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ADMISSIBILITY AND RELIABILITY OF DISCOVERY STATEMENTS MADE UNDER SECTION 27 OF THE INDIAN EVIDENCE ACT: AN ANALYSIS

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Abstract: Statements made or information supplied by the accused under section 27 of the Indian Evidence Act, 1872 are rendered admissible in court insofar as it distinctly relates to the discovery of a new fact (discovery statements). However, there lie several nuances in the extent of its scope and applicability in different circumstances. The present article is an attempt to explore the ambit and purview of said discovery statements in two folds, concerning their admissibility in court and the placing of reliance upon the same as evidence, under the provisions of the aforementioned section 27.

In furtherance of the same, the article begins with a brief introduction to section 27, tersely delving into the history of its formulation whilst also laying down the necessary elemental ingredients for its attraction. This is followed by an analysis concerning its use and application in varied circumstances as stipulated by judicial precedents to better comprehend the situations under which it may be employed and the limitations regarding its utility as admissible evidence before the court. Thereafter, the penultimate segment of the article deals with the impact of historical and contemporary interpretations given by the courts, concerning its use, upon key stakeholders. The article ends with remedial measures or suggestions which may be incorporated for enhanced lucidity and efficiency in the usage of section 27.

Keywords: Section 27, discovery statement, scope, applicability, reliance, ingredients, judicial precedents, stakeholders, lucidity, efficiency.

SECTION 27, THE INDIAN EVIDENCE ACT, 1872: AN INTRODUCTION

Section 27 of the Indian Evidence Act, 1872, is a provision that provides for an exception to the general rule against self-incrimination under Section 25 of the Act. It allows for the admissibility of a discovery statement made by an accused person in police custody, in certain circumstances, even if the rest of the statement itself is not admissible as evidence.¹

The section applies only to criminal trials and not to civil proceedings since confessions or information supplied by the accused hold great relevance in the eventual outcome of criminal proceedings;² therefore, the purpose of the section is to enable the discovery of material evidence that would otherwise have been difficult to obtain.³

Section 25 of the said Indian Evidence Act, provides that “no confession made to a police officer shall be proved as against a person accused of any offense.”⁴ This is based on the principle that a confession made in police custody is often the result of coercion, torture, or other forms of undue influence, and therefore unreliable.⁵ Section 27, however, carves out an exception to this rule in cases where the fact discovery is a result of information given by an accused person is made.

Usually, in practice, Section 27 is often invoked in cases where the police have recovered incriminating evidence based on information provided by the accused person. The section allows for the admissibility of such evidence, provided that the discovery of the evidence was a direct result of the information provided by the accused person.⁶

HISTORICAL ORIGINS

The historical origins of Section 27, can be traced back to English Common Law, which established

¹ The Indian Evidence Act, 1872, § 27, No. 1, Acts of Parliament, 1872 (India).

² RATANLAL & DHIRAJLAL, THE LAW OF EVIDENCE (LexisNexis 2019).

³ *Id.*

⁴ The Indian Evidence Act, 1872, § 25, No. 1, Acts of Parliament, 1872 (India).

⁵ *supra* note 2.

⁶ *State of U.P. v. Singhara Singh*, AIR 1964 SC 358.

a similar rule known as "*Smith's Rule*" or "*The Confession Rule*".⁷ This rule allowed or the admission of any fact discovered as a result of an accused person's confession, even if the confession itself was inadmissible.⁸

It stems from the English case of *R v. Thompson*, where it was held that a confession made by an accused which led to the discovery of incriminating evidence was admissible as evidence against the accused. The rationale behind the rule was that if the confession was true, then the evidence discovered as a result of the confession would also be true.⁹

The historical backdrop in which the Indian Evidence Act was enacted is also significant. The Act was enacted during a period of British colonial rule in India, and its provisions were shaped by the political and social conditions of the time. The Act was intended to provide a uniform system of evidence law for the Indian subcontinent and was designed to reflect the values and norms of British colonial society.¹⁰

