

# **BOMBAY HIGH COURT**

Sohanlal Pahladrai Vaid

Vs.

State (Bombay)

Criminal Revn. Appln. No. 28 of 1964, with Appln. No. 25 of 1964

(Chitale, J.)

03.02.1964

## **JUDGMENT**

**Chitale, J.**

1. This is a revision application by the accused against the order passed by the learned Judicial Magistrate, F.C., Jalgaon, which is confirmed by the learned Sessions Judge, Jalgaon rejecting their prayer for a summons for production of earlier statements of some of the prosecution witnesses.

2. The relevant facts are as follows :- Accused Nos. 1 and 2 are the proprietors of "Sohanlal Pahaladrai Solvent Extraction Plant Jalgaon" and accused No. 3 is the Manager of the said plant. On 17th March 1961, there was an explosion in the said plant and 23 employees died and eight more employees sustained injuries. The State Government appointed a Commission of Inquiry under the Commissions of Inquiry Act, 1952, to inquire, among other things, into the cause of the said explosion. This Commission was appointed in April 1962. The Commission recorded the evidence of several persons. After the inquiry; a charge-sheet was submitted against the present accused under Sections 286, 287 and 304 of the Indian Penal Code. This charge-sheet was submitted in May 1962. Many of the persons who gave evidence before the Commission, are cited as prosecution witnesses. During the course of the trial, the accused applied to the learned trial Magistrate that summons should be issued to the then D.S.P. Jalgaon under Section 94, Cri. Pro. Code asking him to produce the statements of the prosecution witnesses made before the above said Commission. The accused stated that copies of these statements were supplied to the accused while inquiry before the Commission was going on and that these statements of prosecution witnesses before the Commission were required at the trial for contradicting the prosecution witnesses under Section 145 of the Indian Evidence Act, if occasion for the same arises.

3. Both the learned trial Magistrate as well as the learned Sessions Judge held that in view of Section 6 of the Commission of Inquiry Act, 1952, the statements of prosecution witnesses before the Commission could not be used to contradict them at a subsequent trial, hence the accused's application for a summons to get those statements produced was rejected. It is against this decision that the present revision application is preferred by the accused.

4. Mr. Nain, who appears for the petitioner-accused contends that the interpretation put upon Section 6 of the Commissions of Inquiry Act, 1952, by the Courts below is erroneous. Section 6 reads thus :

"6. 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."

Mr. Nain contends that reading Section 6 as a whole it is clear that the protection afforded by this section is against fastening any civil or criminal liability on a person appearing as a witness before a Commission to give evidence, because of any statement in his evidence before the Commission. Mr. Nain contends that the words.

"No statement shall be used against him" in Section 6 cannot be interpreted to mean that such a statement cannot be used for any purpose whatever. Mr. Nain also relies on the words "except a prosecution for giving false evidence by such statement" to contend that these words by necessary implication indicate that a statement before the Commission can be used and proved to show that the witness making that statement has hereby deliberately given false evidence before the Commission. In my opinion, there is considerable force in these contentions.

5. As stated by Mr. Rane, the learned Assistant Government Pleader, there is no doubt that Section 6 is intended to encourage people to come forth and give evidence before a Commission without being apprehensive of civil or criminal liability because of their giving evidence before a Commission. The question for consideration, however, is whether the words "no statement shall be used against him in any civil or criminal proceedings" can be interpreted to "mean that the statement cannot be used for any purpose whatever except the one mentioned in Section 6. In the first place, if it was the object of the Legislature that the statement of a person made before a Commission should not be used for any purpose whatever in a subsequent civil or criminal proceeding, the Legislature could have said so clearly. The very fact that the Legislature has not chosen to say so is very significant. The material words are "against him." The question for consideration is whether the use of a statement made before a Commission as an earlier statement to contradict a later statement, as provided for by Section 145 of the Evidence Act,

would amount to a "use against the person making the said statement." Mr. Nain contends that the expression "against him" must be interpreted to mean that the use of the said statement should not adversely affect the witness so as to give rise to a civil or criminal liability against him except the one mentioned in the section itself. When a statement made by a witness before a Commission, is used as an earlier statement for contradicting the witness under Section 145 of the Indian Evidence Act, it cannot be said that such use is "against him", because no liability is thereby fastened 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. In my opinion, such use under Section 145 of the Evidence Act, does not amount to "use against the witness", as contemplated by Section 6 of the Commissions of Inquiry Act, 1952. The use of an earlier statement before a Commission for the purpose mentioned in Section 145 of the Indian Evidence Act, would be helpful to a Court which has to decide whether the witness concerned should be believed or not. In enacting Section 6 of the above said Act, the Legislature could not possibly intend to lay down that a statement of a witness made before a commission could never subsequently be shown to be inaccurate, wrong or false, except in a prosecution against that witness mentioned in the said section.

