Madhya Pradesh High Court
Govind vs State Of Madhya Pradesh on 15 May, 2001
Equivalent citations: 2001 (4) MPHT 466
Author: S Pandey
Bench: S Pandey

ORDER S.C. Pandey, J.

1. This criminal revision under Section 397 read with Section 401 of the Code of Criminal Procedure is directed against the orders dated 4-4-2001 and 17-4-2001 passed by the Addl. Sessions Judge, Sihora in Sessions Trial No. 103/95.

2. The facts of this case disclose that the relevant FSL reports of Forensic Science Laboratory, Sagar were filed on 1-8-2000. The were not the originals but were alleged certified copies. Copies of the FSL reported were given to the counsel for the accused persons. No application under Section 79 of the Indian Evidence Act (for short "the Act") was filed on that date. Therefore, it was not known to the accused person on 1 -8-2000 if the prosecution wanted to examine the scientific expert who made the reports for proving the copies. It is on 4-9-2000 an application under Section 79 of the Act for exhibiting the alleged certified copies of the FSL reports was filed. The learned Trial Judge accepted the two reports of FSL, Sagar stating that these certified copies are tendered under Section 293 of the Code of Criminal Procedure (for short "the Cr.PC") and they be marked as Exs. P-27 and P-28. Thereafter the learned Trial Judge went on, and on 4-4-2001 the learned Trial Judge decided the application dated 16-12-2000. In that application dated 16-12-2000 it was claimed by the applicant that the copy of the application under Section 79 of the Act was not given to the accused person and the exhibits were marked without giving the accused person an opportunity to controvert the application under Section 79 of the Act. The view of the learned Trial Judge was that the order dated 4-9-2000 marking the aforesaid documents was passed in presence of the counsel and therefore he found that there was no propriety in reopening the order when the Court had found that these documents were not of suspicious character. The application was rejected. Thereafter the application filed by the accused person for examination of the officer who made the report of the FSL was also rejected by the impugned order dated 17-4-2001. The concerned officer P.N. Bhavodia was sought to be examined by the applicant. Learned counsel for the applicant states that so far as Satyendra Kumar was concerned, no prayer was made but the learned Trial Judge wrongly thought that the applicant wanted to examine him.

3. The only question that has been raised by learned counsel for the applicant in this case is that under Section 293 of Cr.PC, the original report of scientific expert mentioned in that Section is acceptable as the evidence within the meaning of Section 3 of the Act. It is argued that an alleged certified copy is not an evidence under the Act.

4. It is submitted by the learned counsel for the applicant that the certified copies of the documents will not be evidence for the purpose of Section 293, Cr.PC. Consequently the initial order marking the reports of the FSL, Sagar as Exs. P-27 and P-28 is bad in the eyes of law and this Court can exercise its discretion in the interests of justice to correct that order suo motu. It is further argued

that in any case when these documents were admitted by order dated 4-9-2000, the copy of the application under Section 79 of the Act was not provided to the counsel and the documents were exhibited without an opportunity to counter the application under Section 79 of the Act. The learned Trial Judge passed the order without examining the validity of application under Section 79 of the Act. Further it has been argued that in any case the learned Trial Judge should have allowed the application for summoning persons who made the FSL reports Exs. P-27 and P-28. It was argued that the contents of the certified copies could be proved by him and the error could be corrected. There was no reason for the learned Trial Judge to reject that application.

5. Learned counsel for the State, on the other hand, supported the impugned orders and says that the learned Trial Judge was right in holding that Exs. P-27 and P-28 were marked without any objection on part of the accused person and consequently the accused cannot raise this point before the learned Trial Judge as sell as before this Court.

6. In the opinion of this Court, the discretion and power to exercise suo motu interference by this Court will depend upon the question whether the certified copies of FSL report marked as Exs. P-27 and P-28 are admissible in evidence under Section 293 of Cr.PC. If the certified copies of the documents are held to be admissible, no case is made out for interference in the revision. However, if the certified copies of these documents are totally inadmissible in evidence without proof as per the Act, then there may be a case for interference with the impugned orders.

7. In this connection, it is necessary to reproduce the definition of "Document" and "Evidence". In the Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context : --

***** "Document" -- "Document" means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

"Evidence" means and includes -

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence;

(2) all documents produced for the inspection of the Court; such documents are called documentary evidence.

It is, thus, clear from Sub-clause (2) of the definition of evidence that all the documents which are produced for inspection of a Court are known as documentary evidence. The use of words "documents produced for inspection of a Court' obviously means the original documents. Section 59 of the Act permits proof of all facts by oral evidence save the contents of a document. It is obvious that a written document has to be produced ordinarily for proving its contents. Section 61 of the Act permits proof of contents of a document by production either primary or secondary evidence. Section 62 of the Act defines primary evidence to mean the production of the document itself. The

two explanations added to this section merely expands the natural definition of primary evidence and explains that in certain circumstances counter part of a document or number of documents made by one uniform process be treated as primary evidence. That is to say they are as good as the originals. We have seen that the Act has allowed an original document to be produced for proving the contents of a document. Otherwise a party can lead secondary evidence to prove the contents of a document. However, mere production of a document does not automatically prove that it is written by the persons mentioned in the document. Therefore, it is necessary to lead oral evidence for proving not its contents but the fact of its being written or signed by the maker thereof. In fact this Act is apart from the contents of document and falls in the domain of oral evidence. This act of a person can only be proved by oral evidence. Section 67 of the Act provides for proving the aforesaid Act by examination of the maker. Section 68 of the Act provides for the manner of proving execution where the document is required by law to be attested.

8. We must now examine Section 293 of the Cr.PC in the backdrop of these provisions of the Act. It reads as under :--

"293. Reports of certain Government scientific experts.-- (1) Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any enquiry, trial or other proceeding under this Code.