Thus, when the Indian Evidence Act was enacted in 1872, it was largely based on the English Common Law system. Section 27 of the Act reflects the principle of Smith's Rule, with some modifications. In this regard, it is important to note the distinction that the Smith's Rule is not limited to confessions made during the course of an investigation to a police officer, but can include any statement made by an accused person, such as a statement made in court or to a private individual.¹¹ However, for Section 27 to apply, the discovery of the fact must be a direct result of the information supplied by the accused.¹²

Thus, it was included in the Act to allow for the admission of evidence that would otherwise be excluded due to the general rule against the admissibility of statements made by an accused to a police officer as a modified and restricted version of the Smith's Rule owing to colonial India's socio-political climate at the time which was characterized by increasing hostilities against the British at

⁷ S. SARKAR, SARKAR'S LAW OF EVIDENCE 420 (LexisNexis 2021).

⁸ *Id.*

⁹ S.N. MISHRA, INDIAN EVIDENCE ACT 96 (Central Law Publications 2017).

¹⁰ *Id.*

¹¹ Pranjal Kishore, *Section 27 of the Indian Evidence Act, 1872: An Appraisal*, 62 JILI 358 (2020).

¹² *Id.*

the time coupled with the steady emergence of a national consciousness.¹³

NECESSARY INGREDIENTS

The attraction of penal punishment as provided under any offense emerges with the successful adherence to all ingredients that cumulatively constitute said offense.

The key ingredients essential to attract Section 27 of the Indian Evidence Act, 1872, include *firstly*, the statement must be made by a person accused of any offense because Section 27 applies only to information received from a person who is in the custody of a police officer in connection with an offense, which means that the statement must be made in the presence of that police officer.¹⁴

Secondly, such a statement made by the accused must be voluntary and not obtained by inducement, threat, or promise. If the statement was obtained through any of these means, it will not be admissible in court.¹⁵

Lastly, and perhaps most importantly, a new fact must be discovered as a result of the statement made under Section 27, and it must be a fact that the police officer did not previously know.¹⁶ Such a statement may even form part of the confession as long as it leads to the aforementioned discovery of a new fact with only that portion of said confession being admissible that lead to such discovery.¹⁷

Furthermore, the term "fact" in Section 27 refers to a relevant fact, which means any fact that makes the existence or non-existence of any other fact more or less possible than it would have been without the evidence of that fact. Therefore, the new fact discovered must be relevant to the case at hand and must have some probative value.¹⁸ It is also essential to note that the new fact discovered must be a distinct result of the statement given by the accused, in that said statement directly and unequivocally lead to the discovery of that fact.¹⁹

¹³ *Id.*

¹⁴ *State of Maharashtra v. Damu*, (2000) 6 SCC 269.

¹⁵ *State of Haryana v. Ram Singh*, (2002) 6 SCC 641.

¹⁶ *Pulukuri Kottaya v. Emperor*, AIR 1947 PC 67.

¹⁷ *Id.*

¹⁸ *Siddharam Satlingappa Mhetre v. State of Maharashtra*, (2011) 1 SCC 694.

¹⁹ *Lalita Kumari v. Govt. of U.P.*, (2014) 2 SCC 1.

JUDICIAL PRECEDENTS CONCERNING THE ADMISSIBILITY AND RELIABILITY OF DISCOVERY STATEMENTS AS MADE UNDER SECTION 27

Section 27, as previously described, allows for the admissibility of any fact discovered as a result of information provided by the accused person during police custody and thereby operates as an exception to the general rule against the admissibility of a confession made by an accused person in criminal proceedings.

The admissibility and reliability of such information is a complex issue and has been the subject of several decisions by Indian courts. Therefore, to attain a comprehensive understanding regarding its use and applicability in courts, it becomes imperative to gain an expansive account as to when shall it be valid to invoke said section.

