

The Delhi Cloth & General Mills Co., Ltd.
 v.
 The Chief Commissioner, Delhi and others
 Falshaw, C.J.

officers' salaries as extended in this Department. If this amount were excluded the percentage could be about 57. There is unfortunately no authority, except the Rajasthan decision to which I have referred, in which any standard has been laid down regarding the minimum percentage of sums realised as licence fees and utilised on services by the Department concerned which would cause a licence fee to be held as merely a colourable disguise for the imposition of tax, but I should certainly not be inclined to strike down such a licence fee where about 63 per cent is actually spent on services rendered. In the Rajasthan case the percentage was considerably below, but several special circumstances existed in that case. Perhaps a bill will have to be drawn somewhere, but this is not a case for it. The result is that I would dismiss the petition with costs. Counsel's fee Rs. 200.

Mehar Singh, J. MEHAR, SINGH, J.— I agree.

B.R.T.

REVISIONAL CRIMINAL

Before J. S. Bedi, J.

CHANI ALIAS CHANAN SINGH,—*Petitioner.*

versus

THE STATE,—*Respondent.*

Criminal Revision No. 515 of 1964.

1965
 February, 12th. *Evidence Act (I of 1872)—S. 27—Disclosure statement made under—Proof of—Production of Investigating Officer as a witness—Whether obligatory.*

Held, that section 27 of the Indian Evidence Act, 1872, is an exception to sections 25 and 26 of the Act and it nowhere lays down that to prove a disclosure statement under the section, the examination of the investigating officer, who had interrogated the accused, as a witness was obligatory. What is required under this section is that the person when he makes the disclosure statement should be accused of an offence and must be in the custody of a police officer. Even then only so much of the information, whether it amounts to a confession or not as relates distinctly to the fact thereby discovered, can be proved.

Petition for revision of the order of Shri Brijindra Singh, Sodhi, Additional Sessions Judge. Ferozepore, dated the 25th April, 1964, affirming that of Shri S. N. Goyal, Magistrate, First Class, Moga, dated the 28th November, 1963, convicting the petitioner.

Y. P. GANDHI, ADVOCATE, for the Petitioner.

M. K. MAHAJAN, ADVOCATE FOR ADVOCATE-GENERAL, for the Respondent.

JUDGMENT

BEDI, J.—The facts giving rise to this revision are briefly as under. On 8th of September, 1961, the shop of Lachhman Dass situated in Moga was broken into from where an amplifier, a gramophone machine and about half a dozen gramophone records were stolen. Then again, on 1st of January, 1962, the shop of Dasondhi Ram, P.W., situated in Moga Mandi, was broken into from where gold clips (Exhibits P. 4), and gold *dandis* (Exhibits P. 3), were removed. These ornaments, respectively, were pawned by Mohinder Singh, P.W., and Karam Singh, P.W., for Rs. 130 and Rs: 200 with Dasondhi Ram,—*vide* relevant entries in the *bahi*. Lachhman Das, and Dasondhi Ram, lodged reports at the Police Station soon after the occurrence.

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On 1st of July, 1962, the petitioner, who is resident of village Bhadaur in district Barnala, was taken into custody by the police of police-station Mahal Kalan, when the petitioner was found going leading two bullocks. The bullocks were suspected to be stolen property. The petitioner was interrogated by Sukhdarshan Lekhi, on 2nd of July, 1962, in the presence of Ranjit Singh, Kartar Singh and Natha Singh, when he disclosed that he had sold the ornaments in question to Udhe Chand and Nikka Singh, P.Ws., and that he could get the same recovered from them. He then led the investigating party to that place and in the presence of Kartar Singh and Natha Singh, got the ornaments recovered along with relevant entries made in the *bhai*. These entries in the *bahi* were thumb marked by the petitioner. They were sent to the hand-writing expert, who was of the view that the thumb impressions in question tallied with the thumb impressions of the petitioner which were taken later on before a Magistrate. The petitioner on the above allegations was sent up for trial under section

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411, Indian Penal Code. He was convicted by Shri S. N. Goel, Magistrate 1st Class, Moga,—*vide* his order, dated 28th November, 1963, under section 411, Indian Penal Code, in respect of the recovery of the ornaments above mentioned. He was, however, acquitted in respect of the recoveries of the articles alleged to belong to Lachhman Dass. The petitioner was sentenced to rigorous imprisonment for six months. He went up in appeal in the court of Session and the appeal was dismissed by the Additional Sessions Judge, Ferozepore,—*vide* his order, dated 25th April, 1964, and it is against this order that the petitioner has come to this court in revision.

The petitioner, when examined under section 342 of the Code of Criminal Procedure denied the allegations against him. He, however, admitted his thumb impressions on the entries in the *bahi* above-mentioned, but added that those were obtained from him by force. He, however, led no evidence in defence.

The only point raised by the petitioner's learned counsel before me was that the officer, who had interrogated the petitioner, as a result of which the disclosure statement was made by him, had not been examined by the police and, therefore, the disclosure statement in this case cannot be taken into consideration. In support of his contention he cited two cases, namely, *Public Prosecutor v. Pasala, Venkata Raddy and another* (1), and *The Public Prosecutor v. Indian China Lingiah and others* (2). But these authorities have no relevancy to the point raised. This argument, it appears was raised before the learned Additional Sessions Judge, also and he had rightly rejected it holding that the disclosure statement was made in the presence of Ranjit Singh and Kartar Singh, besides the investigating officer and although it would have been better if the investigating officer was examined, but for the one reason or the other his presence could not be secured. The prosecution evidence was closed by the Magistrate himself. He also observed that although Kartar Singh, was one of the witnesses of the disclosure statement, but through an omission the Public Prosecutor who was conducting the

(1) A.I.R. 1945 Mad. 202.

(2) A.I.R. 1954 Mad. 433.

case in the lower court had not examined Kartar Singh, on that point. He, however, relied on the statement of Ranjit Singh, who was said to be an entirely disinterested person, and relying on the disclosure statement thus made by the petitioner convicted him. The wording of section 27 of the Indian Evidence Act, also further goes to repel the argument of the petitioner's counsel. Section 27 reads as under:—

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“Provided, that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of police officer, so much of such information whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved”.

This section is an exception to sections 25 and 26 of the Indian Evidence Act. This section nowhere lays down that to prove such a disclosure statement to examine the investigating officer, who interrogated the petitioner was obligatory. What is required under this section is that the person when he makes the disclosure statement should be accused of an offence and must be in the custody of a police officer. Even then only so much of the information whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, can be proved. I, therefore, see no force in this contention of the petitioner's counsel.

His last submission was that the petitioner had been released on bail by Gurdev Singh J., on the 4th of May, 1964, and at any rate he should not be sent back behind the bars again and, if necessary, the remaining portion of his sentence be converted into fine. I feel that taking into consideration the value of the stolen property and other facts and circumstances of this case, the ends of justice will be met if the unexpired portion of his sentence of the imprisonment is converted into a fine of Rs. 250. I order accordingly. In default of payment of fine he will suffer the remaining portion of his sentence. The order of the Court below is modified only to this extent.

K.S.K.