(2) The Court, may, if it thinks fit, summon and examine any such expert as to the subject-matter of his report.

(3) Where any such expert is summoned by a Court and he is unable to attend personally, he may, unless the Court has expressly directed him to appear personally, depute any responsible officer working with him to attend the Court, if such officer is conversant with the facts of the case and can satisfactorily depose in Court on his behalf.

(4) This section applies to the following Government scientific experts, namely:--

(a) any Chemical Examiner or Assistant Chemical Examiner to Government;

(b) the Chief Inspector of Explosives;

(c) the Director of the Finger Print Bureau;

(d) the Director, Haffkeine Institute, Bombay;

(e) the Director (Deputy Director or Assistant Director) of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;

(f) the Serologist to the Government.

This section of Cr.PC applies to the report of scientific experts mentioned in Sub-section (4 of Section 293. The Sub-section (1) of Section 293 permits report of any one of those scientific experts given under his hands in respect of a thing submitted for examination or analysis to be used in evidence as such unless the Court requires his presence (sub-section 2) or that of his deputy (sub-section 3) for the purpose of giving evidence. The Sub-sections (2) and (3) give discretion to the Court to summon a witness to depose about the report. Thus, ordinarily the report of the expert is admissible without examining the maker thereof. This rule of evidence is an exception to Section 67 of the Act. Section 293 is confined to the original report which is treated as primary evidence under Section 62 of the Act. This section of Cr.PC may be treated as an exception to Section 67 of the Act because it modifies the contents of that section partially for a given purpose. The further question is : should this Court enlarge the scope of this section by permitting admission of certified copies without examining the expert ? There are two serious objections to this view. Firstly the certified copy of a document is secondary evidence as per Section 62 of the Act. Further Section 65 of the Act bars production of secondary evidence unless the conditions (a) to (g) mentioned in that section are fulfilled. Section 293, Cr.PC is confined to a report. It would be appropriate to consider the effect of conditions (e) and (f) of Section 65 of the Act. In case of (e) and (f) certified copy of document is made admissible as secondary evidence. Section 65(e) refers to a public document within the meaning of Section 74 of the Act. Section 65(f) refers to a document where certified copy is permitted to be produced by the Act or other law.

9. It is argued that the report under Section 293, Cr.PC is a "public document" and, therefore, its certified copy would be admissible. A report of an expert is merely his opinion on a subject. A close study of Section 74 of the Act would reveal that the words "acts" twice used in Section 74 of the evidence are used in the same sense. Every act of a public servant would not be a public document. Section 74 of the Act refers to that act of which a record is made for public inspection. Section 76 of the Act gives right to an interested person to inspect a public document. He can demand a certified copy. A report of an expert cannot be inspected by an interested person. Its copies are not available to a person interested. In the case of Abdul Hakim Khan v. Raja Saadat Ali Khan and Ors., Gokaran Nath Mishra, J., AIR 1928 Oudh 155, agreeing with the argument of Mr. Jinnah held that a report of civil surgeon to Magistrate is not a public document. The civil surgeon gave his opinion as an expert. He did not make the record of his "act" in the official capacity for the inspection of public. The aforesaid definition given by Gokaran Nath Mishra, J., commends to this Court. It accords with the common sense view that a "public document" mentioned in Section 74 of the Act is the records of the act of public officer of which he is required under any law or rule to keep record for consumption of public at large. Thus, the reports mentioned in Section 293, Cr.PC are not public documents. This conclusion is reinforced by the fact that the legislature was required to enact Section 293, Cr.PC for the facility of admission of these reports without examining the makers thereof. Section 293, Cr.PC was, thus, confined to primary evidence which is the actual report. Since this report is not a public document, its certified copy cannot be given under Section 76 of the Act and consequently cannot be proved under Section 77 of the Act. No other provision under any other taw including the Cr.PC was brought to the notice of the Court.

10. In the opinion of this Court, the only way to prove the contents of a report under Section 293, Cr.PC, if it is lost, is by producing secondary evidence. It has been held that reports mentioned in

Section 293 of Cr.PC shall not fall within Section 74 of the Act and hence they are not public document. Therefore, their certified copies under Sections 76 and 77 of the Act shall not be admissible. Section 65(e) and 65(f) of the Act do not apply. The presumption under Section 79 of the Act does not apply. It deals with certified copies of public documents. Consequently, resort can be had to other provisions of Section 65. In this case Section 65(c) of the Act could be used if the report is lost or destroyed. This discussion upto now is confined to the contents.

11. Moreover it may be noticed that the enactment of Section 293 of Cr.PC was also exception to the mode of proof, execution or creation of a document. The production of purported report would have been proof of its contents as well as its creation unless the Court otherwise directed. Now since the original is not being produced, it is necessary to examine its maker for proving that he had actually made it. Section 67 of the Act would come into play alongwith Section 65 thereof. In this connection the cases reported in AIR 1963 Orissa 58 (State of Orissa v. Pichika Parvatisam) as well as AIR 1954 Patna 131 (State v. Karu Gope) are the authorities which may be considered. In both these cases it has been laid down that the copy of the original report of expert cannot be used as an evidence without formal proof. In other words formal proof is required in the manner secondary evidence is proved if the original is not produced.

12. The result is that the order dated 4-9-2000 is set aside in suo motu exercise of revisional power of this Court and all consequential orders regarding the FSL reports Exs. P-27 and P-28 are hereby set aside. It is directed that the prosecution/State should examine the person who supplied the copies of these documents for proving their contents and their creation or produce the originals for proving these documents. The parties are directed to appear before the learned Trial Judge on 11-7-2001.

13. The revision is allowed to the extent indicated above.

14. Criminal Revision allowed.