In the early case of *Queen-Empress v. Pakkirisamith*, the Privy Council had held that the admissibility of a discovery statement made under section 27 of the Indian Evidence Act, 1872 depends on whether the statement was made voluntarily or not.²⁰ Further, “the statement must relate to a fact discovered as a result of the information provided by the accused.” The same was affirmed in *Emperor v. Bal Gangadhar Tilak*²¹ and thereafter, in *Pakala Narayana Swami v. Emperor*.²²

However, it was in the landmark case of *Pulukuri Kottaya v. Emperor*, where the Privy Council had comprehensively discussed the admissibility and reliance that is to be placed upon discovery statements as valid evidence in courts whereby the council devised important distinctions regarding the use of section 27 so as to provide a more lucid legal framework for the same.

The case concerned the discovery of a revolver and a knife by the police in the presence of the accused, Pulukuri Kottaya. The accused had made a statement to the police that he had hidden the weapons in a certain place and had subsequently taken the police to said place leading to their

²⁰ (1897) ILR 20 Mad 65.

²¹ (1916) 18 Bom LR 116.

²² AIR 1939 PC 47.

discovery.²³ In this regard, the council whilst delivering its judgment, made it clear that the discovery of a fact must be more than mere production of evidence by the accused for the attraction of section 27.

In other words, the mere fact that the accused person led the police to the place where the evidence was found would not be sufficient to establish a nexus between the discovery and the statement made by the accused.²⁴ Instead, there must be a clear link between the information provided by the accused and the discovery of the fact wherein based on the information provided by the accused, the police independently make the aforesaid discovery without having the accused physically guide them to the location.²⁵

This served as an important discernment considering that it laid more down, more clearly and distinctly, the circumstances in which section 27 may be called upon to counter ambiguity and ambivalence. The same was built upon and expanded by the courts in post-colonial India, becoming the bedrock of the law on discovery statements made under Section 27.

In the initial years after independence, the Supreme Court emphasized the need for the prosecution to establish a clear link between the discovery and the statement made by the accused in *the State of Maharashtra v. Praful Desai*.²⁶ The court observed that the mere fact that the accused led the police to the place where the evidence was found would not be sufficient to establish the nexus between the discovery and the statement, thereby reiterating the seminal principles first enumerated in *Pulukuri Kottaya*.

Subsequently, in *the State of Rajasthan v. Kalki*, the Supreme Court reiterated the test laid down in *Pulukuri Kottaya* and observed that the statement must be proved to have led to the discovery beyond a reasonable doubt.²⁷

Over the years, the courts have strengthened jurisprudence concerning the various other aspects involved in the formulation of discovery statements as well. In *Rameshwar v. State of Rajasthan*, the

²³ AIR 1947 PC 73.

²⁴ *Id.*

²⁵ *Id.*

²⁶ (2003) 4 SCC 601.

²⁷ (1981) 2 SCC 752.

court observed that the statement need not be precise and accurate, but it must provide some information that leads to the discovery of a fact.²⁸ The court also held that the discovery statement need not necessarily relate to physical evidence, but could also be “a statement that leads to the discovery of a person or an object”, consequently broadening the ambit of the discovery made.²⁹

Furthermore, in *Suresh Chandra Bahri v. State of Bihar*, the Supreme Court held that the admissibility of a discovery statement made under section 27 of the Indian Evidence Act, 1872 depends on whether the statement was made voluntarily and whether it relates to the discovery of a fact.³⁰ The court also held that the statement must not be made under any inducement, threat, or promise. The same was later affirmed by the court in the *State of Maharashtra v. Bharat Fakira Dhiwar*.³¹ Moreover, in *M.P. Sharma v. Satish Chandra*, the court strictly placed the burden of proof as regards proving the voluntary nature of said statement upon the prosecution.³²

Additionally, the Court has clarified that the discovery of the fact need not be immediate, and could be made even after some time has passed since the statement was made.³³ However, in *State of Maharashtra v. Saquib Abdul Hamid Memon*, the court held that if there is a gap of several months between the statement and the discovery, then the prosecution must establish that the accused had not had access to the place where the evidence was found during that period.³⁴

However, if an accused person retracts a discovery statement, it cannot be relied upon unless there is independent corroboration, as was held by the Supreme Court in *State of U.P. v. Jagdeo*.³⁵ Regarding the evidentiary value of a discovery statement as the basis for conviction, the Supreme Court, in its judgment in *State of Maharashtra v. Sukhdev Singh* stated that while the statement of the accused may not be admissible as a confession, it can still be considered as a piece of evidence leading to the discovery of a fact.

