

Amulya Kumar Panda Vs. State of Orissa

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Court : Orissa

Decided On : Jan-18-2008

Reported in : 2008CriLJ1672; 2008(1)OLR417

Judge : Pradip Mohanty, J.

Appellant : Amulya Kumar Panda

Respondent : State of Orissa

Advocate for Pet/Ap. : Mr. Mohanty

Judgement :

Pradip Mohanty, J.

1. In the instant revision, the petitioner calls in question legality of the order dated 24.4.2006 passed by the learned Ad hoc Addl. Sessions Judge, FTC, Aska in S.C. Nos. 26 and 66 of 2004. By the impugned order, learned Addl. Sessions Judge allowed the prayer of the prosecution to display video cassettes, which are marked as M.Os. I, V and VI, for better appreciation of the evidence available on record.

2. Brief facts of the case, which are relevant for the purpose of this revision, are that the petitioner along with other accused persons is facing trial in the aforesaid Sessions Cases for commission of offences punishable under Sections 302/365/120B IPC. During the course of investigation, the petitioner, while in

custody, confessed before the I.O. to commit the above offences and such admission of the petitioner has been recorded through video cassettes at the instance of the I.O. During the course of trial, the aforesaid video cassettes have been marked as M.Os. I, V and VI without objection. On 19.04.2006, prosecution filed a petition for displaying the said video cassettes. Petitioner filed counter to the said application stating therein that the bald prayer of the prosecution was not maintainable and that in order to fill up the lacuna, the prosecution had filed the said petition. Since video recording of the so-called confessional statement has been made in presence of the police, the same is not admissible in evidence and, as such, the petition should be rejected. But the trial Court after hearing the parties rejected the objection of the petitioner, allowed the petition filed by the prosecution and directed the prosecution to make necessary arrangements for display of the above video cassettes.

3. Mr. Mohanty, learned counsel for the petitioner, submitted that after closure of the prosecution evidence on 10.03.2006, the case was posted for accused statement. On the said date, a petition for displaying the video cassettes was filed by the prosecution. Therefore, the petition for displaying the video cassettes after closure of the prosecution evidence is not maintainable. He further submitted that confession before a police officer about the crime is inadmissible in evidence in view of the bar under Sections 25 and 26 of the Indian Evidence Act. He further submitted that the whole exercise of recording video cassettes appears to have been guided and controlled by the I.O. The version of the petitioner to the questions put by the I.O. in presence of the witnesses has been recorded in the cassettes. The said evidence is not admissible. In other words, the said recording of the video cassettes is not admissible in evidence and, as such, it need not be displayed. Further, display of video cassettes by the prosecution would create bias in the mind of the Court. Therefore, there is chance of emotion, which may affect the judicial determination.

4. Mr. Behera, learned Addl. Govt. Advocate vehemently contended that there is no illegality and infirmity in the order. The prosecution has filed the petition before recording of accused statement. Disclosure statement of the accused under Section 27 of the Indian Evidence Act is in the nature of exception to Sections 25

and 26 of the said Act and the said disclosure statement should be allowed to be proved. Such statement cannot be discarded on the ground that it was made before a police officer during investigation. In the instant case, M.Os. I, and VI are with regard to leading to discovery under Section 27 of the Indian Evidence Act. Therefore, it is necessary to display M.Os. I, and VI for just decision of the case.

5. Learned counsel for the parties, in support of their respective contentions, relied upon the decisions in *Sri Jayaram Singh v. Tuka @ Arabinda Prasad Singh and Ors.* (1991) 4 OCR 227, *State of Orissa v. Sukuram Munda etc.* 2006 (II) OLR 380, *State of Haryana v. Jagbir Singh and Anr.* : 2003 CriLJ5054 , *State of Maharashtra v. Dr. Praful B. Desai*, : 2003 CriLJ2033 , *State of Himachal Pradesh v. Jeet Singh* : 1999 CriLJ2025 , *Sanjay alias Kaka etc. etc. v. The State (N.C.C.T. of Delhi)* (2001) 20 OCR (SC) 479, and *State of Maharashtra v. Damu Gopinath Shinde* AIR 2000 SC 1691.

6. Perused the case records, the decisions cited by the parties and provisions of Sections 25, 26, 27 65A and 65B of the Indian Evidence Act. In the instant case, the question of determination is whether in the facts and circumstances of the case statement of the petitioner recorded in the video cassette can be displayed or not. The scope and ambit of Section 27 of the Indian Evidence Act have been illuminatingly stated in *Pulkuri Kotayya v. Emperor* AIR 1947 PC 67. The said position has also been highlighted in *Amitsingh Bhikamsing Thakur v. State of Maharashtra* (2007) 36 OCR (SC) 648. In the case of *Amitsingh* (supra) various requirements of Section 27 have been elaborated in para 29 of the judgment, which are quoted hereunder:

29. The various requirements of the section can be summed up as follows:

(1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.

(2) The fact must have been discovered.

- (3) The discovery must have been in consequence of some information received from the accused and not by accused's own act.
- (4) The persons giving the information must be accused of any offence.
- (5) The must be in the custody of a police officer.
- (6) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.
- (7) Thereupon only that portion of the information, which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible.

From a bare reading of the above decision and the provisions of the Section, it is crystal clear that the statement of the accused regarding the place of concealment of incriminating articles is a piece of information, which facilitates the discovery of such article and is admissible under Section 27 of the Indian Evidence Act.

7. In the instant case, display of video cassettes in respect of the statement of the accused regarding the place of concealment of incriminating articles and the accused leading the police officer to the spot and giving discovery of the articles under Section 27 of the Indian Evidence Act is admissible and the rest is inadmissible. But, in order to prove this part, the duty of the prosecution is to produce the evidence. The video cassettes can be used as an aid of investigation and corroboration. In order to allow display of the video cassettes, it is necessary for the trial Court to verify the video cassettes to the above extent only so that the interest of the accused can be safeguarded.

8. In view of the above, this Court modifies the order dated 24.4.2006 to the extent that the prosecution shall be permitted to make necessary arrangements for display of those parts of the video cassettes only which are relevant with regard to Section 27 of the Indian Evidence Act.

The CRLREV is disposed of with the modification of the impugned order to the above extent.

