections could have been submitted by the respondents herein - original accused and/or even could have been considered by the learned trial Court at this stage and unless and until they are produced in evidence. Ms. CM. Shah, learned APP has relied upon the recent decision of the Hon"ble Supreme Court in the case of Sunil Kumar Vs. State of Haryana, in support of her prayer to allow the present Criminal Revision Application and to quash and set aside the impugned order passed by the learned trial Court.

4. Shri Chhara, learned advocate appearing on behalf of the respondent Nos. 1

and 2 has as such fairly conceded that it was not the right stage to consider the objection with respect to the admissibility and/or inadmissibility of the panchnama, which were raised by the respondent - accused. He has also fairly conceded that as such at the most such objections with respect to admissibility and/or inadmissibility of the panchnama mark 10/14 can be raised as and when the same is produced in the evidence. Therefore, it is requested to pass appropriate order making suitable observations and reserving right of the accused to raise such objections at appropriate stage.

5. Heard learned advocates appearing on behalf of respective parties at length and perused the impugned order passed by the learned Sessions Judge, Ahmedabad (Rural). As stated herein above, application Exh. 54 was given by the respondents herein - original accused raising objection against examining the panch witness Nos. 32 and 33, by the prosecution on the ground that the panchnama produced at mark 10/14 is inadmissible evidence. It is required to be noted that at this stage and when panchas/panch witness Nos. 32 and 33 were yet to be examined by the prosecution to prove the panchnama mark 10/14 and as such it was yet to be produced in their evidence. It is a cardinal principle of law that unless and until any document is produced in evidence, no objection can be raised prior thereto raising objection with respect to whether such a document is admissible in evidence or not. The appropriate and proper stage to raise such an objection would be as and when such document is produced in evidence and such objections are required to be considered in accordance with law and on merits and considering the provisions of the Indian Evidence Act. Under the circumstances, the learned Sessions Judge, Ahmedabad (Rural) has materially erred in passing the impugned order restraining the prosecution to examine panch witness Nos. 32 and 33 making observations at this stage that the panchnama (which is yet not produced before the Court in evidence) is inadmissible evidence. Under the circumstances, it appears that the learned Sessions Judge has exercised the jurisdiction at an inappropriate stage and has exceeded in its jurisdiction to exercise such powers at this stage. Under the circumstances, the impugned order passed by the learned Sessions Judge, Ahmedabad (Rural) cannot be sustained and the same deserves to be quashed and set aside. In view of the above and for the reasons stated above, present Criminal Revision Application succeeds. Impugned order dated 06.07.2011 passed below Exh. 54 in Sessions Case No. 158 of 2010 by the learned Sessions Judge, Ahmedabad (Rural) is hereby quashed and set aside. However, it is observed that as and when the panch witness Nos. 32 and 33 are examined and the panchnama is produced in evidence and the accused persons are of the opinion that such panchnama is inadmissible in evidence, it will be open for them to raise appropriate objections at the appropriate stage which shall be considered by the learned Sessions Judge in accordance with law and on merits and considering the provisions of the Indian Evidence Act and it will be open for the prosecution to point out that either the whole panchnama or part of the panchnama is admissible in evidence which may also be considered by the

learned Sessions Judge in accordance with law and on merits and considering the parameters of the Indian Evidence Act without being in anyway influenced by the impugned order which otherwise is quashed and set aside. Rule is made absolute accordingly.