
(2001) 04 BOM CK 0027

In the Bombay High Court

Case No : Criminal Rev. Application No. 268 of 2000

State of Maharashtra

APPELLANT

Vs

Balasaheb @ Ramesh Laxman Deshmukh

RESPONDENT

Date of Decision : 27-04-2001

Acts Referred:

Constitution of India, 1950 — Article 20(3)
Criminal Procedure Code, 1973 (CrPC) — Section 161, 193, 209, 319, 319(1)
Evidence Act, 1872 — Section 132
Penal Code, 1860 (IPC) — Section 120, 34

Citation : (2002) 1 MhLj 148

Hon'ble Judges : N.V. Dabholkar, J

Bench : Single Bench

Advocate : V.D. Sapkal, app, for the Appellant; N.B. Suryawanshi, for the Respondent

Final Decision : Allowed

Judgement

1. By this revision, the State, which is complainant in Regular Criminal Case No. 97/96, State v. Rajiv Deshmukh and Ors. on the file of Judicial Magistrate (First Class), Chalisgaon, challenges legality, propriety and correctness of the order passed by learned Magistrate below Exhibit 190 on 5-9-2000.

By the impugned order, it is held that witness Balasaheb @ Ramesh Laxman Deshmukh respondent is entitled to protection under Article 20(3) of the Constitution of India and the prosecution is, therefore, directed not to examine him as a witness in the said case.

2. The incident in question took place on 26-4-1996 between 00-30 to 01-30 hours i.e. after just past midnight, on the night between 25th and 26th April, 1996. On Chalisgaon Dhule Road, there is a hotel run in the name and style "Hotel Rani Park". Complainant Charudatta Nanabhau Pawar was sitting in the northern part of the campus of said hotel. It is the prosecution story that PW Balasaheb @ Ramesh Laxman Deshmukh had invited him there for dinner.

Because complainant called accused No. 2 Shrikant @ Nana Deshmukh by waiving hand, he took it as an insult and he beat complainant by fists and kicks. Accused No. 1 also beat the complainant along with other accused.

Balasaheb @ Ramesh Laxman Deshmukh is recited as witness in the said matter. His statement is recorded on 28th April, 1996.

After the incident on 28-4-1996, on completion of investigation, Chalisgaon Police Station filed a chargesheet on 24-5-1996 against 4 persons, viz. (1) Rajiv Deshmukh; (2) Shrikant Deshmukh; (3) Sunil Kadasane; and (4) Mukesh Pachoriya, for the offences punishable under Sections 325, 323, 504, 506 read with 34 of Indian Penal Code. This chargesheet was registered and numbered as Criminal Case No. 97/96.

3. On 7-1-1998, complainant Charudatta Nanabhau Pawar filed a private complaint in the Court of JMFC, Chalisgaon, which was registered as Criminal Case No. 3/98. In this private complaint, 4 accused persons, who are chargesheeted in Criminal Case No. 97/96 are recited as accused Nos. 1 to 4. In addition, complainant has impleaded 6 more persons as accused Nos. 5 to 10.

Suffice it to point out that witness Balasaheb @ Ramesh Laxman Deshmukh is impleaded as accused No. 6. Suresh Pagare and S.N. Joshi, who were then attached as P.I. and P.S.I, to Chalisgaon Police Station, are impleaded as accused Nos. 7 and 8.

Remaining three - Sandeep Purnapatre (accused No. 5), a practising lawyer of Chalisgaon; Pradip Ramrao Deshmukh (accused No. 9) and Anil Ramrao Deshmukh (accused No. 10), accused Nos. 9 and 10 being uncle and father of accused No. 1, although impleaded, learned Magistrate refused to issue any process against them.

Learned Magistrate has passed a reasoned Order dated 2-2-1998 while issuing process against accused Nos. 1 to 4, 6, 7 and 8 for offences punishable under Sections 120-B, 325, 323, 506, 218, 219, 220, 465, 466, 469, 471 read with 34 of Indian Penal Code. For the purpose of present revision petition, we are not concerned, why the learned Judge was not inclined to issue process as against accused Nos. 5, 9 and 10.

4. Learned APP has produced copies of relevant documents from both criminal cases pending on the file of JMFC, Chalisgaon.

