State of N.C.T. of Delhi

v.

Mukesh

(Supreme Court Of India)

HON'BLE CHIEF JUSTICE MR. ALTAMAS KABIR HON'BLE MR. JUSTICE M.Y. EQBAL HON'BLE MR. JUSTICE VIKRAMAJIT SE

Criminal Appeal No. 698 Of 2013 (Arising Out Of S.L.P.(Crl.) No. 2637 Of 2013) | 03-05-2013

1. Leave granted.

2. This appeal is directed against the judgement and order dated 7th March, 2013, passed by a learned Single Judge of the Delhi High Court in Criminal Revision Petition No.124 of 2013. By his said order, the learned Judge set aside the order passed by the Trial Court rejecting the prayer made on behalf of the accused to confront P.W.1 with a statement made by him in a Television interview on Zee News on 8th February, 2013, after the filing of the charge-sheet, for the purpose of contradicting him with his previous statement in order to test his veracity and to impeach his credibility, as provided for under Section 146 of the Evidence Act, 1872.

3. The learned Solicitor General urged that the view taken by the High Court could result in serious consequences in the matter of holding of trials on account of the fact that the attempt to bring in evidence by way of cross-examination of a prosecution witness, in regard to statements made after the filing of the charge-sheet, would be contrary to the provisions of Section 145 of the Evidence Act as well as section 161 of the Code of Criminal Procedure, 1973 [`Code', for short].

4. In the instant case, on the basis of certain statements made by P.W.1, the complainant, and other material, a charge-sheet had been filed by the Investigating Authorities against the respondent. After the charge-sheet had been filed, the complainant appears to have given a T.V. interview on Zee News on the same subject. In the said circumstances, the question which arises is, whether, under the provisions of Section 145 of the Evidence Act, a subsequent statement made after the filing of the charge-sheet could be treated as a "previous statement" and be utilized for the purposes of Section 145 thereof. For the sake of reference, Section 145 of the Evidence Act is extracted hereinbelow:

"145. Cross-examination as to previous statements in writing.--

A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him."

5. The learned Solicitor General also referred to the provisions of Section 162 of the Code, from which he pointed out that the statement made to the police under Section 161 of the Code was not to be signed and, in any event, no statement made by any person to a police officer in the course of the investigation should, if reduced to writing, be signed by the person making it, nor should any such statement or any record thereof, whether in a police diary or otherwise or any part of such statement or record, be used for any purpose, save as indicated in the section itself. The learned Solicitor General pointed out that, in the proviso to sub-section (1), it has been indicated that, when any witness is called by the prosecution in such inquiry or trial, whose statement has been reduced into writing, any part of his statement, if duly proved, may be used by the accused and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by Section 145 of the Evidence Act, and when any part of such statement is so used, any part thereof may also be used in the re- examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination. The learned Solicitor General sought to emphasise the fact that the aforesaid provisions all indicate that, for the purposes of the prosecution witnesses, statements made prior to the filing of the charge-sheet could be used for the purpose of either Section 145 of the Evidence Act or Section 161 of the Code. According to him, the scheme of the Code as well as the Indian Evidence Act clearly indicates that only such statements, as made by the prosecution witnesses and recorded for the purposes of Section 161 of the Code, may be used for the purposes indicated therein during the trial. According to him, in the instant case, the interview given by P.W.1 on television, after the filing of the charge-sheet, cannot be said to be a previous statement for the purposes of Section 145 of the Evidence Act.

6. The learned Solicitor General also brought another important aspect to the notice of the Court as to how far a Television interview, after the filing of the charge-sheet, could be introduced by way of evidence in the trial. According to him, the recording of an interview before the Media could not be equated with the statements made by the witness during investigation before the Police authorities and, accordingly, even on such score, the High Court was in error in setting aside the order passed by the learned Trial Judge and directing that the said material could also be used on behalf of the accused for the purpose of confronting the witness.

7. On the other hand, it has been submitted by learned counsel for the respondent-accused that the use of the expression "previous statements" made in Section 145 of the Evidence Act, cannot be or should not be interpreted to mean, statements made only at the time of investigation under Section 161 of the Code, but should also be extended to any period before the witness is actually examined and that, accordingly, a statement, which is made even after the filing of the charge-sheet by the prosecution witness, could be used to confront him for the purpose of any contradiction which may be evident.

