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Court : Allahabad

Decided On : Mar-25-1977

Reported in : 1977CriLJ2008

Judge : Prem Prakash and S.K. Kaul JJ.;

Appellant : Babulal

Respondent : State

Judgement :

Prem Prakash, J.

1. This matter upon a reference made ' by a learned single Judge of this Court ariess from a conviction Under Section 3 of the Railway Property (Unlawful Possession) Act. 1966 (to be hereinafter referred as the Act.). The questions raised in the case are these :

1. Whether an officer of the Force making an inquiry Under Section 8(2) read with Section 9 of the Act is bound to furnish copies of the statements of persons examined by him Under Section 173(4) of the Old Code of Criminal Procedure (Correponding to Section 207 of the Code of Criminal Procedure 1973).?

2. Whether, if it is not obligatory upon the prosecution to supply the copies, an accused in order to show the contradiction or inconsistency between the statement

of the witness at the trial and what he had stated before the inquiry officer, can call in evidence for the copy for the purposes of Section 145 Indian Evidence Act?

3. If the answer to the above is in the negative, in what manner the trial court should act to ensure a fair trial of the accused?

4. Whether an accused not making a request for copies at the trial can complain of material prejudice being caused to him by the non-supply of such copies at the hearing of the appeal?

2. So far as the first question is concerned, the matter is now settled by the decisions of the Supreme Court in Srilal Shaw v. State of West Bengal : 1975 CriLJ423 ; State of U. P. v. Durga Prasad : 1974 CriLJ1465 and the Assistant Collector of Customs Bombay v. L. R. Melwani : 1970 CriLJ885 that where the criminal prosecution is instituted on a private complaint, the documents mentioned in Sub-clause (4) of Section 173 cannot be made available to the accused. Section 173 is attracted only in a case investigated by a police officer under chapter XIV of the Code of Criminal Procedure. Copies of the documents cannot be made available to the accused by taking aid of Section 94 also as that section does not empower a Magistrate to direct the prosecution to give copies of any documents to an accused person. In Durga Prasad's case the Supreme Court had the occasion to consider the relevant provisions of the Act and the nature and scope of the inquiry contemplated by Section 8(1) of the Act. Taking the view that an officer conducting an inquiry Under Section 8(1) of the Act does not possess all the attributes of an officer in charge of a police station investigating a case under chapter XIV of the Code, Mr. Justice Chandrachud speaking for the court, observed (vide para 17) :

The Officer conducting an inquiry Under Section 8(1) cannot initiate court proceedings by filing a police report as is evident from the two provisos to Section 8(2) of the Act.... The duty cast by proviso (b) on an officer of the Force to make a full report to his official stands in sharp contrast with the duty cast by Section 173(1)(a) of the Code on the officer in charge of a police station to submit a report to the Magistrate empowered to take cognizance of the offence. On the conclusion of an inquiry Under Section 8(1), therefore, if the officer is of the opinion that there

is sufficient evidence or reasonable ground of suspicion against the accused, he must file a complaint Under Section 190(1)(a) of the Code in order that the Magistrate concerned may take cognizance of the offence.

Further in para 23 it was said :

The High Court was therefore in error in holding that statements made during the inquiry Under Section 8(1) of the Act are on a par with statements made during the course of an investigation, that Section 162 of the Code applied with full force to the inquiry proceedings and that in taking signatures of witnesses on the statements made by them the inquiry officer had committed a flagrant violation of Section 162 of Code.