Prosecution story, as is put up before the Court in the State case registered as Criminal Case No. 97/96, is based on complaint allegedly registered by Charudatta with Chalisgaon Police Station on 27-4-1996. As per this complaint, PW Balasaheb @ Ramesh Deshmukh reached the house of complainant Charudatta on 26-4-1996 at about midnight hours and after some informal talk, he took complainant for dinner at hotel Rani Park. They talked for about half an hour till the food ordered was not served. The four accused at that time entered the hotel and occupied seats in the garden.

After PW Balasaheb @ Ramesh completed his meals, accused Rajiv and Sunil (Nos. 1 & 3) approached Balasaheb and offered to pay his bill. Accused Shrikant and Mukesh had also reached near the dining table at that time. Accused No. 1 took away PW Balasaheb outside the hotel compound for some confidential talk. At this juncture, as complainant called accused Shrikant by waving the hand, he got angry and attacked the complainant, with abusive language, as also fists and blows. It is added that accused No. 1 also reached there. He beat complainant by using brass fist and used abusive as well as threatening language.

According to prosecution story in this case, PW Balasaheb @ Ramesh Laxman Deshmukh was trying to control the accused persons and save the complainant. It is also added that PW Balasaheb @ Ramesh suggested that complainant Charudatta should go and lodge a complaint with the Police Station, but at the request of complainant, he was reached home and thereafter the complaint is said to have been registered on 27-4-1996 at 20-05 hours.

The story, as put up by the complainant in the private complaint, is certainly not identical much less congruent with the story as put up by the prosecution in the State case. For the purpose of present revision petition, it is necessary to take a note of the role attributed to Balasaheb @ Ramesh Laxman Deshmukh, in the private complaint, which is much different than in the State case. No doubt private complaint is also a case based on the same incident on the midnight between 26th and 27th April, 1996, that occurred at hotel Rani Park, during which all 4 accused persons charge sheeted in RCC No. 97/96 are said to have abused, threatened and inflicted injuries upon the person of the complainant.

According to story in the private complaint, Balasaheb @ Ramesh Laxman Deshmukh had conspired with accused Nos. 1 to 5. Such an inference is suggested by the complainant due to following circumstances. According to private complaint, Balasaheb @ Ramesh had approached him at his residence at midnight hours and asked him (complainant) to accompany, because he (Balasaheb) had some work with the complainant.

Accused No. 1 Rajiv is said to have uttered referring Balasaheb @ Ramesh,

^^ckyklkgso rQEgh vkeps dke dsys vkrk Mh- vk;- th- Hkqtaxjko eksfgrs ek>s ukrsokbZd vkgrs- rQEgkyk tsFks iksLVhax ikfgts rsFks d:u nsrks-**

i.e.

"Balasaheb, you have done our work, now that DIG Bhujangrao Mohite is my relative, I shall arrange a desired posting for you."

Thus, according to complainant, role of Balasaheb @ Ramesh, who is a witness in the State case, was that of conspirator and fetching the complainant to the location was the job complied by him.

In further part of the complaint, it is alleged that when complainant rested on the shoulders of Balasaheb @ Ramesh he released the complainant on the

ground and accused Nos. 1 to 5, therefore, could continue beating the complainant.

In the private case, it is not the story of complainant that Balasaheb @ Ramesh, either suggested him to lodge complaint with the Police Station or helped him reach his residence.

The role attributed to accused Nos. 7 and 8 in the private complaint RCC No. 3/98 is also the cause for necessity of private prosecution. According to complainant, after having reached home by about 4 a.m., father of complainant immediately took him to Chalisgaon Police Station. He was referred by Police Station to Government hospital, where he was examined and treated by Dr. Subhash Purnapatre and a written complaint about the incident, accompanied by medical certificate, was tendered before accused No. 7 (PI Subhas Pagare) on 26-4-1996 itself. At the instructions of accused No. 7, Police Station Officer also acknowledged the receipt of this complaint. However, accused No. 7 did not give a copy of first information registered in the Police Station register, on the basis of this written complaint in spite of demand. It is the case of complainant that accused Nos. 7 and 8 have suppressed this written complaint tendered by him on 26-4-1996. He was called at the Police Station on 27-4-1996 at about 7-30 p.m. when accused Nos. 9 and 10 i.e. uncle and father of accused No. 1 were present in the Police Station. Accused No. 7 PI Pagare told the complainant that his signature was to be obtained on additional statement. Accused No. 7 directed accused No. 8 to bring the additional statement, when accused No. 8 PSI Joshi brought a ready statement and complainant was asked and ultimately forced to sign the same without allowing him to read the contents. According to complainant, accused Nos. 7 and 8 have filed the State case registered as RCC No. 97/96 on the basis of this complaint dated 27-4-1996 upon which signature of complainant is obtained by force and without allowing him to know the contents.

