

**inderjeet Singh Vs. State**

**inderjeet Singh Vs. State**

**SooperKanoon Citation :** [sooperkanoon.com/693222](http://sooperkanoon.com/693222)

**Court :** Delhi

**Decided On :** Jul-01-1992

**Reported in :** 1994CriLJ150; 1992(2)Crimes1137; 48(1992)DLT309; 1992(23)DRJ357; 1992RLR367

**Judge :** Usha Mehra, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 284

**Appeal No. :** Criminal Miscellaneous (Main) Appeal No. 1468 of 1992

**Appellant :** inderjeet Singh

**Respondent :** State

**Advocate for Pet/Ap. :** P.P. Grover and; B.D. Batra, Advs

**Judgement :**

**Usha Mehra, J.**

(1) Inderjeet Singh is alleged to be a muscleman engaged by M/s. Karnal Pharmacy owned by Naresh Bhardwaj and others of Village Azadpur. The prosecution version is that Inderjeet Singh was engaged by the muscleman of the said pharmacy in order to ensure the delivery of the consignments and also that the payment is promptly received for the consignments delivered. He used to accompany the driver of the vehicle in which the consignments were carried. On

4th November, 1991 it is alleged that the petitioner accompanied Shri Daya Chand the driver of the vehicle Matador No.DAE 1657 for delivering the consignment of liquor. The consignment consisting of 50 boxes of liquor was delivered to Ram Niwas Mittal of Azadpur. At that time according to the prosecution the petitioner told Mr. Mittal in the presence of Daya Chand that there was 'Unnis-Bees Ki Garbar Hai' in the consignment and that he should dispose of the same quickly 31 the tame of Diwali. Mr. Mittal placed another order of 50 boxes to be delivered by 6th November. 1991. This consignment containing another 50 boxes was delivered to Ram Niwas Mittal on 6th November, 1991 by Inderjeet Singh on behalf of the owners in the vehicle driven by Daya Chand. Mr. Ram Niwas Mittal had pointed out on 6th November, 1991 that though the petitioner had told that there was a defect in the consignment but the same had been consumed by the customers.

(2) It is in this background that the prosecution charged the petitioner under Sector. 284/337/304 read with Section 120-B of the Indian Penal Code . The sole testimony against the petitioner of his having the knowledge that the consignment consisted of spurious liquor was that of Daya Chand. It is further the case of the petitioner that the co-accused, the grocery shop owners have already been granted bail. He accordingly applied for the bail but the same was rejected by this Court. Now in ihe present petition the petitioner has come up with fresh grounds namely that Daya Chand has stated that he never made any statement to the police implicating the petitioner. In this regard an affidavit of Daya Chand has been filed. Beside, in the enquiry being held by the Commission, Daya Chand appeared as a witness before the inquiry Judge and denied that the petitioner was having any knowledge regarding the consignment supplied on 4th or 6th November, 1991 containing 'Kapur Asav'. Not only Daya Chand has denied this fact, even Abdul Gafoor who appeared before the Commission denied that the petitioner was an employee of M/s. Kamal Pharmacy.

(3) Relying on the statement of Daya Chand made in his affidavit as well as statement made before the Commission set up to enquire this matter, Mr. P.P. Grover contended that no case is made out against the petitioner because she only testimony which the prosecution was relying was that of Daya Chand. Daya

Chand has categorically stated that he never made a statement implicating the petitioner. He further contended that the statement made by the witness before the Commission is relevant and is admissible before this Court and for this purpose he has placed reliance on the decision of the Bombay High Court in the case of *Sohanlal Pahladrai Vaid Vs . State : AIR1965 Bom1* , where the incident in respect of which accused was being prosecuted in a criminal trial had been the subject matter of an inquiry by a Commission of inquiry appointed under the Act. It was held that the statements made by the prosecution witnesses before the Commission could be used by the defense for the purpose mentioned in Section 145 of the Evidence Act. therefore. Mr. Grover contended that the statement made by Mr. Daya Chand before the Commission can be taken into account and in view of that statement no case is made out against the petitioner.

(4) To appreciate the contention of the counsel for the parties, it will be worthwhile to understand the scope of the Commission of the Inquiry Act, 1952 (hereinafter called as the Act').

(5) 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.'

(6) The reading of Section 6 clearly shows that the protection is afforded to such a person against civil or criminal liabilities for appearing as a witness before a Commission. But the reading of Section 6 cannot be interpreted to mean that such a statement cannot be used for any purpose whatsoever. In fact Section 6 of the Act wants to protect such a witness so that no such action is taken for making a statement. It has been interpreted by the Bombay High Court to mean that when a statement is made by a witness before the Commission. it can be treated as an earlier statement for contradicting that witness as provided under Section 145 of the Indian Evidence Act. it cannot be said that such use is against him, because no liability can be fasten on him. The purpose of using an earlier statement under