3. In view of the law laid down by the Supreme Court we must hold that the officer conducting an inquiry Under Section 8(1) of the Act does not possess ; all the attributes of an officer in charge of a police station investigating under Chapter XIV of the Code. When a person is arrested for an offence punishable under the Act, the officers of the Force have the power to investigate into the offence and the statements recorded by them during the course of investigation do not attract the provision of Section 162 Cr. P. C. It being not an investigation under Chapter XIV of the Code, the officer of the force is under a duty as provides the proviso (b) to Section 8(2) of the Act to make a full report to his official superior who in his turn, to initiate the prosecution, must file a complaint Under Section 190(1)(a) of the Code to enable the Magistrate to take cognizance of the offence. In the consequence the prosecution is not under an obligation to supply the copies of the statements of the witnesses examined by the officer of the Force in the course of inquiry as required by Section 173(4) of the old Code corresponding to Section 207 of the new Code. We are in respectful agreement with the decision in Premchandra v. State 1973 All W. R. (HC) 403 and record our respectful dissent from the view taken by a learned Single Judge of this Court in Indal Singh v. State 1972 All Cri, J. 188.

4. Before we turn to the second question, it would be relevant to consider what use the prosecution or the accused can make of such statements at the trial for an offence under the Act.

5. Section 9 of the Act empowers the officer of the Force to summon any person to give evidence or to produce a document or any other thing in any inquiry which he may be making for any of the purposes of the Act. Sub-section (4) provides that every such inquiry shall be deemed to be a 'Judicial proceedings.' within the meaning of Sections 193 and 228 of the Indian Penal Code. It is under the authority given by Sub-section (4) that the officer of the Force can take evidence and record statements. If the statement, which is recorded by an officer of the Force in the exercise of his powers under this section, be an acknowledgment of guilt, it will be too much to say that the statement is made to a police officer since a police officer never acts judicially and no proceeding before a police officer is deemed under any provisions, so far as we are aware, to be a judicial proceeding for purposes Of Sections 193 and 228 Penal Code or for any other purpose. The statement of a witness recorded during the course of the inquiry being a former statement made by the witness before an authority legally competent to investigate the fact regarding the alleged commission of the offence may be proved in order to corroborate his tesimony at the trial : See Section 157 of Indian Evidence Act. The prosecution may, with the leave of the court, Under Section 154 of the Evidence Act, cross-examine the witness with reference to the statement recorded by the inquiry officer in the event of the witness appearing to be hostile or exhbiting an interest 'adverse'' to the prosecution. And when the prosecution seeks to avail of the statement of the witness for the purposes aforesaid the accused shall be entitled to the copy of such statement to enable him to lay foundation for impugning the credibility of the witness.

6. What legitimate use the accused may have of the prior statement made by a witness in the course of inquiry is the question that next falls for our consideration. learned Counsel for the revisionist has urged that unless the accused can get the copies of the statement, they will not be in a position to exercise the right Under Section 145 of the Indian Evidence Act. We agree with the learned Counsel that the inconsistency or contradiction shown to exist between the statement made in the course of inquiry and what the witness has said in the examination-in-chief may affect his credit. But his previous statement cannot be used to get rid of the evidence which he is giving unless it is read to him or he is allowed to read it, the obvious reason being to give him en opportunity of explaining the apparent

discrepancy. 'It is an elementary rule that the contents of a written document, if they are to be proved, should be proved by production of the document and not by oral testimony. In Roscoe's Evidence in Civil Actions 19th Ed. P. 160, it is stated : 'In consequence of the general rule that the contents of a written document ought to be proved by the production of it, and not by oral testimony, it was held in The Queen's case (2 Br. & B. 287) that it was not competent to ask a witness, even on cross-examination about a statement formerly made by him in writing without showing to him the writing referred to, and putting it in evidence as part of the case of the cross-examining party either immediately or in the ordinary course of the cause ; and this opinion of the judges has been since constantly acted upon ; whether the question be put merely to discredit the witness by contradicting him, or as conducive to proof of the matter in issue.' (See Rex v. Anderson, The Law Times Reports Volume 142, page 580). This being so, but the accused cannot have the right to see the statement of a witness examined by an 'officer of the Force.' When neither the Act bestows such right upon him nor does Section 145 Indian Evidence Act make an express provision for the issue of the copy. A statement recorded by an Officer of the Force is not a public document within the meaning of Section 74 of the Evidence Act (See Isab. Mandal v. Queen Empress (1901) ILR 28 Cal 348 and therefore, the accused cannot claim to get copies of the statements in advance. There is no rule which, in our opinion, touches such a case or which in any way recognises such a right. Accordingly we answer the second question in the negative.