Although major details regarding difference in the prosecution story, as put up in the State case and private complaint are given above, in brief, for the purpose of present revision petition, it is sufficient to take a note that Balasaheb @ Ramesh Laxman Deshmukh, who is prosecution witness in the State case, playing the role of a friend cum savior of complainant Charudatta Deshmukh, is said to be a part and parcel of the conspiracy to beat the complainant. He is motivated to help accused Nos. 1 to 4, probably, in order to secure transfer to a suitable posting and is, therefore, impleaded as accused person.

5. As many as five Criminal Applications Nos. 348, 445 , 583, 1549 of 1998 and 839 of 1999 arising out of these two cases appear to have been disposed of by a common order dated 24-6-1999 of this Court, relevant portion of which is as follows :

"(1) RCC No. 97/96 and Criminal Case No. 3/98 presently pending before the Court of learned JMFC, Chalisgaon, will be clubbed together, tried and decided

simultaneously."

The parties were directed to appear before JMFC, Chalisgaon, on 30-6-1999 and the Magistrate was directed to dispose of the cases within a period of four months.

6. Learned APP has produced for ready reference, copy of an order passed by JMFC (Joint Court), Chalisgaon, on 24-4-2000. This is an order passed by the learned Magistrate below Exhibits 102 and 112 in Regular Criminal Case No. 97/96 (State Case). Relying upon the observations of the Hon"ble the Apex Court in Harjinder Singh Vs. State of Punjab and Others, the Magistrate has ordered,

"Thus, both these cases are to be tried separately, but to be disposed of simultaneously, without losing the identity of each case."

The learned Judge has further observed that simply by clubbing the two cases together, there was no question of framing additional charge or altering the charge already framed in the State case or of holding fresh trial by taking into consideration the allegations raised in the private case. According to the Magistrate, allegations raised either by private complaint or so called FIR dated 26-4-1996 could not form the basis of the charge or additional charge in the State case. From the concluding paragraph of this order, it appeal"s that learned Special Prosecutor had urged to implead Balasaheb @ Ramesh Laxman Deshmukh as an accused person in the State case. Learned Magistrate did not concur with the learned Special Prosecutor and, therefore, refused to redraft the charge and proceed de-novo in the State case. This order has come to be passed after as many as 6 witnesses were already examined in the State case.

Although Harjinder"s case is relied upon by learned APP Shri Sapkal, the same was for a limited purpose. It was pointed out by him that the trial Court has decided to proceed with two cases in the manner laid down by Hon"ble Apex Court in Harjinder"s case. Learned Magistrate has borrowed the observations of Hon"ble Apex Court from para 8 of reported case, while directing that the State case and private complaint shall progress simultaneously and be decided on the same day but separately, without loss of identity. As can be seen from observations in para 8 of the reported judgment, adoption of such a course is necessary to obviate the risk of two Courts coming to conflicting findings.

7. By application dated 31-3-2000 filed in RCC No. 97/96 (challan case), PW Balasaheb @ Ramesh prayed for directions to the prosecution not to examine him as a witness by exercising testimonial compulsion on him. He has pointed out that he is impleaded as an accused person in RCC No. 3/98 (private complaint), which is ordered to be heard and disposed of with RCC No. 97/96. While deposing, complainant Charudatta Pawar has levelled specific allegations against him and, thus, it is claimed that putting him in the witness box will be tantamount to compelling an accused person to testify against himself in a criminal case and, therefore, directions, as indicated above, were prayed for.

By impugned order passed on 5-9-2000, learned Magistrate observed that complainant has made specific allegations against applicant/witness in his evidence at Exhibit 142. The prosecution was also relying upon Exhibit 143, the complaint dated 26-4-1996 in which applicant/witness was shown co-conspirator. Relying upon judgment of the Supreme Court in *Balkishan A. Devidayal Vs. State of Maharashtra*, the Judge held that the applicant/witness was "accused of an offence" within the meaning of Article 20(3). He could not be said to have waived the protection merely because his statement was recorded u/s 161 of Criminal Procedure Code, 1973. Therefore, learned Magistrate directed the prosecution not to examine applicant as witness in the State case.

