

# Relevance of Information Received From Accused Person in Police Custody

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**Abstract – Information received from a person accused of an offence is always of immense importance, it may be in the form of confession or statement. The rule which exclude confession made to police is a rule based on public policy. Section 27 of Indian evidence Act, 1872 is exception to this rule. An information given by accused person in police custody leading to discovery of a fact is admissible and relevant. It is based on doctrine of confirmation by subsequent finding. Any statement admissible under this section is admissible against the person accused giving information and not against any other person. The provisions of section 27 are constitutionally valid and valuable for criminal justice system.**

**Keywords: Admissibility, Evidence, Information, Offence, Relevancy.**

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## INTRODUCTION

Under Indian law an accused of an offence is deemed to be innocent unless and until his guilt proved beyond reasonable doubt. Sections 24, 25 and 26 of the evidence, Act, 1872 all three contain safeguards in favor of accused person and prohibit the prosecution from using any confessional statement made by the accused person, against the accused in trial. The rule which excludes confessions is a rule based on public policy. A confession is irrelevant if it is caused by any threat, inducement or promise<sup>38</sup>; if it is made to a police officer shall not be proved and admissible<sup>39</sup>; and if it is made by accused person while he is in police custody<sup>40</sup>.

But it is relevant under three situations, first if it is made after the impression of threat, inducement or promise has been fully removed<sup>41</sup>. Second if it is not made to a police officer or in other words if it is made to any person other than police officer. Third when it is made in the presence of magistrate while the accused is in police custody<sup>42</sup>.

It needs not to say that these are among the most important provisions of criminal law because a confession is the best and substantive piece of evidence against the accused.

Section 27 of the Indian Evidence Act, 1872 is one of the most important provisions relating to confessional statement made by an accused person in police

custody. It says any statement, whether it amount to confession or not, made by the accused person in police custody leading to discovery of a fact is admissible. It is also known as discovery statement. the principle contained in section 27 is based upon doctrine of confirmation by subsequent finding of fact<sup>43</sup>.

It is in the form of a proviso to section 24, 25 and 26 of the evidence Act.<sup>44</sup> And partially lifts the ban imposed by these sections. It deals with how much information received from accused person may be proved. It says that:

When any fact is discovered in consequence of information received from a person accused of any offence, in police custody, so much of such information as relates distinctly and clearly to the fact thereby discovered<sup>45</sup>, may be proved If the aforesaid conditions are satisfied whether the statement amount to a confession or not.

## SECTION 27 SCOPE AND REQUIREMENTS

Pulukuri Kotayya V. Emperor is an important judgement about the ambit and scope of section 27 of the Evidence Act<sup>46</sup>. It was observed in this case that the fact discovered within section not as equivalent to the object produced. The fact discovered include the place from which the object is produced and the accused's knowledge as to this. But the information given must relate distinctly or clearly to the discovered fact. The Information

<sup>38</sup> Section 24 of Indian Evidence Act, 1872.

<sup>39</sup> Section 25 of Indian Evidence Act, 1872.

<sup>40</sup> Section 26 of Indian Evidence Act, 1872.

<sup>41</sup> Section 28 of Indian Evidence Act, 1872.

<sup>42</sup> Section 26 of Indian Evidence Act, 1872.

<sup>43</sup> The King V. Look Hart 1785

<sup>44</sup> Aghnoo Nagesia V. State of Bihar AIR 1966, SC

<sup>45</sup> Section 27 of Indian Evidence Act, 1872.

<sup>46</sup> AIR 1947 PC 67

should not be related to past user or the past history of the object produced.

Sec. 27 makes a confessional statement relevant even if it is made to a police officer in police custody, but the condition is that the confession made has led to the discovery of some facts. The essentials ingredients of section 27 are:

1. That a fact is discovered, which is relevant, in consequence of the information received from a person accused of an offence.
2. Fact discovered must be deposited to.
3. Such information which leads to discovery of fact must be given by the accused person in police custody.
4. Only so much of the information as relates distinctly and clearly to the facts thereby discovered is may be proved<sup>47</sup>.

If the statement of an accused person made to the police officer satisfy all requirements hereinbefore mentioned his statement may be used against him, but only so much of statement which relates distinctly and clearly to the facts thereby recovered.

## THE FACTS DISCOVERED

The fact discovered in consequence of information received from accused must be relevant under any of the provisions relating to relevancy of fact of Indian Evidence Act, 1872. The expression 'relate' in section 27 means "to connect" or "be connected" and the term "distinctly" means "unmistakably", "clearly", "decidedly", or "Indubitably"<sup>48</sup>. Thus it is the requirement of the section that the information and the fact should be associated and well connected with each other as cause and effect. There must be a strong connection between information and the fact discovered by such information. If any portion of the information does not satisfy this test, it should be left out.