Section 145 of the Evidence Act is to show that the witness is unreliable and that the Court should not believe him. therefore, such a use of his statement made before the Commission would not amount to using the said statement against his interest. Rather such an earlier statement made before the Commission would be helpful to a Court which has to decide whether the witness concerned should be believed or not. therefore, Mr. Grover contended that taking this view of the matter the statement made by Daya Chand before the Commission is relevant and this will clinch the issue that the petitioner had no knowledge whatsoever about the spurious quality of the consignment delivered to Ram Niwas Mittal and that at no point of time he ever stated to Ram Niwas Mittal that this consignment was having some defect. Mr Grover thereafter placed reliance in the case of Mandhir Singh & Ors. v. The State of Punjab reported in 1987 C.C. Cas 322. This was a case under Section 3 of the Terrorist and Disruptive Activities (Prevention) Act (TADA). In that case the prosecution had registered a case against the accused on the allegation of conspiring to kill Hindus at large while traveling in a taxi of Ramesh Kumar. The sole evidence of the conspiracy as per the prosecution was the passenger of the taxi that is Ramesh Kumar. Ramesh Kumar filed an affidavit before the learned designated Court to saying that he never made a statement before the police nor did he travel in the taxi with the accused. The Punjab High Court took the view that the designated Court was not justified in refusing the bail. Bail should not be rejected on the ground to wait for the evidence on merits, because the sole witness against the accused pertaining to the conspiracy was Ramesh Kumar and he had denied having made such a statement to the police. therefore, relying on this judgment, Mr. Grover contended that the sole witness of the prosecution in the present case alleging that the petitioner had knowledge about the spurious quality of the liquor was Daya Chand but the said Daya Chand by his affidavit as well as by his statement before the Commission has denied the same. therefore, the petitioner is entitled to bail as has been given to the co-accused namely grocery shop owners.

(7) On the other hand the counsel for the State contended that the statement made before the Commission by Daya Chand has no relevance nor can be relied upon. It is not admissible nor it can be called earlier statement as required under Section 145 of the Indian Evidence Act. Mr. Batra counsel for the State in order to

strengthen his arguments placed reliance on the decision of the Supreme Court in the case of Kehar Singh and others Vs . The State (Delhi Administration) : 1989 CriLJ1 . He contended that the Supreme Court has now settled the law. Considering the restriction contained in Section 6 of the Commission of the Inquiry Act. the statement made by a witness before a Commission couldn't be used in a criminal trial either for the purposes of cross examination or to contradict the witness or to impeach his credit. It has been further observed that in view of the prohibition contained in Section 6 even the copies of the statements made by the witnesses before the commission also can not be supplied to the accused. Nor such a report can be summoned by the Court. It has no evidentiary value in the trial of a criminal case. In this view of the matter when the law is settled by the Supreme Court, the authorities cited by the learned counsel for the petitioner have no relevance. Mr. B.D. Batra, learned counsel for the state thereforee p73 contended that in view of the Supreme Court judgment no evidentiary value can be attached to the statement made by Daya Chand before the Inquiry Commission nor his affidavit can be relied at this stage.

(8) Mr. Grover in view of this judgment of the Supreme Court contended that though the commission of inquiry held by Justice Thakkar was in camera and in this view of the matter alone observations were made in Kehar Singh's judgment. But without quarrelling with the contentions raised by Mr. Batra, he is relying on another facts of this case namely that according to prosecution version the petitioner told Ram Niwas Mittal that the consignment had some 'Unnis-Bees Ki Garbar Hai'. This by no stretch of imagination can be inferred that petitioner had knowledge that the consignment consisted of 'Kapur Asav' nor does the words 'Unnis-Bees Ki Garbar Hai' disclose that the petitioner knew what were the contents of the said liquor. Moreover, the job of the petitioner was only to collect money from the customers. He was not an agent of the owner. He was neither owner nor manufacturer of the said liquor, as muscleman he was used to collect the money. He did not prepare this illicit liquor nor he participated in the manufacturing of the same. He could not have p73 gained anything by the sale of spurious liquor. He was merely to collect the price of the goods supplied to the customers. His role was neither in the preparation of the liquor nor the actual transportation of the spurious liquor. Mr. Grover thereforee contended that the

prosecution has, on surmises and conjunctures, came to the conclusion that the petitioner had the knowledge. In fact his role cannot be any way different from that of the grocery shops owners or of Ram Niwas Mittal. whom according to the prosecution the petitioner disclosed that there was some 'garbari' in the consignment. The said Ram Niwas Mittal has already been granted bail. The petitioner is in jail since 9th November, 1991 and there are no chances of his interfering with the witnesses or tempering with the evidence.

(9) Taking the facts as discussed above, particularly when the prosecution has to establish whether the petitioner had the knowledge and also the fact that Ram Niwas Mittal has already been granted the bail, I see no reason why the petitioner should be not admitted on bail, because according to prosecution's own version he was neither the manufacturer nor the owner of the illicit liquor. His role was to accompany the driver of the vehicle for carrying the consignment and to recover sale price of the same. For these reasons I admit the petitioner on bail on his furnishing a bond of Rs.20,000.00 with two sureties in the like amount to the satisfaction of the trial court.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**