8. Learned counsel has also submitted that the object of a fair trial could also be evident from Section 146 of the Evidence Act, which provides for questions which are lawful in cross-examination and indicates that, when a witness is cross-examined, he may, in addition to the questions already raised, be asked any question to test his veracity and to shake his credit, which is the argument which seems to have been accepted by the High Court. In support of his submission, learned counsel has referred to the decision of this Court in Bipin Shantilal Panchal vs. State of Gujarat & Another [2001 (3) S.C.C.1], which has been referred to by the High Court, wherein it was held by this Court that, when evidence was being adduced, repeated objections raised with the intention of affecting and hampering the trial have to be discouraged and, accordingly, all objections with regard to the admissibility of evidence should be taken note of by the Presiding Officer, but no long arguments and submissions

should be entertained at such stage, and that any objection that may be taken with regard to the admissibility of such evidence could be taken at the time of final arguments. Learned counsel has laid stress on Paragraphs (12) and (13) of the judgement, wherein it has been observed that, in the said case, on different occasions, the Trial Judge had chosen to decide questions of admissibility of documents or other items of evidence, as and when objections thereto were raised, and then detailed orders were passed either upholding or overruling such objections. Their Lordships also observed that the worst part was that after passing the orders, the trial court waited for days and weeks for the parties concerned to go before the higher Courts for the purpose of challenging such interlocutory orders. It is in such context that their Lordships held that it was an archaic practice that during the evidence-collecting stage, whenever any objection was raised regarding admissibility of any material in evidence, the Court did not proceed further without passing orders on such objections. Accordingly, their Lordships suggested a practice which, according to them, would be a better substitute and, that is, whenever an objection is raised at the evidence-taking stage regarding the admissibility of any material or item of oral evidence, the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence), subject to such objections to be decided at the last stage in the final judgment. Learned counsel, accordingly, submitted that, in the interest of justice and having regard to the provisions of Section 146 of the Evidence Act, it was incumbent upon the Trial Court to allow the defence to cross-examine P.W.1 on the statements made by him during the television interview given by him after the filing of the charge-sheet and which interview had not been relied upon by the prosecution.

9. Having carefully considered the submissions made on behalf of the respective parties, we are inclined to hold that, from the scheme of the Code of Criminal Procedure and the Evidence Act, it appears that the investigation and the materials collected by the prosecution prior to the filing of the charge-sheet under Section 161 of the Code, are material for the purposes of Section 145 of the Evidence Act, 1872. The expression "previous statements made" used in Section 145 of the Evidence Act, cannot, in our view, be extended to include statements made by a witness, after the filing of the charge-sheet. In our view, Section 146 of the Evidence Act also does not contemplate such a situation and the intention behind the provisions of Section 146 appears to be to confront a witness with other questions, which are of general nature, which could shake his credibility and also be used to test his veracity. The aforesaid expression must, therefore, be confined to statements made by a witness before the police during investigation and not thereafter.

10. Coupled with the above is the fact that the statement made is not a statement before the Police authorities, as contemplated under Section 161 of the Code. It is not that electronic evidence may not be admitted by way of evidence since specific provision has been made for the same under Section 161 of the Code, as amended, but the question is whether the same can be used, as indicated in Section 161, for the purposes of the investigation. If one were to read the proviso to sub-section (3) of Section 161 of the Code, which was inserted with effect from 31st December, 2009, it will be clear that the statements made to the police officer under Section 161 of the Code may also be recorded by audio-video electronic means, but the same does not indicate a statement made before any other Authority, which can be used for the purposes of Section 145 of the Evidence Act.

11. The decision referred to by the learned counsel in the case of Bipin Shantilal Panchal [supra] has to be read and understood in that context. The said decision appears to have been rendered in a situation where, at every stage, the prosecution's attempts to adduce evidence was being objected to on behalf of the accused. It is in such circumstances that the decision was rendered. This is a case

where, however, an attempt of the defence to introduce evidence, which is not contemplated within the scheme of the Code or the Evidence Act, was before the Court and the Court decided that the same could not be permitted. The decision in the case of Bipin Shantilal Panchal [supra] cannot, therefore, be applied to the facts of this case.

12. In this regard, reference may be made to the decision rendered by a Bench of six Judges of this Court in Tahsildar Singh & Ors. vs. State of Uttar Pradesh [A.I.R. 1959 S.C. 1012], wherein, in somewhat similar circumstances, it was stated that "previous statement" would be such statements as made during investigation.

13. Accordingly, we allow the appeal, set aside the judgement of the High Court and restored that of the Trial Court.