6. Mr. Rane, the learned Assistant Government Pleader, contends that if it was correct to say that Section 6 is intended merely to protect a witness making a statement before a Commission from civil or criminal liability then the latter part of Section 6 would be redundant. Mr. Rane contends that if the petitioner's contention is correct, the first part, viz.

"no statement made by a person in the course of giving evidence before the Commission shall subject him to any civil or criminal proceeding" would be enough, and the latter part viz.

". . . . . or be used against him" would be redundant, hence the construction sought to be put upon Section 6 by the petitioner cannot be accepted. I am unable to uphold this contention. The expression

"No statement. . . . . shall subject him to"

clearly indicates that a statement made before a commission could not be made the basis of a civil or criminal proceeding against the person making that statement., i.e., no civil or criminal liability could arise out of such statement, the only exception being the one mentioned in Section 6 itself. The latter part, viz.,

"No statement. . . . . shall be used against him"

in my opinion, only lays down that in any other civil or criminal proceeding the statement, even though not the sole basis of that proceeding, shall not be used so as to fasten any civil or criminal liability on the person making the statement, of course subject to the exception mentioned in Section 6. Reading Section 6 as a whole, it is clear that it merely lays down that a statement

made by a person before a Commission would not expose the person making that statement to any civil or criminal action, which would render him liable on account of that statement, subject to the only exception mentioned in that section.

7. For reasons indicated above, I hold that the learned trial Magistrate as well as the learned Sessions Judge - both of them - are wrong in taking the view that in a criminal case, which is not against the person making a statement before a Commission the use of such a statement for the purpose mentioned in Section 145 of Indian Evidence Act, is Prohibited by Section 6 of the Commissions of Inquiry Act, 1952. If it is held that such use is prohibited by Section 6, it would confer on a statement before a Commission, immunity from challenge which the Legislature possibly never intended when it enacted Section 6.

8. Mr. Nain during his arguments relied upon, *Alien Berry and Co. Private Ltd. v. Vivian Boses*<sup>1</sup> *Gulab v. The Crown*<sup>2</sup>, *Imperatrix v. Pitamber Jina*<sup>3</sup>, *Queen Empress v. Tribhovan Manekchand*<sup>4</sup>,. The point that arises before me did not directly arise in those cases<sup>3</sup> and in my opinion these cases will not strictly speaking apply to the facts of the present case. I may, however, mention that the decision, ILR 9 Bombay 131, may have some relevance. In that case Section 25 of the Indian Evidence Act, was considered and it was held that although the confession made to a police officer may be inadmissible to prove the alleged offence against the maker of that confession, it is admissible for other purposes under Section 18 of the Indian Evidence Act. Similarly even though a statement made before a Commission cannot be used - subject to the exception mentioned in Section 6 - against the person making that statement so as to fasten on him civil or criminal liability, it can be used for other purposes, e.g., to show that that person, when he gives evidence in a subsequent proceeding, is not telling the truth or that he did not tell the truth when he gave evidence before the Commission.

9. Thus, in my opinion, the statements made by the prosecution witnesses before the Commission, can be used by the defense for the purpose mentioned in Section 145 of Indian Evidence Act. The learned trial Magistrate should, therefore, make the said, statements available to the accused for cross-examination, if they so desire. I would like to make it clear that these statements can be utilized by the accused only for the purpose of contradiction, as contemplated by Section 145 of Indian Evidence Act.

10. For reasons indicated above, I make the rule absolute, set aside the order passed by the Courts below and direct that the statements of the prosecution witnesses made before the Commission shall be made available to the accused for cross-examination of the prosecution witnesses.

Order set aside.

<sup>1</sup> AIR 1960 Pun 86

<sup>3</sup> ILR 2 Bom 61

<sup>2</sup> AIR 1923 Lah 315

<sup>4</sup> ILR 9 Bom 131 and (1837) 7 LJ 268