8. It was argued by learned APP that the State case has neither recited applicant Balasaheb @ Ramesh as an accused nor the learned Judge has framed charge against him and, therefore, he is not "an accused", in the said case. In order to claim protection of Article 20(3) of the Constitution, three ingredients are required to be satisfied ;

- (i) person accused of any offence;
- (ii) compulsion;
- (iii) to be a witness against himself.

It was also added that Balasaheb @ Ramesh having already made a statement before Police u/s 161, Criminal Procedure Code, 1973, there is no element of compulsion. Since he is expected to depose in conformity with the statement u/s 161 of Criminal Procedure Code, 1973, which contains no material incriminating himself, there is no element of deposing against himself. Thus, according to Shri Sapkal, none of the three ingredients of Article 20(3) are attracted.

Shri Suryawanshi, learned counsel while defending the impugned order on behalf of protected witness, pointed out that in his deposition recorded at Exh.142, complainant Charudatta has levelled imputations of being co-conspirator against Balasaheb @ Ramesh. The trial Court has also exhibited office copy of the application by complainant dated 26-4-1996 as Exh.143 (Secondary evidence admitted, original tendered to Police Station not being available) which document also paints Balasaheb @ Ramesh as conspirator and, therefore, now it can be said that he is facing "formal accusation" even in the State case and it is not open for State to claim that he is not an accused. Reliance was also placed on Section 319(1) of Criminal Procedure Code, 1973, and it was argued that now trial Court has no option but to implead Balasaheb @ Ramesh as an accused person in the State case.

Section 319(1) of Criminal Procedure Code, 1973, reads as follows :

"319. Power to proceed against other person appearing to be guilty of offence. --
(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court

may proceed against such person for the offence which he appears to have committed.

Reliance was also placed on Joginder Singh and Another Vs. State of Punjab and Another, in order to propound that now Magistrate has no option but to implead Balasaheb @ Ramesh as co-accused in the State case.

As can be seen on going through paras 6 and 7 of the reported case, it mainly resolves conflict between Sections 193 and 319 of Criminal Procedure Code and concludes as follows in para 8 of the judgment:--

"8. It will thus appear clear that u/s 193 read with Section 209 of the Code when a case is committed to the Court of Session in respect of an offence the Court of Session takes cognizance of the offence and not of the accused and once the Sessions Court is properly seized of the case as a result of the committal order against some accused the power u/s 319(1) can come into play and such Court can add any person, not an accused before it, as an accused and direct him to be tried along with the other accused for the offence which such added accused appears to have committed from the evidence recorded at the trial. Looking at the provision from this angle there would be no question of reading Section 319(1) subject or subordinate to Section 193."

Thus, the case nowhere lays down that it is obligatory on the trial Judge to implead and proceed against a person, who appears to be guilty of offence, by exercising powers u/s 319 of Criminal Procedure Code, 1973.

On this aspect, peculiar facts in the matter at hands cannot be ignored. Witness Balasaheb @ Ramesh is facing the trial, in the form of private complaint registered as Case No. 3/98, on the basis of same incident which is subject matter of C. C. No. 97/96. The two cases are to proceed simultaneously but separately. Therefore, it is not at all necessary for trial Court to implead him as co-accused in State Case No. 97/96. Use of phrase ".....the Court may proceed against such person" in Section 319(1) of Criminal Procedure Code, 1973, keeps a margin for the trial Judge and enables him to abstain from exercising the powers u/s 319 of Criminal Procedure Code, 1973.

In fact, on reference to order dated 24-4-2000, which is passed by learned trial Judge below Exhibits 102 and 112 in RCC No. 97/96 and especially contents in paras 2 and 3 of the same, it is evident that trial Court has refused to treat the application dated 26-4-1996 exhibited as Exhibit 143 as FIR in the State case. It has also refused to alter charge already framed or to start the trial de novo. The contention of learned APP that Balasaheb @ Ramesh is not facing trial so far as State case is concerned and, therefore, he is neither likely to be tried nor convicted in the same is, therefore, well founded.

