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Court : Delhi

Decided On : Mar-09-1981

Reported in : 19(1981)DLT390

Judge : G.R. Luthra, J.

Acts : Code of Criminal Procedure (CrPC) , 1971 - Sections 397, 401 and 482;
[Indian Penal Code \(IPC\), 1860](#) - Sections 34, 341, 380 and 451; Evidence Act -
Sections 45 and 146

Appeal No. : Criminal Revision Appeal No. 203 of 1980

Appellant : Vinod Kumar and ors.

Respondent : State

Advocate for Pet/Ap. : D.R. Sethi and; P.P. Grover, Advs

Judgement :

G.R. Luthra, J.

(1) The present petition under Section 397 read with Sections 401 and 482 of the Code of Criminal Procedure (hereinafter referred to as the code) involves a question whether a prosecution witness in a criminal trial can be called upon to get his voice tape recorded for enabling an accused to get the same compared with an alleged tape recorded voice of the said witness.

(2) Petitioners are facing trial in the court of a Metropolitan Magistrate, Delhi on the charges of alleged commission of offences of criminal house trespass of shop No. 835/1 Krishna Cloth Market, Chandni Chowk, Delhi belonging to Ganpat Ram of M/s. Laxmi Textiles, Chandni Ghawk, Delhi and theft of Cloth worth Rs. 4500.00 belonging to said Ganpat Ram punishable under Sections 451, 341 and 380 read with Section 34 Indian Penal Code.

(3) During the trial Shri Ram Chand Juneja (Public Witness 6) appeared as a witness for the prosecution. During cross-examination a suggestion was put to the witness to the effect that he had admitted before the petitioners that he had not seen anything about the occurrence and that he was appearing as a witness under pressure of Ganpat Ram. Witness denied that suggestion. He was confronted with a tape recorded conversation. Witness denied that his voice was recorded in that tape. Thereafter the petitioners brought an application to the effect that aforesaid witness be summoned and that he should be called upon to get his voice tape recorded so that comparison could be done between his sample voice and his alleged tape recorded voice.

(4) That application was contested by the State as well as Ganpat Ram.

(5) The learned Magistrate was of the view that it was unscrupulous on the part of the petitioners to have approached the witness during the trial, that such tampering with witnesses should be discouraged and that therefore, petitioners were debarred on account of their unscrupulous conduct to have sample voice of the witness recorded.

(6) I endorse the ultimate decision of the learned Magistrate but for different reasons. There is no provision of law at all for calling upon a prosecution witness to get his sample voice tape recorded. There is nothing in the Indian Evidence Act which even remotely suggests that such a power can be exercised by a court. In respect of comparison of dispute writings or finger impressions with sample ones, there is provision under Section 73 of the Evidence Act for taking sample writings. That section reads as under:

'IN order to ascertain whether a signature writing, or seal is that of the person to whom it purports to have been written or made any signature, writing or seal admitted or proved to the satisfaction of the court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose. The court may direct any person present in court to write any words or figures for the purpose of enabling the court to compare the words or figures so written with any words or figures alleged to have been written by such person.'

(This section applies also with any necessary modification, to finger impressions). There is no such provision in the Indian Evidence Act in respect of recording of sample voice. Further, Section 45 of the Evidence Act makes evidence of an expert upon a point of law, or of science, or art or as to identify of handwriting or finger impressions admissible. But evidence of an expert on comparison of sample voice with disputed one has not been made admissible under any provision of the Evidence Act.

(7) The learned counsel for the petitioner relied upon Section 146 of the Indian Evidence Act which reads as under :

'146,when a witness is cross-examined he may, in addition to the questions herein before referred to be asked any questions which tend : (1) to test his veracity. (2) to discover who he is and what is his position in life or, (3) to shake his credit) by injuring his character, although the answer to such question might tend directly or indirectly to criminate him, or might expose him to a penalty or forfeiture.' He urged that Section 146 permitted a court for calling upon the witness to give a sample voice so that his veracity may be tested by way of comparison with the alleged tape recorded voice.

(8) Obviously contention of the learned counsel is misconceived. Section 146 deals with the scope of the questions which can be put in the cross-examination. It does not deal with any directions which can be given to the witness. It does not envisage giving of direction by a court to a witness to give sample voice.

(9) The learned counsel for the petitioners contended that this court in the exercise of inherent powers for achieving ends of justice, may direct the court of Magistrate to call upon the witness to give sample voice. He explained that it was in interest of justice that it should be brought to light if the witness was acting in the advancement of truth or merely a tool in the hand of Ganpat Ram.

(10) But this court cannot give any directions to the Metropolitan Magistrate concerned which that Magistrate has no authority according to law to do. This court cannot call upon the Magistrate to do an act which he is not empowered under the law. Rather it will be abuse of powers of this court to give such a direction which is not warranted by law.

(11) I, therefore, dismiss the revision petition. Stay of proceedings already granted is hereby vacated. Let a copy of this order be sent to the trial court immediately along with records of the said court. I am told by the learned counsel for the parties that already trial court has fixed a date for appearance of the parties.