

DAJI

Copy of order

No. 10611 /DHC/WRIT/D-5/2009  
Dated 4-3-09

From,

The Registrar General  
Delhi High Court  
New Delhi

To,

1. Delhi Police, Headquarters, IP Estate, New Delhi
2. Principal Magistrate, Sewa Kuteer, Juvenile Justice Board, Kingsway Camp, Mukherjee Nagar, Delhi
3. Principal Magistrate Paryas Observation Home (Prayas), GNLS Complex, Delhi Gate
4. Court on its own motion, through Mr. Anant Kumar Asthana, Advocate (HRLN), 576, Masjid Road, Jangpura, Bhogal, New Delhi-14
5. State Govt. of NCT of Delhi, 5-Sham Nath Marg, Delhi

**WRIT PETITION ( C ) NO.- 8801/2008**

Courts on its own motion

....Petitioner/s

Vs.

State, GNCTD and others

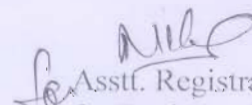
....Respondent/s

Sir,

I am directed to forward herewith for information and immediate compliance/necessary action a copy of order dated 3.3.2009 passed by Hon'ble **Division Bench** of this Court in the above noted case alongwith a copy of Memo of parties.

Please acknowledge receipt.

Yours faithfully,

  
Asstt. Registrar (Writs)  
for Registrar General

BR/3.3.2009

IN THE HIGH COURT OF DELHI AT NEW DELHI.

W.P.(C) NO. 8801 12008

MEMO OF PARTIES

COURT ON ITS OWN MOTION

Through: MR Anant Kumar Asthana  
Advocate (HRLN)  
576, Mayapuri Road Jangpura, Bhogal  
New Delhi - 110014

(Through letter)

VERSUS

STATE  
GOVT. OF NCT OF DELHI  
5, SHAM NATH MARG,  
DELHI

.....RESPONDENT



COURT ON ITS OWN MOTION

..... Appellant

Through Mr. Anant Kumar Asthana, and Ms.  
Minna & Ms. Minna Kabir, Advocates.  
Mr. Suman Doval, Amicus Curiae.

Versus

Govt. of NCT of Delhi

..... Respondent

Through Ms. Mukta Gupta, Advocate.

**CORAM:****HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE SANJIV KHANNA**

- 1. Whether reporters of the local papers be allowed to see the judgment ?**
- 2.To be referred to the Reporter or not ?**
- 3.Whether the judgment should be reported in the Digest ?**

**J U D G M E N T**  
**03-03-2009**

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**Per Court**

Suo Moto notice was issued by this Court on the basis of letter received from two child welfare workers that Delhi Police is compelling and forcing children to sign statements made to the police officers and is relying upon the said statements before the Juvenile Justice Board. It is stated in the letter that Delhi Police has adopted this illegal practice in matters relating to juveniles in conflict with law and this practice is contrary to Section 162(1) of the Criminal Procedure Code, 1973 which enjoins that no statement made by any person to a police officer in the course of an investigation shall, if reduced in writing be signed by the person making the said statement. The letter also gives details of some of the cases in which signed statements made by juveniles before the police officers were relied upon.

2. Delhi Police have filed an affidavit stating inter alia that after notice was issued by this Court, they have issued an order dated 17.12.2008

statements of children apprehended under Juvenile Justice Act signed from them should be stopped forthwith. It is further stated in the circular that this aspect will be included in the training / sensitization programme.

3. During the course of hearing before us, one of the questions raised was that disclosure statements made to a police require signature or thumb impression for purpose of Section 27 of the Evidence Act. Absence of signature or thumb impression on the disclosure statement will detract authenticity and reliability of the said statement. Unsigned disclosure statement would not be admissible in evidence and, therefore, the police officers / investigating agency should not be barred from obtaining signatures of the juvenile on the disclosure statement and including such statement with a charge sheet. Reference was made to paragraph 8 in Jackaran Singh Vs. State of Punjab, AIR 1995 SC 2345.

4. Mr. Suman Doval, advocate has brought to our notice that paragraph 8 of the judgment in Jackaran Singh case was modified / amended by corrigendum dated 24.5.1996 and the observations of the Supreme Court with regard to signatures or thumb impressions of the accused on the disclosure statement recorded for the purpose of Section 27 of the Evidence Act stand deleted and omitted. Therefore, it will not be proper to rely upon paragraph 8 of the aforesaid judgment and the observations made therein.