It can be visualized that reference by learned Advocate Shri Suryawanshi to Section 319 of Criminal Procedure Code, 1973, together with contents in Balkishan A. Devidayal Vs. State of Maharashtra, , is aimed at speculation that

Balasaheb @ Ramesh can possibly be impleaded as an accused person in the State case any time in future in the light of deposition of complainant at Exhibit 142 and exhibition of application dated 26-4-1996 at Exhibit 143. Para 70 in the matter of Balkishan reads as follows:

"To sum up, only a person against whom a formal accusation of the commission of an offence has been made can be a person "accused of an offence" within the meaning of Article 20(3). Such formal accusation may be specifically made against him in an F.I.R. or a formal complaint or any other formal document or notice served on that person, which ordinarily results in his prosecution in Court."

Based on the observations of Supreme Court, Shri Suryawanshi claimed that once the application dated 26-4-1996 is exhibited, witness Balasaheb @ Ramesh is facing formal accusation.

In this context, it must be taken into consideration that evidence of complainant Charudatta is being recorded for the purpose of two cases and exhibition of his complaint application dated 26-4-1996 is relevant and material in view of accusations levelled in the private complaint Criminal Case No. 3/98 to the effect that his application which was first in time was suppressed by accused Nos. 7 and 8 in that case and they obtained another statement by force which is treated as F.I.R. Looking to the fact that statement of Charudatta dated 27-4-1996 is treated as F.I.R. for the purpose of challan Case No. 97/96, contention of learned counsel Shri Suryawanshi that Exhibit 143 is admitted in evidence as FIR in the State case cannot be sustained. In fact, as already pointed out earlier, the learned trial Judge has rejected such a contention in his order dated 24-4-2000.

In reply to these arguments of Shri Suryawanshi, learned APP Shri Sapkal has placed reliance upon The State of Bombay Vs. Kathi Kalu Oghad and Others, and more particularly conclusions drawn by the Court in para 16 of its judgment. Conclusion at Sr. No. (7) reads as follows :

"(7) To bring the statement in question within the prohibition of Article 20(3), the person accused must have stood in the character of an accused person at the time he made the statement. It is not enough that he should become an accused, any time after the statement has been made."

Taking into consideration the conclusion, it is felt, apprehension that Balasaheb @ Ramesh may be impleaded as an accused person post deposition may not be sufficient to grant him protection against deposition, much less a blanket protection as is conferred by the trial Court. In view of the fact that Balasaheb @ Ramesh is still not impleaded as an accused by amending the charge and in exercise of the powers conferred by Section 319(1) of Criminal Procedure Code, 1973, even after deposition of Charudatta and exhibition of application dated 26-4-1996 enables us to lead to an inference that as at present if he is to step into witness box, he is not formally impleaded as an accused person. Whether application dated 26-4-1996 is FIR for the purpose of Criminal Case No. 97/96 is answered in the negative by learned Judge with his order dated 24-4-2000 and

in any case the contentious issue is subjudice as at present. The impugned order granting protection to Balasaheb against entry into witness box at this stage cannot escape the blame of being premature. FIR, formal complaint, etc. referred in para 70 of Balkishan's case are illustrations as to when a person can be said to be facing formal accusation. But the stage at which the trial stands is also of significance. For example, even if a particular name appears in the FIR, but after investigation into the matter, Police do not implead such a person as accused in the challan filed before the Magistrate, the person cannot be said to be facing formal accusation merely because his name is incorporated in the FIR. Incorporation of name in the chargesheet, incorporation of the name in the formal charge framed by the Magistrate will be further illustrations indicating the particular person facing formal accusations. As the case advances in its various stages, formal accusation in an earlier document may or may not be sufficient to say that the person is "an accused" in that case. Since Criminal Case No. 97/96 has proceeded beyond the stage of filing chargesheet and framing of charge, even if application dated 26-4-1996 is treated as FIR, the fact remains that in the chargesheet and the charge framed by the Judge, name of Balasaheb @ Ramesh is not recited as accused person. A formal document at subsequent stage of the trial not indicating Balasahab as an accused person nullifies the effect, if any, of the accusations against him in the application dated 26-4-1996, so far as Criminal Case No. 97/96 is concerned.

At the cost of repetition, it may be said that exhibition of application dated 26-4-1996 at Exhibit 143 is relevant and material for private complaint No. 3/98 and the same may be irrelevant and inadmissible, so far as State case No. 97/96 is concerned. Therefore, learned APP Shri Sapkal appears justified on contending that Balasaheb @ Ramesh is still not an accused in the State case.