The fact discovered may be the instrument of crime, the stolen property, the body or carcass of the person murdered, or any other material thing in relation to the place or vicinity where it is found.<sup>49</sup>

Fact as defined in section 3 of the evidence Act, includes both physical and psychological facts.<sup>50</sup>

In order that a "discovery" of a fact may come under the provisions of section, the place from which the

incriminating articles was recovered must be a place of concealment which would be difficult or impossible for the police to discover without some assistance from the accused<sup>51</sup>.

In State of HP v. Jeet Singh<sup>52</sup> the Apex Court observed that Sec. 27 provides no rule which renders the statement of accused inadmissible if recovery of the articles was made from any place which is open or accessible to others. any object can be concealed in places which are open or accessible to others. the important question is whether the place was ordinarily visible to others, not the question whether it was accessible to others. The question of accessibility to the place is immaterial and has no importance for the purpose of this section.

Further, the statements admissible under section 27 are not admissible against person other than the maker of statement<sup>53</sup>. The discovery must be made by the police officer as a result of information given by the accused and not by any other person or source. If a statement is made by the accused concerning an investigation in some other case which results in discovery of a fact, it is also relevant.<sup>54</sup>

## RECEIVING OF INFORMATION FROM ACCUSED PERSON

Only such information is admissible under Sec-27, which proceeds from a person accused of an offence. It may often happen that there are more accused than one, and this fact also cannot be denied that information given by one accused may be known to others. A discovery made on information received from one accused is not relevant against the others. But in a case where a joint statement/disclosure is made by two or more accused then, evidence must be led to indicate as to which of them first made the statement which led to discovery. It is statement made by the first accused that can be admitted under Sec. 27 as against him. the statement made by the other accused after the discovery of fact cannot be used in evidence against him as the statement made by him does not relates distinctly to the facts discovered, because no fact has been discovered on the basis of statements of such accused, a discovered fact cannot be rediscovered. Where prosecution is not in a position to establish in case of joint statement as to who made the first that led to discovery, the evidence under section 27 would not be admissible to establish the guilt of either accused.

In State (NCT Delhi) v. Navjot Sandhu case<sup>55</sup> The Supreme Court expressed its view on simultaneous disclosure/joint disclosure. In this case admissibility of information received from both accused relating to the discovery of hideouts of the deceased terrorist,

<sup>47</sup>Mohd. Inayatullah v. State of Maharashtra, AIR 1976 SC 483

<sup>48</sup>Sukhan V. Emperor AIR 1929, LAH 344.

<sup>49</sup>Surjit Singh V. State of Punjab, 2005 Cr. L.J. 1176 (P &Hry High Court).

<sup>50</sup>Pulukuri Kotayya V. Emperor AIR 1947, PC; State (NCT of Delhi) V. Navjot Sandhu, AIR 2005 Sc 3820.

<sup>51</sup>Sandhu Singh V. State, AIR 1968 Punj 14.

<sup>52</sup>AIR 1999 SC 1293.

<sup>53</sup>Surender Parsadv. State of Bihar Cr. LJ 2190

<sup>54</sup>State of Rajasthan v. Bhup Singh (1997) 10 SCC 675.

<sup>55</sup>AIR 2005 SC 3820

recovery of other relevant things were in issue. Both accused together led the police to two hideouts and shops and pointed out the hideouts and shops. The Supreme Court said joint disclosure or simultaneous disclosure, per se, is not inadmissible under section – 27. The expression "A person accused" need not necessarily be a single person, but it could be two or more accused. If information received is given one after the other without any break, almost simultaneously and the information is followed up by pointing out the material things by both of them, there is no good reason to abjure such evidence from the regime of section 27. Credibility and Admissibility are two separate aspects, and to what extent such simultaneous disclosure could be relied upon by court is a matter of evaluation of evidence by court.

## **SIGNATURE ON THE DISCOVERY STATEMENT**

Any discovery statement recorded under section 27 of the Evidence Act and the fact that it is not signed by the accused person or there is not any thumb impression of accused on it diminish materially the authenticity, value and reliability of the disclosure statement<sup>56</sup>. It is also pertinent to discuss here the embargo contained in sec. 162(1) Cr.P.C. 1973, the embargo in such section does not apply in case of statement which led to any discovery of fact under sec. 27 of the Evidence Act, and it has been lifted by sec. 162(2). Thus signing by the accused of the disclosure statement is permissible and does not violate the law<sup>57</sup>.

