

Chandran Vs. State of Kerala

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Court : Kerala

Decided On : Apr-10-1985

Reported in : 1985CriLJ1288

Judge : S. Padmanabhan, J.

Appellant : Chandran

Respondent : State of Kerala

Judgement :

ORDER

S. Padmanabhan, J.

1. This petition filed under Section 482 of the Criminal Procedure Code is for setting aside an order passed by the Additional Sessions Judge, Parur in Crl. M.P. No. 44 of 1985 in Sessions Case No. 17 of 1984. The order is dated 19-3-1985 and the purport of the order is to permit the prosecution to examine the investigating officer again to prove the alleged confessional statement which led to the recovery of some material object.

2. Section 27 of the Evidence Act is a provision which is often complained of being misused for the purpose of creating evidence otherwise not available. It is an exception to the general rule that the confession of an accused person to a police officer is not admissible. What is admissible under Section 27 is only .so much of

the information which led to the recovery of the object proved to be having connection with the crime. The object recovered acts as corroboration of the information and assurance of its correctness. The information must be one exclusively available to the person making it. But many recoveries on the basis of search or otherwise are afraid of being attempted to be converted as recoveries on informations conveyed by the accused relying on the provisions of Section 27. Such attempts will cut at the root of fair trial which every accused person is entitled.

3. In order to ensure fair trial and act as a check against manipulations at the hands of dishonest investigators and further to ensure correctness of the informations it is necessary that such informations which are called disclosure statements should be recorded in first person as and when made. The recovery mahazars or other relevant records must contain such statements to the extent necessary in first person and they will have to be made available to the Court and the accused at the earliest possible opportunity.

4. In this case the recovery mahazars and the case diary statements of the concerned witnesses proceeded as if the recoveries were by search or otherwise and not on the basis of informations conveyed by the accused. They are conspicuously silent in regard to the disclosure statements. Now the entire trial including examination of the investigating officer is over and the case stands posted for questioning the accused under Section 313 of the Code. What the prosecution now wants and what the Court has allowed is recalling the investigating officer to be examined again for production and proof of the disclosure statements. The fact that it was not available for being put to the investigating officer when he was examined indicates that its late production and proof will prejudice the accused in his defence,

5. Under Section 311 of the Code the Court is, having the power to recall and re-examine any witness. But that could be only when the Court is satisfied that it is essential for the just decision of the case. Recalling and re-examining a witness like the investigating officer for production and proof of a vital record having great relevance in deciding the guilt of the accused and that too after conclusion of the

evidence cannot be said to be essential for the just decision of the case. It may result in miscarriage of justice.

6. The petition is therefore allowed and the impugned order is set aside.

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