9. Attention of both the lawyers was drawn to Section 132 of Indian Evidence Act since it is felt that reference to the same for decision of revision petition on merits is inevitable. Said section along with its proviso is reproduced here below for ready reference :

"132. Witness not excused from answering on ground that answer will criminate.
-- A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture, of any kind :

Proviso. -- Provided that no such answer which a witness shall be compelled to give shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer."

On going through the section, it can be seen that; a witness cannot be excused

from answering any question that is relevant to the matter in issue. But on reference to the proviso to the said section, it can be seen that in case the answer to such question directly or indirectly criminales such witness or exposes him to penalty or forfeiture of any kind, he is also protected from arrest or prosecution on the basis of such answer. By virtue of the proviso, such answer also cannot be proved against him in any criminal proceeding.

It may not be incorrect to say that Section 132 of Evidence Act is a tailor made apparel from the yarn provided by Article 20(3) of the Constitution.

Once a person steps into a witness box, he would be under obligation to answer each and every question, irrespective of the fact that it criminales or tends to expose the maker of it to any penalty or forfeiture, subject to only one qualification that question must be relevant to the matter in issue. Thus, if respondent Balasaheb @ Ramesh is put in the witness box, two ingredients of Article 20(3) out of the three would be satisfied i.e. he would be giving evidence/ a witness and that would be under compulsion, since he has already expressed his unwillingness to step into witness box. Argument of learned APP that because he has willingly given statement u/s 161 of Criminal Procedure Code, 1973, and hence there is no element of compulsion, is not sustainable in that sense. In spite of this, he is not entitled to protection under Article 20(3), because he is still not an accused in the State case and also because by deposing as a witness in the State case, ordinarily he would not be giving evidence against himself what evidence he would depose to, his statement u/s 161 of Criminal Procedure Code, 1973, is the basis and indicator (pages 12 to 15 Exh. B of petition), which contains no material that criminales/exposes or tends to criminate/ expose the witness Balasaheb @ Ramesh. A person certainly can be compelled to be a witness he cannot be compelled to be witness against himself. Compulsion to depose as a witness and render assistance in the administration of justice is embodied in Section 132 of the Indian Evidence Act, at the same time protection against self-incrimination is incorporated in the proviso. Reading Section 132 and proviso together, a witness while in the witness box will be able to point out to the Court that answer to a particular question would be self inculpatory or tend to expose him to penalty/ punishment/forfeiture etc. It would be for the Court to compel him to answer, if the Court is of the view that answer is relevant to the matter before it. As soon as the Court directs him to answer, protection as embodied in the proviso to said section would come into play. The answer will not be available to state either to effect arrest or to prosecute the witness for an offence that may appear to have been committed by the witness, as a result of such answer, nor such answer will be available to anybody (complainant in private case No. 3/98 included) to be used against him in any criminal proceedings. Even complainant in CC No. 3/98 will not be able to rely upon such answer, in support of his case, and he will have to prove his case by other evidence, de hors such self incriminating statement. Of course, the trial Court would be obliged to record objection of the witness to answer any particular question, as recently laid down by Hon"ble Apex Court in 2001 AIR SC Weekly

841, Bipin Panchal v. State of Gujarat, before compelling him to answer the question. The only exception is prosecution for perjury/giving false evidence. If such a statement is false evidence, the consequences of prosecution for perjury can follow, as in the case of any other witness.

10. To sum up, witness Balasaheb @ Ramesh Laxman Deshmukh is not an accused in C.C. No. 97/96 in spite of accusations against him in the deposition of complainant Charudatta (Exh. 142) and admission of complainant dated 26-4-1996 (Exh. 143) which are pieces of evidence relevant in C.C. No. 3/98, since he is not charged by the charge framed in that case. Therefore, even if he is compelled to depose as a witness in C.C. No. 97/96 that cannot be said to be compulsion to give evidence against himself. Moreover, by virtue of proviso to Section 132 of Indian Evidence Act, he is protected from use of self incriminating statements against him, in any other proceedings including C.C. No. 3/98.

The blanket protection granted by Magistrate vide his order dated 5-9-2000 cannot, therefore, be sustained. The revision petition is allowed and impugned order is quashed and set aside.

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At this stage, Advocate Shri Suryawanshi prays that in order to enable the witness respondent Balasaheb @ Ramesh to obtain stay or suitable directions from the Hon''ble Supreme Court, the order may not be given effect immediately (The trial Court is under directions to expedite the case). However, in the interest of justice, present order shall not be given effect for a period of four weeks.

Certified copy expedited.

11. Revision petition allowed.