## **EVIDENCE OF DISCOVERY**

The evidence of discovery under sec. 27 in most cases consist of two parts, first the evidence of recorded information emanating from the accused person in custody. Second, evidence of leading by the accused of the police with or without witnesses to the place of concealment, when there is as a recorded statement of the accused, and the production of article. There may be a case when discovery of any fact is made by investigating officer without recording the information but on oral statement of accused the case seems similar to the first one. There may be a third case when there is only evidence of physical leading and pointing out by the accused and no evidence of any oral or recorded statement. The Apex Court in Suresh Chandra Bahri v. State of Bihar<sup>58</sup> said that information whether, written or oral or no information at all does not matter as long as the evidence of physical leading, pointing out and recovery at the instance of the accused is established on the evidence.

It is not essential that the person who makes the statement himself leads the police officer to the place where an object is concealed and point out the same to him, in order to make the information given by him admissible under sec. 27, it is sound if the investigating officer may go to the spot in the company of witnesses and recover the material object<sup>59</sup>.

Absence of independent witnesses at the time of making the statement is not fatal, as the presence of independent witnesses at the time of making the statement by accused is not made mandatory by section 27<sup>60</sup>. However, it is necessary that the exact words in which the accused gave the information must be proved in the absence of which recovery will not speak anything and will be irrelevant and of no use.<sup>61</sup>

## **Constitutional Validity of provision of Sec. 27**

The Supreme Court in State of UP v. Deoman Upadhyaya<sup>62</sup> decided the Question of constitutional validity of Sec.-27. The one of the main issues was relating to the classification between person in custody and person not in custody. The Supreme Court held that provision sec. 27 of evidence act are not discriminatory and unfair, and therefore does not violate article 14 of the Constitution. Under Cr.P.C. statement or information given by a person who is not in police custody in consequence of which something associated with the crime is discovered, the statement cannot be proved against him, but in case of statement by a person in police custody it would have become provable against him. The Supreme Court said the reason for classification is to encourage people not in custody to give information about crime. The court held classification as reasonable and valid, not artificial, arbitrary or evasive.

After Deoman case, in state of Bombay v. Kathi Kalu Oghad and others<sup>63</sup> a question relating to constitutionality of section 27 was raised before the Supreme Court that the Section is unconstitutional because it violates the provisions of Article 20(3) of the Constitution.

The court held that if accused person has given self-incriminatory statement or information without any threat, that will be admissible in evidence under this section though it was given under any inducement or promise and the same will not violate Article 20 (3) of the constitution of India, for the reason that the statement or information was given without any compulsion. The provisions of Section 27 of the

<sup>56</sup>Jackaran Singh v. State of Punjab, AIR 1995 SC 2345.

<sup>57</sup> Sub. Section (2) of section 162 of The Code of Criminal Procedure, 1973.

<sup>58</sup>AIR 1994 SC 2420

<sup>59</sup>State (NCT of Delhi) V. Navjot Sandhu, AIR 2005 SC 3820.

<sup>60</sup>Parveen Kumar v. State of Karnataka (2003) 12 SCC 199.

<sup>61</sup>Bhimappa Jinnappa Nagwer v. State of Karnataka, AIR 1993 SC 1469.

<sup>62</sup>AIR 1961, ISCR 14.

<sup>63</sup>1961 AIR 1808, 1962 SCR 310.

Evidence Act are not within the bar aforesaid, unless compulsion has been used in obtaining the information.

## CONCLUSION

Section-27 lays down the English doctrine of confirmation by subsequent facts. The section is a valuable provision in the form of exception to the proceeding section 24, 25 and 26. Irrelevant confessions under aforesaid provisions become relevant if they fall under the provision of sec. 27. When any statement leads to the discovery of a fact connected with the crime it is admissible in evidence whether it is obtained by any inducements or promise, or made to police officer, or made during the time of police custody by the accused person, which otherwise not relevant and admissible in evidence against the accused. The discovery of the fact assures the truth of the statement and makes it reliable. Thus it appears that the intention of the legislature is that all objections to the validity of that part of the statement be removed which leads to the discovery of a fact related to the crime. Statement made by the accused not only relevant in the present case in which it is made, but also in some other case, if the statement lead to the discovery of a fact relating to the both cases.

## REFERENCE:

1. Ratan Lal & Dheeraj Lal; the Law of Evidence, 21 Edition, 2005.
2. The Law of Evidence (Batuk Lal), 22<sup>nd</sup> Edition Central Law Agency, Allahbad, 2008.
3. Principles of the Law of Evidence (Avtar Singh) 21st Edition, 2014, Central Law Publication, Allahabad, 146.
4. Digest of the Law of Evidence (1876, 1st Edition) 28.
5. The Law of Evidence 8th Edition (M. Monir), 2011, pp. 117-129.

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