Raghuveer Sharan vs District Sahakari Krishi Gramin Vikas ... on 10 September, 2024

Author: Prashant Kumar Mishra

Bench: Prashant Kumar Mishra

2024 INSC 681 REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE/INHERENT JURISDICTION

CRIMINAL APPEAL NO(s). 2764 OF 2024
(Arising out of Special Leave Petition (Crl.) No. 3419 OF 20

RAGHUVEER SHARAN ... APPELLANT

VERSUS

DISTRICT SAHAKARI KRISHI GRAMIN
VIKAS BANK & ANR. ...RESPONDENTS

WITH

CONTEMPT PETITION (C) NO. 508 OF 2024 IN CRIMINAL APPEAL
NO(s). 2764 OF 2024 @ SPECIAL LEAVE PETITION (CRL.) NO.
3419 OF 2024.

JUDGMENT

PRASHANT KUMAR MISHRA, J.

CRIMINAL APPEAL NO(s). 2764 OF 2024

1. The appellant seeks to challenge the judgment and order dated 09.11.2023 passed by the High Court of Madhya Pradesh in Criminal Revision No. 1925 of 2023 whereby the High Court has dismissed the appellant's revision application affirming the order passed by the Special Court MP/MLA) Gwalior on 17.04.2023 in exercise of power under Section 319 of the Code of Criminal Procedure, 19731 to summon the appellant as an accused.

2. The facts of the case, briefly stated, are that in the year 1998, one Rajendra Bharti was the President of the complainant/respondent no. 12 which is now under liquidation. At the relevant

time, accused Savitri Shyam (since deceased), (mother of the accused Rajendra Bharti), moved an application on 24.08.1998 for creating a Fixed Deposit of Rs. 10,00,000/- for a period of 3 years with the respondent bank, in her capacity as the President of Shyam Sunder Shyam Sansthan, Datia, Madhya Pradesh. The amount was deposited with the respondent bank vide 2 separate deposits of Rs. 8.5 Lakhs and Rs. 1.5 Lakhs respectively. However, subsequently, these challans were interpolated under the initial of the appellant who was working as the Cashier of the respondent bank at the relevant time. Due to the interpolation, the Fixed Deposit for 3 years was converted to Fixed Deposit for 10 years by committing forgery. In the bank ledger also interpolation and forgery were made by striking off the period of "3 years" to make "15 years" under the initial of the appellant.

3. When the criminal complaint was filed, the appellant was also examined as one of the witnesses of the respondent bank, wherein he admitted having changed the tenure of the Fixed Deposit from 3 years to 10 years and later on to 15 years. This statement of the appellant was 'Cr.P.C.' 'respondent bank' recorded at the pre-summoning stage on 19.03.2016. However, subsequently, during trial, PW-1/Narendra Singh Parmar was examined- in-chief on 31.03.2022 wherein he made the statement that it was the appellant who made the interpolation in the Fixed Deposit document.

4. After the statement of PW-1/ Narendra Singh Parmar was recorded, the respondent bank submitted application under Section 319 Cr.P.C. for arraying the appellant and one Rakesh Bharti (brother of Rajendra Bharti) as additional accused.

5. The trial court vide its order dated 17.04.2023 allowed the application partly by summoning the appellant, while rejecting the same qua Rakesh Bharti. Pursuant to the summoning, charges have already been framed against the appellant on 15.06.2023.

6. The trial court's order dated 17.04.2023 was challenged before the High Court. However, under the impugned judgment and order, the High Court dismissed the criminal revision petition preferred by the appellant. SUBMISSIONS

7. Mr. Vivek K. Tankha, learned senior counsel appearing for the appellant has argued that the appellant was entitled to the benefit under Section 132 of the Indian Evidence Act, 18723 and he could not be held accountable for the statement made by him. It is also argued that the evidence available on record do not make out any prima facie case 'of the Act' against the appellant for summoning him as an accused under Section 319 Cr.P.C. It is further submitted that the power under Section 319 Cr.P.C. can be exercised only in a case when there is prima facie material giving rise to grave suspicion against the person with respect to commission of offence. Reference is made to R. Dinesh Kumar alias Deena v. State represented by Inspector of Police and another4.

