

(1982) 01 GAU CK 0002
In the Gauhati High Court

The State of Assam

APPELLANT

Vs

Suprabhat Bhadra and Others

RESPONDENT

Date of Decision : 05-01-1982

Acts Referred:

Commissions of Inquiry Act, 1952 — Section 6, 8B
Criminal Procedure Code, 1973 (CrPC) — Section 395
Evidence Act, 1872 — Section 145
Penal Code, 1860 (IPC) — Section 302

Citation : (1982) CriLJ 1672

Hon'ble Judges : T.C. Das, J;B.L. Hansaria, J

Bench : Division Bench

Judgement

B.L. Hansaria, J.—This is a reference u/s 395 of the Cri. P. C- by the learned Sessions Judge, Nowgong, soliciting this Court's opinion on an important question of law. The same is whether a witness in a criminal trial can be allowed to be contradicted with reference to the statement made by him before a Commission of Inquiry constituted under the Commissions of Inquiry Act, 1952, hereinafter the Act.

2. In the case before the learned Sessions Judge, some persons were facing trial under various sections of law, including 302 IPC. One of the charges was that the unlawful assembly had caused the death of one Anil Bora at Hojai Town. To inquire into the circumstances leading to the death of aforesaid Anil a Commission of Inquiry under the Act had been constituted and which had submitted its report. a petition was, therefore, filed before the trial court on 27-6-1980 stating that many charge-sheeted witnesses were examined before the aforesaid Commission, and so, for the ends of justice and for proper defence of the accused, the statements of these witnesses before the Commission should be called for. The Presiding Officer by an order dated 5-7-1980 allowed this prayer as he felt that "the statement made by witnesses before Commission can be used for corroboration and contradiction u/s 145 Evidence Act." He, therefore, ordered to call for the depositions from the Home Secretary. The records,

however, did not come even by 25-3-1981 when a fresh prayer was made to call for the records. In the meantime there was change in the incumbent of the office. The learned Sessions Judge who dealt with this matter on 25-3-1981 felt that the record of Commission of Inquiry is inadmissible u/s 6 of the Act. In view of the conflicting decision the point has been referred to this Court u/s 395 of the Code. This is how the matter is before us.

3. Shri Lahiri who has appeared for the accused persons first raised a point that it was not open to the succeeding Sessions Judge to modify the order already passed in this regard by his predecessor. We do not propose to go into this aspect and dispose of the reference on this short ground inasmuch" as the point is of importance and needs decision at our hand for guidance of the subordinate judiciary.

4. To express our views on the point under reference, let Section 6 of the Act be noted:

Statements made by persons to the Commission.- No statement made by a person in the course of giving evidence before the Commission shall subject him to. or be used against him in, any civil or criminal proceeding except a prosecution for giving false evidence by such statement:

Provided that the statement-

(a) is made in reply to a question which he is required by the Commission to answer, or

(b) is relevant to the subject matter of the inquiry.

5. An analysis of this section brings out these propositions:

(1) No statement made by a person in the course of giving evidence before a Commission shall subject him to any civil or criminal proceeding; and

(2) no such statement shall be used against him in any civil or criminal proceeding.

(3) This embargo would not apply if the statement maker is being prosecuted for having given false evidence by such statement.

The restriction imposed by the proviso to the section may not detain us as it would be assumed that the requirement is satisfied for the statemens in question. The first of the above three pro-positions presents no difficulty. This safeguard lakes care of any probable direct harm to the person making the statement as it lays down that because of the statement made by him, the person shall not be subjected to any civil or criminal proceeding. To illustrate, if a person states before a Commission : "I had burnt the house of A", A cannot file a suit claiming damage against such person relying on that statement, nor can any criminal proceeding be started against the person because of the above statement.