²⁸ AIR 1952 SC 54.

²⁹ *Id.*

³⁰ AIR 1995 SC 2053.

³¹ (2003) 12 SCC 262.

³² AIR 1954 SC 300.

³³ *supra* note 30.

³⁴ (2008) 13 SCC 21.

³⁵ AIR 1963 SC 612.

Moreover, in *State of U.P. v. Deoman Upadhyaya*, the Supreme Court of India held that discovery statements made under Section 27 are admissible even if they are not recorded in writing, as long as there is oral evidence to prove their truth. The court also noted that the fact discovered must be previously unknown to the police and that the statement made by the accused must have been the cause of that discovery.³⁶

Lastly, such statements cannot be held inadmissible merely because they were made in the presence of a co-accused as held by the Supreme Court in *M.P. Sharma v. Satish Chandra*. The court noted that the fact that the statement was made in the presence of a co-accused is a factor to be considered in determining its admissibility, but that it does not render the statement inadmissible per se.³⁷

In conclusion, the admissibility and reliability of discovery statements have been the subject of extensive discussion and analysis by the Indian courts leading to developed precedents regarding their imploration in courts and associated weight as sound evidence.

STAKEHOLDER IMPACT ANALYSIS:

Having explored the multifaceted interpretations given by the courts over the years governing the various aspects surrounding the attraction and utilization of Section 27, it now becomes imperative to evaluate the possible impacts of said interpretations upon the two key stakeholders involved herein; primarily *the accused* and *the prosecution*.

A. IMPACT UPON THE ACCUSED

Discovery statements made under Section 27 of the Indian Evidence Act, 1872 have a significant impact on the accused. These statements can be used as evidence against the accused in court, and they can be a critical factor in determining the outcome of a trial. In cases where the discovery statement is admissible and reliable, it can be used to establish the guilt of the accused, leading to conviction and punishment.³⁸ In some cases, a conviction can have a lasting impact on the accused's reputation and future prospects.³⁹

³⁶ (1992) 3 SCC 700.

³⁷ *supra* note 32.

³⁸ *supra* note 23.

³⁹ R. Venkata Rao, *Discovery and Recovery under Section 27 of the Indian Evidence Act, 1872: A Reassessment*, 54 JILI, 175-193 (2012).

Additionally, the use of discovery statements can also have psychological effects on the accused. The knowledge that their own statements have been used to incriminate them can cause feelings of guilt, shame, and remorse, particularly if the accused did not fully understand the implications of making such a statement at the time. This can have long-term effects on the accused's mental well-being and ability to cope with the consequences of their actions.⁴⁰

Furthermore, in cases where the discovery statement is unreliable or inadmissible, it can compound the detrimental impact on the accused. False discovery statements can lead to wrongful convictions and punishments, which can result in severe consequences for the accused, including loss of liberty and reputation.⁴¹

In light of these significant impacts on the accused, it is important that courts carefully consider the admissibility and reliability of discovery statements made under Section 27 to insulate against the risk of wrongful convictions and miscarriages of justice.

B. IMPACT UPON THE PROSECUTION

The aforementioned discovery statements made under Section 27 may have a significant impact on the prosecution as well. The provision allows the prosecution to introduce crucial evidence that may otherwise have been difficult or impossible to obtain. The use of discovery statements can thus increase the chances of securing a conviction, which is the ultimate goal of the prosecution in criminal trials.⁴²

However, the reliance on discovery statements as evidence can also make the prosecution vulnerable to challenges regarding the reliability and authenticity of such statements. As discussed earlier, the Supreme Court of India has laid down stringent requirements for the admissibility of discovery statements. Failure to meet these requirements can result in the statements being excluded as evidence, which can weaken the prosecution's case.⁴³

⁴⁰ *Id.*

⁴¹ *supra* note 36.