8. Per contra, Mr. Saurabh Mishra, learned senior counsel appearing for the respondent bank would argue that since the appellant is made accused on the basis of statement made by PW-1/Narendra Singh Parmar recorded in course of trial on 31.03.2022 and not on the basis of appellant's pre-summoning statement recorded on 19.03.2016, therefore, Section 132 of the Act, has no application in the facts and circumstances of the case. It is also argued that the statement recorded

at the pre-summoning stage is not admissible in evidence as held by this Court in Sashi Jena and Others v. Khadal Swain and another.5 ANALYSIS

9. The issue to be decided herein is whether in the facts and circumstances of the case, the appellant is entitled for protection under Section 132 of the Act, as his statement was recorded earlier at the pre- summoning stage as a witness for the complainant/respondent bank. (2015) 7 SCC 497 (2004) 4 SCC 236

10. Before proceeding further, it would be appropriate to refer and reproduce the provisions contained in Section 132 of the Indian Evidence Act, 1872 as under: -

> "132. Witness not excused from answering on ground that answer will criminate. -
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> A witness shall not be excused from answering any question, as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind:
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> Proviso:- Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him, in any criminal proceeding, except a prosecution for giving false evidence by such answer."

11. In order to have clear understanding of the sweep and import of the provisions contained in Section 132 of the Act and the proviso, in particular, it is necessary to dwell on the principle on which the provision is introduced in the statute.

12. The proviso to Section 132 of the Act is based on the maxim nemo Tenetur prodere seipsum i.e. no one is bound to criminate himself and to place himself in peril. In this regard the law in England, (with certain exceptions) is that a witness need not answer any question, the tendency of which is to expose the witness, or to feed hand of the witness, to any criminal charge, penalty or forfeiture6. The privilege is based on the principle of encouraging all persons to come forward with evidence, by protecting them, as far as possible, from injury or needless annoyance in consequence of so doing7. This absolute privilege, in some cases tended to bring about a failure of justice, for the allowance of the excuse, particularly when the matter to which the question related was in the knowledge solely of the witness, deprived the court of the information which was essential to its arriving at a right decision.

13. In order to avoid this inconvenience, Section 132 of the Act, withdrew this absolute privilege and affords only a qualified privilege. The witness is deprived of the privilege of claiming excuse from testifying altogether; but, while subjecting him to compulsion, the legislature, in order to remove any inducement to falsehood, declared that evidence so obtained should not be used against him, except for the purpose in the Act declared.

14. It must also be borne in mind that the proviso to Section 132 of the Act is also an extension of the protection enshrined under Article 20(3) of the Constitution of India which confers a fundamental right that "no person accused of any offence shall be compelled to be a witness against himself". Under the constitutional scheme, the right is available only to a person who is accused of an offence, the proviso to Section 132 See Woodroffe & Amir Ali, Law of Evidence, Twenty-first edition, 2020 pp.4377 (Syn 132.1) R v. Gopal Dass, (1881) 3 Mad 271 WM Best, A Treatise on the Principles of Evidence, 4th Edn, H Sweet, London, 1866, p 126 of the Act, in extension, creates a statutory immunity in favour of a witness who in the process of giving evidence in any suit or in any civil or criminal proceeding makes a statement which criminates himself. It is settled that the proviso to Section 132 of the Act is a necessary corollary to the principle enshrined under Article 20(3) of the Constitution of India which confers a fundamental right that "no person accused of any offence shall be compelled to be a witness against himself"8.

15. A perusal of the legislative history would reveal that the object of the law is to secure evidence which could not have been obtained. The purpose for granting such a statutory immunity was to enable the court to reach a just conclusion (and thus assisting the process of law).