6. The trouble maker is the second proposition. Can it be said that when a witness is sought to be contradicted in a civil or criminal proceeding with reference to his earlier statement made before the Commission, that statement is being used "against him"? One view may be that this is so, specially when it is found by referring to the earlier statement made before the Commission that the witness was giving a false evidence in the subsequent legal proceeding which may even make him liable for prosecution of having committed perjury. To decide whether the legislature really wanted to prohibit even this use of the earlier statement, we have to bear in mind the object of the Act, the public interest involved in discovering truth in a Court of Justice and the right of an accused or adversary to cross-examine a witness and to solicit truth from him. There can be no denial that Section 6 must have found its place in the Act to enable the Commission to solicit true facts from witnesses, who would have been afraid of telling the truth, the whole truth and nothing but the truth, but for the protection given by Section 6. If the witnesses apprehend prosecution or civil proceeding against them for the statements made before the Commission, their own self interest might have stood in the way of giving out the full truth known to them. But then Section 6 has a reservation, and the same is that the statement made before the Commission cannot be false, and were it so, the maker thereof runs the risk of prosecution for giving false evidence. Section 8B of the Act also shows that where the credit of a witness is being impeached, no opportunity visualised by that section need be given - the underlying idea perhaps being that if to shake the credibility of a witness, his credit is impeached, the same cannot be regarded as an act prejudicial to the reputation of the person, "inasmuch as the finding of a Commission must after all be based on the evidence of credible witnesses.

7. As a witness is supposed to speak the truth before the Commission, so also he had to be a witness of truth in any civil or criminal proceeding, Therefore, use of the statement made before the commission cannot strictly speaking be said to be using the same against him". Of course, if he departs from his earlier statement, he may be contradicted as permitted by Section 145 of the Evidence Act. It would not advance the cause of justice, if even this right is denied to a person who is going to be affected in any civil or criminal proceeding because of what has been deposed by a witness if he not be a reliable person having made contradictory statements. It may as well be that on the basis of the statement of a witness a person may find himself saddled with heavy civil liability, or may be lodged inside a prison, though the witness had earlier given a contradictory statement. Cause of justice would, therefore, undoubtedly suffer if a broad meaning were to be given to the protection visualised by the second of the aforesaid propositions of Section 6 of the Act. It is a settled rule of interpretation that if two views are reasonably possible on the construction of a statutory provision, the one which obviates injustice or advances the. cause of justice (and larger public interest as against private interest of an individual) should be upheld. See Maxwell's Interpretation of Statutes, 12th Edn. p. 208.

8. We cannot, however, stress the language of a provision which would defeat the object behind it. As a person is assured by Section 6 of the Act that statement made by him in the Commission would not be used against him in any civil or criminal proceeding the assurance cannot be whittled down by so interpreting the provision which would water down the safeguard, It seems to us that if while allowing use of the earlier statement for the purpose of contradiction, it is held that the earlier statement cannot be used in any prosecution that may be launched against the witness for having given false evidence in the subsequent proceeding, the protection given by Section 6 of the Act will have its full play and at the same time it will not throttle the larger public interest which is to discover truth and for this purpose to impeach the credit of a witness making contradictory statement in a Court of Justice. Such an interpretation also gives strength to the valuable right of cross-examination conferred on parties.

9. In examining the matter thus we have been immensely benefited by the discussion of this subject by a Division Bench of the Bombay High Court in *State of Maharashtra v. Ibrahim* 1978 Cri LJ 1157 which upheld the view taken by a single Judge in *Sohanlal Pahladrai Vaid Vs. State*, has noted the different aspects involved, and has dealt with some other decisions cited at the Bar. As we are in respectful agreement with the view taken by that Bench except that the statement cannot be used for prosecution of perjury, we have not burdened this judgment with the case law. We only wish to say that the decision of the Supreme Court in *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, and that of Madhya Pradesh High Court in *Puhupram v. State* 1968 MPLJ 629 were rightly held in the aforesaid case to have no bearing insofar as the point under examination is concerned, as they had dealt with some other aspect of the matter altogether. Let it be said to the credit of learned Advocate General, Assam, who has also assisted us in answering the reference, that he too felt that prohibition of his statement before the Commission for the limited purpose of contradiction was not intended by Section 6 of the Act.

10. We, therefore, hold that Section 6 of the Act does not inhibit use of the statement made by a witness before a Commission in a subsequent civil, criminal or other proceeding for the purpose of contradicting the witness. The use of the statement for corroboration is not visualised by Section 145 Evidence Act, but if any other statute permits it, Section 6 of the Act apparently does not stand in the way. The statement would not, however, be usable against the witness in any prosecution of perjury for having given false evidence in the subsequent proceeding.

11. Let a copy of this opinion be sent to the learned Sessions Judge, Nowgong urgently to enable him to call for the relevant records and to dispose of the sessions case expeditiously.

T.C. Das, J.

12. I agree.