⁴² Varsha S. S., *Use of Discovery Statements in Criminal Trials: A Comparative Study*, 45 *IBR*, 122-143 (2018).

⁴³ *Id.*

Furthermore, the use of discovery statements can also lead to ethical concerns regarding the methods used to obtain such statements. The accused may allege that the statement was obtained through coercion, threats, or promises of leniency, leading to questions about the voluntariness of the statement.⁴⁴ Such allegations can damage the reputation of the prosecution and the criminal justice system as a whole.

Therefore, while discovery statements can be a powerful tool for the prosecution, their use is not without risks. The prosecution must ensure that the statements meet the stringent requirements laid down by the courts and that they were obtained in a lawful and ethical manner.

REMEDIAL SUGGESTIONS

The discovery statement has been a valuable tool for investigating agencies in the discovery of material evidence, leading to the prosecution of the accused. However, the admissibility of discovery statements has been a subject of extensive debate in the legal system, with occasional concerns raised over its reliability and potential for abuse. Therefore, the following remedial measures are proposed by the author to impart greater clarity and efficiency to discovery statements made under the provision of Section 27:

1. **Standardisation of Judicial Interpretation:** The standardization of judicial interpretation of section 27 will enhance the consistency and reliability of the provision. The Supreme Court of India should issue guidelines for the interpretation of the provision, highlighting the key factors to be considered in determining the admissibility and reliability of discovery statements. This will enhance the clarity of the provision and promote consistency in its application.
2. **Development of Procedural Guidelines:** The development of procedural guidelines, specific to the recording and use of discovery statements will enhance the credibility and reliability of the evidence. The guidelines should outline the procedures to be followed in the recording of discovery statements, highlighting the need for voluntary and non-coercive statements. The guidelines should also provide for the verification of the statements by independent witnesses and the cross-examination of the accused.

⁴⁴ *supra* note 39.

3. **Emphasis on Corroboration of Discovery Statements:** The courts should emphasize the need for corroboration of discovery statements to enhance their reliability and credibility. The courts should consider the circumstances of the discovery, the nature of the evidence, and the credibility of the accused in determining the reliability.
4. **Independent Witnesses:** The presence of independent witnesses during the discovery process ensures that the discovery is genuine and not fabricated or manipulated by the police or the accused. It also provides an additional layer of corroboration for the discovery statement. The courts should encourage the inclusion of independent witnesses during the discovery process to enhance the credibility and reliability of the discovery statement.
5. **Recording of Discovery Statements:** The recording of discovery statements should be done meticulously and systematically to avoid any ambiguity or confusion. The statements should be recorded in the language of the accused, and the accused should be given an opportunity to read and verify the statement. The recording should be done in the presence of the accused, and the accused should be allowed to make any corrections or additions.
6. **Training of Police Personnel:** The police personnel involved in the discovery process should be given adequate training and guidance to ensure that the process is carried out fairly and transparently. The police personnel should be trained to ensure that the discovery is genuine and not fabricated or manipulated. They should also be trained to ensure that the accused's rights are protected and that the process is carried out in a manner that is consistent with the law.

CONCLUSION

Discovery statements made under Section 27 of the Indian Evidence Act, 1872 can be a powerful tool in the hands of the prosecution. However, their usage must be tempered with caution to ensure that they are not misused or abused. The above remedial measures, if incorporated, can enhance the lucidity and efficiency in the usage of Section 27 and also ensure that the rights of the accused are protected. It is essential that the courts, police personnel, and legal professionals work together to ensure that the discovery process is carried out in a fair, transparent, and reliable manner.