State of Rajasthan Vs. Lichman

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Court : Rajasthan

Decided On : Feb-09-1984

Reported in : 1984CriLJ1845; 1984()WLN445

Judge : M.C. Jain, J.

Appellant : State of Rajasthan

Respondent : Lichman

Judgement :
ORDER

M.C. Jain, J.

1. The State has filed this petition under Section 482, Cr.P.C. against the order dated 3.10.1982, passed by the Judicial Magistrate, First Class, Parbatsa. whereby the learned Magistrate held that the recovery memo being signed by the accused, is inadmissible in evidence, as amounts to confession made by the accused to a police officer.

2. The non-petitioner Lichman was prosecuted for the offence under Section 4/2, Rajasthan Prohibition Act. On an information by a Mukhbir, the S.H.O. Police Station, Pilwa, along with the police party laid an ambush and intercepted the accused, who was proceeding on a Motor Cycle RJZ 8267. On checking, it was found that on the rear seat of the Motor Cycle there was a black rubber tube filled

with liquor. It was found that it was an illicit liquor containing about 20 bottles. The liquor was seized in the presence of Motbirs Bhanwar Lai and Kana Ram and a recovery memo was prepared. Besides the Motbirs, the recovery memo was also got signed by the accused. During the course of evidence an objection was raised on behalf of the accused that the recovery memo is inadmissible in evidence under Section 25, Evidence Act. The learned Magistrate heard the arguments and held that the same is inadmissible in evidence, as it amounts to confession made by the accused to the S.H.O. The State has now submitted this petition challenging the order of the learned Magistrate.

3. I have heard Shri Dev Lal Vyas, learned Public Prosecutor, for the State. Nobody appears on behalf of the non-petitioner despite service of notice.

4. The question that emerges for consideration in the present petition is as to whether the recovery memo of liquor is wholly inadmissible in evidence or it can be admitted into evidence to a limited extent. It may be stated that the liquor was recovered in the presence of Motbirs from the possession of the accused when he was intercepted and that fact has been recorded in the recovery memo. It is true that the police could and should have avoided obtaining of the signatures, but simply because the signatures of the accused had been obtained, in my opinion, the whole of the document cannot be found to be inadmissible in evidence. The document can be admitted into evidence, but the only restriction that can be placed on the prosecution to prove the document is that the prosecution would not be able to prove that the accused signed the recovery memo. The fact of recovery of the liquor from the possession of the accused, can be proved by the S.H.O. and by the Motbir witnesses. But it cannot be proved by them that the recovery memo was signed by the accused in their presence, thereby proving it that the accused made a confession of the fact of recovery of liquor from his possession. No doubt the learned Magistrate has found the recovery memo inadmissible in evidence placing reliance on a decision of the Lahore High Court in Behari Lal v. Crown AIR 1927 Lah 343 : 1927-28 Cri LJ 323. In that case a house was searched and on the recovery list the accused had put his signature. It was held-

That the fact of the accused putting his signature on the recovery list is not admissible in evidence against him in a case in which the possession of the house was in question because it would be an incriminating statement of the nature of a confession to a police officer and could not be proved by reason of the prohibition contained in Section 20.

In that case the petitioner Behari Lal was convicted of the offence under Section 61, Excise Act, by the Magistrate and the conviction was upheld in appeal by the Sessions Judge and a revision was preferred before the High Court. It very much weighed with the trial Magistrate and the Sessions Judge that the accused has put his signatures on the list of recovery and on that basis it was found that the accused was in possession of the house from which the excisable articles were recovered. The High Court did not find any satisfactory evidence on record to hold that the house was in possession of the accused. Campbell, J., observed-

I consider it very doubtful whether the fact of the accused putting his signature on the recovery list as admissible in evidence against him in this case. If it is evidenced that the premises searched belonged to him, this would be an incriminating statement of the nature of a confession to a police officer and could not be proved by reason of the prohibition contained in Section 25 of the Indian Evidence Act.' It would appear from the above observations that on the basis of the statement contained in the recovery list regarding possession of the house, conviction was recorded. There was no other satisfactory evidence on record regarding the possession of the house with the accused. What was found inadmissible, was putting of signature of the accused on the recovery list. The recovery list could have otherwise been proved, without proving the signature of the accused on the recovery list. Thus, this authority, as well, in my opinion, does not lay down that the whole of the recovery list is inadmissible in evidence.