16. In R. Dinesh Kumar alias Deena (supra), the two judges Bench of this Court observed, after referring to Justice Muttusami Ayyar's opinion in the matter of "The Queen vs. Gopal Doss & Anr.9" that the policy under Section 132 of the Act appears to be to secure the evidence from whatever sources it is available for doing justice in a case brought before the court. In the course of securing such evidence, if a witness who is under obligation to state the truth because of the Oath taken by him makes any statement which will criminate or tend to expose such a witness to a "penalty or forfeiture of any kind etc.", the proviso grants immunity to such a witness by declaring that "no such answer given by Laxmipat Choraria v. State of Maharashtra AIR 1968 SC 938 ILR 3 Mad 271 the witness shall subject him to any arrest or prosecution or be proved against him in any criminal proceeding". This Court in R. Dinesh Kumar alias Deena (supra) further observed in para 47 that no prosecution can be launched against the maker of a statement falling within the sweep of Section 132 of the Act on the basis of the "answer" given by a person while deposing as a "witness" before a Court. We are in agreement with the view taken by this Court in R. Dinesh Kumar alias Deena (supra). However, the facts of the present case compel us to consider the matter in a different perspective as to when apart from his own statement made by a witness, he is still protected under the proviso of Section 132 of the Act when there is other material against him for summoning as an accused. In R. Dinesh Kumar alias Deena (supra) a witness examined as PW-64 during trial was sought to be summoned by moving an application under Section 319 Cr.P.C. The Trial Court dismissed the application, and the High Court affirmed the dismissal order. The High Court, in the said case, observed in para 64 that PW-64 cannot be prosecuted by summoning him as an additional accused under Section 319 Cr.P.C. on the basis of his evidence in the Sessions Case. However, the High Court held that PW-64 could be separately prosecuted for an offence under Section 120B of the Indian Penal Code, 186010 read with Section 302 of IPC if independent evidence other than the statement under Section 164 Cr.P.C. of PW-64 and his evidence in Sessions Case are available to prosecute him along with other accused.

'IPC'

17. This Court in R. Dinesh Kumar alias Deena (supra) refused to consider the issue as to whether a witness protected under the proviso of Section 132 of the Act could be separately prosecuted if independent evidence is also available by observing thus in paras 7 & 52:

> "7. In our opinion, the second conclusion recorded by the High Court contained in para 64 extracted above, is really uncalled for in the context of the issue before the High Court. The question before the High Court was whether the Sessions Court was justified in declining to summon PW 64 in exercise of its authority under Section 319 of the Cr.P.C. as an additional accused in Sessions Case No. 73 of 2009. We, therefore, will examine only the question whether on the facts mentioned earlier the Sessions Court is obliged to summon PW 64 as an additional accused exercising the power under Section 319 of the Cr.P.C.
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> 52. In the light of the above two decisions, the proposition whether the prosecution has a liberty to examine any person as a witness in a criminal prosecution notwithstanding that there is some material available to the prosecuting agency to indicate that such a person is also involved in the commission of the crime for which the other accused are being tried, requires a deeper examination."

18. In other words, if the privilege made available to a witness under the proviso to Section 132 of the Act is interpreted as a complete immunity, notwithstanding availability of other evidence, it is capable of abuse. In a particular case, a dishonest Investigating officer could cite a person as a witness in the report under Section 173 of the Cr.P.C, being fully aware that there is incriminating material against such person. Similarly, a man complicit of an offence, could very well institute a complaint under Section 200 Cr.P.C., examine himself as a witness, make statements incriminating himself and claim immunity from prosecution. It could also be so that an investigating officer, under an honest mistake examines a man complicit of an offence as a witness in the case, the Court upon examining the other evidence, could conclude that the witness was complicit in the offence, the question then would be whether there would be complete bar on the Court to prosecute such witness for the offence on the basis of such other material.

19. The question that would then arise is whether the qualified privilege under the proviso to Section 132 of the Act, grants complete immunity to a person who has deposed as a witness (and made statements incriminating himself), notwithstanding the availability of other material with the prosecution?

a. Whether a Court while trying an offence, is barred from initiating process under Section 319 of the Cr.P.C, against a witness in the said proceeding on the basis of other material on record?

