IN THE COURT OF DISTRICT JUDGE-1 & ASJ, GONDIA.

SESSIONS TRIAL NO. 71/2020.
(CNR NO.MHGO01000726-2020)

State of Mah. -Vs- Ankit+3

ORDER ON EXH. 55.
(Passed on this 1st day of April, 2022)

The present witness is the prosecution witness No. 3. This is a panch witness to the memorandum statement under section 27 of the Indian Evidence Act and the discovery accordingly made by the IO on the basis of that statement under section 27 of the Indian Evidence Act. While the witness was being examined, he stated that the accused took the IO, police staff and panchas to the different places where the incident took place and subsequent discovery was made. Learned PP insisted that the confessional statement made by the accused while the places were shown by the accused should be recorded. This Court directed to the learned PP that such statements of the accused which is in confessional nature cannot be recorded as it breaches section 25, 26 and 27 of the Indian Evidence Act. But the learned PP was insisting recording such statements. Hence, the learned PP and learned defence advocates were asked to argue on this point.

2. Heard learned PP and learned advocates.

3. Learned PP relied on the judgment in the case of **Mohmed Inayatullah -Vs- The State of Maharashtra [1976 AIR 483 (SC)], Sanjay @ Kaka Shri Nawabuddin @ Nawab Vinod Kumar -**

Vs- The State (N.C.T. of Delhi), Udai Bhan -Vs- The State of Uttar Pradesh [1962 AIR 1116 (SC)] for buttressing his point.

4. On the other hand, learned advocate Shri. Naiyar for accused No. 1 relied on the judgment in the case of **State of U.P. -Vs- Deoman Upadhyaya [AIR 1960 SC 1125]** to substantiate his point that such statement cannot be recorded.

5. On the other hand, learned advocate Bhajipale for accused No. 3 relied on the judgment of the Hon'ble High Court in the case of **State of Maharashtra -Vs- Damu Gopinath Shinde @ Pimple Maharaj and other [1999(2) Mah.L.R. 87]** to substantiate his point that such statement cannot be recorded. Perused the judgments.

6. In the case of **Mohmed Inayatullah** (supra) while discussing the evidence recorded under section 27 of the Indian Evidence Act the Hon'ble Supreme Court categorically stated that only the statement which are immediate cause of the discovery would be legal evidence and not the rest which must be excised and rejected.

7. This position was high lighted in the case of **Damu Shinde**'s case (supra) by the Hon'ble Bombay High Court. It is also settled position of law under section 27 of the Indian Evidence Act. Hence, there is no substance in the contention of the learned PP that the confessional statement of the accused while he was taking

to the places for the discovery under section 27 of the Indian Evidence Act cannot be recorded.

8. The learned PP is directed to examine the witness on the relevant facts under section 27 of the Indian Evidence Act.

Sd/-

Gondia. (S. B. Parate)

Dated:- 01.04.2022. District Judge-1 & ASJ, **Gondia**.