5. The learned Magistrate has further referred to some observations made by the Supreme Court in Narayan Rao v. State of Andhra Pradesh : 1957 CriLJ1320 . In that case a Panchnama was prepared and it was not only signed by the Panchas, but it also purported to have been signed by the accused persons. That document was a record which was a complete confession of the crime from the beginning to

the end, by air the accused persons. Their Lordships of the Supreme Court observed (Para 5)-

This was highly irregular, but fortunately, it was not a jury trial and has not, therefore, done much harm to the accused persons, but certainly the provisions of the Evidence Act and of the Code of Criminal Procedure have not been observed

Their Lordships of the Supreme Court did not consider the question as to what extent the Panchnama is admissible in evidence or the whole of it is inadmissible in evidence.

6. Reference may profitably be-made to a decision of the Allahabad High Court in Gunda v. State : AIR1954 All127 . In that case also question with regard to admissibility of recovery list arose, which bore signatures of the accused. In this connection the learned Judge observed as under (Para 6):

The procedure of exhibiting entire documents containing objectionable and inadmissible matter of this nature is, in my opinion, irregular. I have noticed this procedure being indiscriminately followed in a number of cases, and I cannot help observing that the repetition of it must in the end have serious repercussions on the fate of the case and must cause incalculable damage to the interests of the accused. It is regrettable that investigating officers make it a practice to invariably append such confessions and to incorporate them in recovery lists apparently for the purpose of introducing inadmissible and damaging evidence against the accused by the backdoor. It is more regrettable that courts should indiscriminately allow such statements to be brought on record in a wholesale fashion without taking the care to dissect them and to sift the admissible portions from the inadmissible ones. In such cases, in my opinion, the trial court should exhibit only the admissible portion and exclude the inadmissible portion. The danger of the admission of the entire documents containing objectionable material of this nature might not be so great in cases tried by assessors. In cases, however, triable by jury, the danger of a wholesale importation of evidence of this nature cannot be over-estimated.

It would appear from the above observations that in such like-documents, the admissible part can be severed from the inadmissible part and the admissible part can be proved and the inadmissible part will not be allowed to be proved at the time when the document is tendered in evidence. It is also pertinent to note that a distinction has been drawn in trials by jury and-trial by assessors. So far as the present case is concerned, such consideration does not arise at all.

7. Reference may also be made to a decision of the Allahabad High Court in Prakash Chand Jain v. State J968 Cri LJ 391. That was a case under Prevention of Corruption Act. A trap was arranged and currency notes were recovered from the pocket of the accused and on the recovery memo signatures of the accused were obtained. It was argued in that case that the trial court has used the appellant's signatures upon the recovery memo as an admission of the recovery of the notes. M.H. Beg, J., as he then was, observed as under:

I am not sure that the trial court went quite so far as that. There is no doubt that, in view of the above mentioned presumption under Section 4 Prevention of Corruption Act, in admission of recovery of money could practically amount to a confession of guilt by the appellant made while in police custody. The recovery memo could not be used as evidence of any such confession against the accused. It could not be used as embodying any statement by the accused during investigation. The fact that it was prepared and its copy given to the appellant could be used to prove the regularity and propriety of the recovery proceedings. I have, therefore, not used the signature of the appellant on the recovery memo as any admission of the actual acceptance of money by the appellant which is amply proved by other evidence.

Exclusion of the fact that the appellant signed such a recovery memo, even as an acknowledgment of the receipt of its copy, could not affect the findings in this case.

8. In the light of what I have considered and discussed above, in my opinion, the recovery memo in the present case is inadmissible so far as proving of putting of signatures by the accused on it is concerned. The rest of the recovery memo is admissible in evidence and the same is not in any way hit by the provision of

Section 25, Evidence Act.

9. In the result, this petition is allowed, the order of the learned Magistrate is set aside and it is held that the recovery memo is inadmissible in evidence to the extent of proof of signatures of the accused on it.