

Rakesh Kumur Vs. State

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Court : Delhi

Decided On : Oct-18-1973

Reported in : 1974RLR37

Judge : P.S. Safeer, J.

Acts : Evidence Act - Sections 25

Appeal No. : Criminal Revision Appeal No. 257 of 1973

Appellant : Rakesh Kumur

Respondent : State

Judgement :

(1) This petition has come up in consequence of an order made on 27.7.73 by Additional Sessions Judge, Delhi in exercise of the jurisdiction provided by S. 438 of the Cr. P.C. whereby he has recommended that the order directing the framing of charge against the petitioner made by Sh. M.S. Rohilla. Judicial Magistrate on 29 3.73 be quashed.

(2) The petitioner was one of the 4 persons against whom the trial Court framed the charge on the 2nd of May, 1973.

(3) The prosecution allegations were that Rs. 2,940.00 were stolen from the shop of one Ram Avtar in East Punjabi Bagh Market. It was alleged that the petitioner

was arrested on the 25th of May, 1971 and a transistor and a wrist watch were recovered from his possession. His statement was recorded on the basis of which the others were arrested.

(4) I have gone through the petitioner's statement on which reliance was placed by the Magistrate for framing the charge. The prosecution urged that the entire statement enjoyed the protection of section 27 of the Indian Evidence Act and could be relied upon. In its clear terms section 27 protects only that much of the statement which is precisely related to the discovery of the fact and would not per se make admissible any incriminating portion in it.

(5) Where an accused person states to the police that he fired a shot from a pistol which killed the deceased and thereafter went to a particular place where he buried the weapon and that he would be able to get it recovered then only that part of the statement would be admissible which mentions the particular place where the weapon is buried and that too in case the statement leads to the discovery of the weapon. The incriminating portion of the statement that the pistol shot was fired by him which killed the deceased, will not be admissible in evidence.

(6) In this case the theft was of currency notes. The stolen property was never recovered. The statement which the petitioner made to the effect that he Along with others Committed the theft was not admissible in evidence under section 27 of the Act. If section 25 of the Act is kept in view the scope of section 27 becomes clear. Section 25 provides that no confession made to a police-officer shall be proved as against a person accused of any offence. The statement of Rakesh Kumar that he had committed theft Along with others was in the nature of a confession made to the police. Section 27 operates within its limited scope. Inspire of section 25 it makes admissible in evidence that portion of the statement of an accused person made to a police-officer which distinctly leads to the discovery of a fact. Where, however, a statement distinctly leads to the discovery of a fact and is inextricable from the incriminating part it will still be admissible in evidence.

(7) In this case the stolen property was not recovered In consequence of the statement made by the petitioner. The incriminating part of the statement could not be relied upon because of the limitation imposed by section 25 of the Act. The

charge to the extent to which it concerns the petitioner is quashed. In respect of others the trial Court will act in accordance with law.

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