

State Vs. Ravikant Sharma and ors.

State Vs. Ravikant Sharma and ors.

SooperKanoon Citation : sooperkanoon.com/714914

Court : Delhi

Decided On : May-23-2006

Reported in : 130(2006)DLT370; 2006(89)DRJ421

Judge : Badar Durrez Ahmed, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 161, 161(3), 172 and 397(2)

Appeal No. : Crl. Rev (P) No. 183/2006

Appellant : State

Respondent : Ravikant Sharma and ors.

Advocate for Def. : Sudharshan Rajan, ; Mohd Qumar Ali and ; N. Hariharan,

Advocate for Pet/Ap. : S.K. Saxena, Spl. P.P. and; Manisha Sharma, Adv

Judgement :

Badar Durrez Ahmed, J.

1. This revision petition is directed against the opinion of the trial court expressed during the recording of the cross-examination of PW-193 (Inspector Sukhwinder Singh) with regard to submissions alleged to have been made by PW-66 (Rakesh Bhatnagar). The portion of the opinion which is impugned herein reads as under:

It is not in dispute that this witness has admitted to have interrogated PW Rakesh Bhatnagar several times but copy of seven statements (recorded by me and other IO's) only is supplied to accused R.K. Sharma. In my opinion even the gist made after interrogating a person i.e., PW Rakesh Bhatnagar was a statement in view of aforesaid provision and the accused was entitled to get copy of such gists of statements. Prosecution is accordingly to supply the copies of such gists to accused R.K. Sharma.

2. The learned Special Public Prosecutor who argued this matter on behalf of the petitioner (State) submitted that by virtue of the above opinion / direction, the prosecution has been directed to supply copies of 'gists' of statements said to have been recorded by PW-193 while interrogating PW-66. According to the learned Special Public Prosecutor, these are not statements which fall within the meaning of Section 161(3) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') and therefore, the accused would not be entitled to any copies of these gists. He further submitted that these gists were not statements but mere observations of the investigating officer namely PW-193 (Inspector Sukhvinder Singh). He referred to the cross-examination of PW-193 which is at page No. 21 of the present paper book. The relevant portion of the said cross-examination reads as under:

At this stage learned defense counsel requests that he be supplied copies of the gist of statements of interrogation of Rakesh Bhatnagar recorded in case diary under Section 161. The witness submits that he did not record the gists of statement but the gist of interrogation which was his own observation and not the statement.

3. Referring to the said portion of the cross-examination of PW-193, the learned Special Public Prosecutor pointed out that PW-193 has clearly and categorically stated that he did not record the gist of statement of PW-66 (Rakesh Bhatnagar) but the gist of interrogation which was his own observation and not the statement of PW-66.

4. In these circumstances, the learned Special Public Prosecutor submitted that the accused would not be entitled to copies of such gists. He further submitted that

this would also entail delay in the trial which has been already delayed.

5. The learned Counsel for the respondents/accused submitted that first of all this revision petition would not be maintainable against the opinion / direction given by the learned trial court with regard to production of these gists inasmuch that is merely an interlocutory direction against which revision is barred by virtue of Section 397(2) of the Code. He referred to the decision of the Supreme Court in the case of K.K. Patel and Anr. v. State of Gujarat and Anr. 2006 SCC 195. In paragraph 11 of the said decision, the Supreme Court, with reference to its earlier decisions in the case of Amar Nath v. State of Haryana : 1977 CriLJ1891 ; Madhu Limaye v. State of Maharashtra : 1978 CriLJ165 ; V.C. Shukla v. State through CBI : 1980 CriLJ690 ; and Rajendra Kumar Sitaram Pande v. Uttam; : 1999 CriLJ1620 , observed that it is now well settled that in deciding whether an order challenged is interlocutory or not for the purpose of Section 397(2) of the Code, the sole test is not whether such order was passed during the interim stage.

6. In the case of Madhu Limaye (supra), the Supreme Court while referring to a decision in the case of S.Kuppuswami Rao v. The King , in paragraph 13 thereof observed that there could be three kinds of orders. One would be 'final' orders which obviously impart finality to the entire proceedings. The other would be 'interlocutory' orders and the third kind would be 'intermediate' orders, that is, neither interlocutory nor final orders. The bar under Section 397(2) of the Code operates in respect of interlocutory orders only and not in respect of intermediate orders. It is, in this context, that the Supreme Court in the case of K.K. Patel (supra) observed in paragraph 11 thereof that the feasible test is whether by upholding the objections raised by a party, it would result in culminating the proceedings, if so any order passed on such objections would not be merely interlocutory in nature as envisaged in Section 397(2) of the Code. In the case before the Supreme Court, the Supreme Court observed that if the objection raised by the appellants were to be upheld by the Court, the entire prosecution proceedings would have been terminated. Hence the order was held to be revisable.

7. The learned Counsel appearing for the respondents/accused also submitted that even on merits, they had a good case insofar as by virtue of Section 172 of the Code, the Investigation Officer is required to maintain a case diary. He referred to the decision of the Supreme Court in the case of *Shamshul Kanwar v. State of Uttar Pradesh*; : [1995]3SCR1197 . Particular reference was made to paragraph 18 thereof to explain the nature of the case diary that is maintained by the police authorities under Section 172 of the Code. The Supreme Court observed that various States have different practices with regard to the manner in which case diaries are maintained. The Supreme Court observed that in some States the case diary comprises of two parts. The first, relating to the steps taken during investigation and the second part consisting of statements of the circumstances ascertained during the investigation. The Supreme Court found that these statements 'obviously relate to the statements recorded by the officer in terms of Section 161 Cr.Pc' and held that copies of the second part which mainly contains statements of the witnesses, as a matter of course, are supplied to accused persons.

8. As regards maintainability of this revision petition, I am of the view that the opinion/ direction which is impugned herein, is not in the nature of an interlocutory order. It is also not a final order as it does not put an end to the entire proceedings. But, as it decisively puts at rest the question of production of a part of a case diary it would fall in the category of 'intermediate' orders. The bar of Section 397(2) Cr.Pc would not come into play.

9. As regards the merits, considering all the arguments advanced by the learned Counsel for the parties and particularly in view of the statements made by PW-193 in the course of his cross-examination that the gists recorded by him were gists of his own observation and not the statements of PW-66, it would be necessary to ascertain by looking at the case diary itself as to whether this statement of PW-193 is made out or not. There is no doubt that if the gists pertain to only observations made by PW-193 himself then these are not to be disclosed to the accused/respondents. However if the gists can be regarded as statements under Section 161(3) of the Code, although in summary form, made by PW-66 then in view of the various decisions of the Supreme Court and particularly in the case of

Shamshul Kanwar (supra), the same would have to be made over to the accused/respondents. It would be necessary to examine the case diary to ascertain the same. The matter is, therefore, sent back to the concerned trial court for a determination on this issue in view of the aforesaid guidelines. Thereafter, the Court may pass appropriate orders. The impugned director/order is set aside.

This revision petition stands disposed of.

dusty to both the parties.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com