20. As noted above, the qualified privilege under the proviso to Section 132 of the Act, is intended to ensure that all the evidence is placed before the Court to reach a just conclusion. In our view, it is not fathomable that a provision in the Evidence Act, the primary purpose of which was to ensure that all the material is before the Court and ensure that the ends of justice are met, could itself grant a blanket immunity to a witness (albeit complicit). Such an interpretation in our opinion would be

unsustainable. Needless to say, that his statement cannot be used for any purpose whatsoever for the purposes of bringing such witness to trial. As such we hold that the qualified privilege under the proviso to Section 132 of the Act does not grant complete immunity from prosecution to a person who has deposed as a witness (and made statements incriminating himself).

21. However, the next question that would arise is what is the course available to a Court, which in the course of trial is confronted with evidence, other than the statement of the witness (against whom incriminating material is available)? Whether the Court can rely upon the statement of the witness for invoking the provisions of Section 319 Cr.P.C? Whether reference to any statement tendered by the witness would vitiate the order under Section 319 Cr.P.C?

22. There cannot be an absolute embargo on the Trial Court to initiate process under Section 319 Cr.P.C., merely because a person, who though appears to be complicit has deposed as a witness. The finding to invoke Section 319 Cr.P.C., must be based on the evidence that has come up during the course of Trial. There must be additional, cogent material before the Trial Court apart from the statement of the witness.

23. An order for initiation of process under Section 319 Cr.P.C against a witness, who has deposed in the trial and has tendered evidence incriminating himself, would be tested on the anvil that whether only such incriminating statement has formed the basis of the order under Section 319 Cr.P.C. At the same time, mere reference to such statement would not vitiate the order. The test would be as to whether, even if the statement of witness is removed from consideration, whether on the basis of other incriminating material, the Court could have proceeded under Section 319 Cr.P.C.

24. In the case at hand, the appellant has been summoned as an additional accused under Section 319 of the Cr.P.C. not only on the basis of his pre-summoning statement but on the basis of the statement of PW-1/Narendra Singh Parmar who was examined as a witness on 31.03.2022. Had the appellant been proposed as an additional accused on the basis of his statement, he would have been summoned immediately after his pre-summoning statement was recorded on 19.03.2016. Thus, the present is a case where the appellant has been summoned as an additional accused on the basis of the statement of PW- 1/Narendra Singh Parmar.

25. The proviso to Section 132 offers statutory immunity against self- incrimination providing that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution or be proved against him in any criminal proceedings except a prosecution for giving false evidence by such answer. Thus, the only protection available is, a witness cannot be subjected to prosecution on the basis of his own statement. It nowhere provides that there is complete and unfettered immunity to a person even if there is other substantial evidence or material against him proving his prima facie involvement. If this complete immunity is read under the proviso to Section 132 of the Act, an influential person with the help of a dishonest Investigating Officer will provide a legal shield to him by examining him as a witness even though his complicity in the offence is writ large on the basis of the material available in the case.

26. As earlier stated, R. Dinesh Kumar aias Deena has not examined the issue discussed in the preceding paragraph, therefore, R.Dinesh Kumar aias Deena (supra) is of no assistance to the appellant.

27. Reverting to the issue as to whether there is prima facie material against the appellant for summoning him as an accused in exercise of power under Section 319 Cr.P.C. It is to be seen that in his statement during trial recorded on 31.03.2022, PW-1/Narendra Singh Parmar has categorically stated in para 5 of the examination-in-chief that the interpolations by applying fluid have been made under the initials and signatures of the appellant. Thus, there is prima facie material for exercise of power under Section 319 Cr.P.C.

28. For the foregoing, the criminal appeal deserves to be and is hereby dismissed.

CONTEMPT PETITION (C) NO. 508 OF 2024 IN CRIMINAL APPEAL NO(s). 2764 OF 2024 @ SPECIAL LEAVE PETITION (CRL.) NO. 3419 OF 2024.

29. In view of the above judgment passed in Criminal Appeal, the proceedings in this Contempt Petition stand closed and the interim order passed therein is vacated. The Contempt Petition is disposed of.

……J. (PRASHANT KUMAR MISHRA) ……J. (PRASANNA BHALACHANDRA VARALE) NEW DELHI;

SEPTEMBER 10, 2024.