7. Then arises the question in what manner the accused could exercise the right to contradict a witness with reference to his previous statement for the purpose of impeaching his credit and showing before the Court that the witness was not giving a truthful account of the material incident or fact. Our general approach should be such as it may not militate very greatly against the interest of justice. Every document, particularly in criminal trial, must be admitted in evidence to throw light on the obscure corners of the case. The light should always be welcomed unless its entry in the court is shut out for very special reasons because 'the object of a trial in every case is to ascertain the truth in respect of the charge made' (See Rex v. Uttamchand (1874) 11 Bom HCR 120). The courts are under no compulsion to follow the lure of the rules of logic in order to produce results on

a matter of practice which are unreasonable and would hinder the course of justice. Obviously it would be wrong if several witnesses were handed statements in circumstances which enable one to compare with another what each had said particularly in a situation where the Act, under which the accused is being prosecuted does not confer upon him the right to obtain the copies of the statement at the trial.

8. The learned Government Advocate contended before us that in the absence of any statutory provision the accused should not have the right to use the prior statement for the purpose of Section 145 Evidence Act. But if we were to accept such a broad contention as this, even though there is a contradiction or inconsistency between the evidence given at the trial and something said by the witness in the course of the inquiry the accused would be deprived of his valuable right to impeach the credit of the witness. 'However slender the material for cross-examination may seem to be, it is difficult to gauge its possible effect. Minor inconsistency in his several statements may not embarrass a truthful witness but may cause an untruthful witness to prevaricate.' (See Pulukuri Kottaya v. Emperer AIR 1947 PC 67 : 48 Cri LJ 533). In our opinion the Judge at the trial before him whether a case for applying the rule of evidence has arisen and whether the account given by the witness in his testimony is inconsistent with the statement given by the witness during the course of the inquiry. Section 165 of the Indian Evidence Act and Section 91 of the Code (Section 257 of Cr. P. C. 1898) enable the court to call for any particular document relevant for the purposes of the trial and if the trial Judge upon a perusal of the record is of the view that a foundation for an attack on the credit of the witness can be laid by the accused, the court would direct the prosecutor to give copies of the relevant statement to the accused so that contradiction of the relevant portion of the statement may be put to the witness and proved as an exhibit in the case of the witness denying to have made such statement. The accused at the time when the trial of the case is commenced may ask the court as each witness is put in the dock and examined to refer to his statement, if any, recorded by the inquiry officer to find out if there is any contradiction or inconsistency between the statement made earlier and the statement made at the trial. The discretion is bound to be exercised by the court fairly and that procedure, without in any manner prejudicing the provisions of the

Act, would assure a fair trial to the accused.

9. Finally, we have to consider whether as contended by the revisionists it would be right to say that notwithstanding their not availing of the aforementioned opportunity at the trial stage, he can complain at the hearing of the appeal of the failure of justice occasioned by the said omission and ask for the quashing of the conviction. The witness having been cross-examined at length in the trial court and the counsel not laying a foundation for assailing the veracity of the witnesses account of material fact, it cannot be maintained with justification that there was wrongful exclusion of evidence vitiating the conviction. The accused cannot, therefore, have a stantial grievance on that score. This does not however, preclude the court to exercise the power. Without giving an unfair advantage to one of the rival sides, Under Section 165 Evidence Act and Section 91 of the Code of Criminal Procedure to arrive at a just decision of the case : see Jamatraj v. State of Maharashtra : 1968 CriLJ231 .

10. Let the reference be returned with anwsers given in the above.