5. In State of UP Vs. Deoman Upadhyaya, AIR 1960 SC 1125, the relative scope of Sections 24 to 30 of the Evidence Act, which deal with admissibility of confessions, and constitutional validity of Section 27 relating to disclosure statements was examined. The majority opinion has held that Section 24 of the Evidence Act bars admissibility of a confession, if it appears to the court to have been caused by inducement, threat or promise having reference to the charge and proceeding from a

person in authority. Section 25 of the Evidence Act creates an absolute ban against using a confession made to a police officer. The ban under Section 25 is complete and equally applies, whether or not the person against whom the evidence is sought to be led in the criminal trial was at the time of making of the confession, in custody. A person need not be an accused of an offence when he makes a confession to a police officer for prohibition under Section 25 to apply. The expression "accused of any offence" used in Section 25 of the Evidence Act is descriptive of a person against whom the confessional statement is sought to be used and does not predicate a condition of that person at the time when he made the statement. Therefore, the bar under Section 25 applies even when the confession is made to a police officer by a person, even before he was accused to any offence and was arrested. Section 25 of the Evidence Act prohibits proof of a confession made by a person to the police officer, whether or not at the time of making of the confession he was in custody. Section 26 of the Evidence Act, prohibits admission of confession by a person in custody, unless the confession is made in the immediate presence of a Magistrate. Section 27, it was held by the Supreme Court is in form of a proviso and renders provable certain statements made by a person when he was in custody of police officer "when any fact is deposed as to be discovered in consequence of the information received". It is only so much of such information as it relates distinctly to the facts thereby discovered which may be proved. Under Section 27 statement / information leading to discovery of facts is admissible to the extent it distinctly relates to the fact discovered. Section 27 of the Evidence Act is founded on the principle that if the truth of the information given by an accused is assured by the discovery of a fact, it is provable in so far as it distinctly relates to the facts thereby discovered. Section 162 of the Criminal Procedure Code it was elucidated

by the Supreme Court enacts a rule of evidence and Section 162(2) does not effect the admissibility of information to the extent permissible under Section 27 of the Evidence Act. Accordingly on analysis of Sections 24 to 27 of the Evidence Act and Section 162 of the Criminal Procedure Code, the Supreme Court laid down the following material propositions :

“(a) Whether a person is in custody or outside, a confession made by him to a police officer or the making of which is procured by inducement, threat or promise having reference to the charge against him and proceeding from a person in authority, is not provable against him in any proceeding in which he is charged with the commission of an offence.

(b) A confession made by a person whilst he is in the custody of a police officer to a person other than a police officer is not provable in a proceeding in which he is charged with the commission of an offence unless it is made in the immediate presence of Magistrate.

(c) That part of the information given by a person whilst in police custody whether the information is confessional or otherwise, which distinctly relates to the fact thereby discovered but no more, is provable in a proceeding in which he is charged with the commission of an offence.

(d) A statement whether it amounts to a confession or not made by a person when he is not in custody, to another person such latter person not being a police officer may be proved if it is otherwise relevant.

(e) A statement made by a person to a police officer in the course of an investigation of an offence under Chapter 14 of the Cr.P.C., cannot except to the extent permitted by Section 27 of the Indian Evidence Act, be used for any purpose at any enquiry or trial in respect of any offence under investigation at the time when the statement was made in which he is concerned as a person accused of an offence.”

6. In the subsequent decision of the Supreme Court in the State of Rajasthan Vs. Teja Ram and others, AIR 1999 SC 1776 reference was made to Section 162(2) of Cr.P.C., which reads as under :

“Nothing in this section shall be deemed to apply to any statement falling within the provisions of Clause

(1) of Section 32 of the Indian Evidence Act, 1872, or to affect the provisions of Section 27 of that Act."

7. The Supreme Court observed that Section 162(1) of Code of Criminal Procedure prohibits and bars signature of a person, whose statement is reduced into writing during interrogation and the said prohibition is a preemptory terms. Witness / accused is not bound by such statement though the police officer has obtained his signature. The underlined policy behind the section is that the witnesses should be free to testify before the court unhampered by anything which the police claims to have elicited from them. However, if an investigating officer ignores of the said provisions, secures signature of a person on the statement, it does not mean that statement of the said witness before the court becomes condemned or vitiated. Accordingly, it was observed :

"The resultant position is that the Investigating Officer is not obliged to obtain the signature of an accused in any statement attributed to him while preparing seizure memo for the recovery of any article covered by Section 27 of the Evidence Act. But, if any signature has been obtained by an investigating officer, there is nothing wrong or illegal about it. Hence, we cannot find any force in the contention of the learned counsel for the accused that the signatures of the accused in Ex.P3 and P4 seizure memo would vitiate the evidence regarding recovery of the axes."

8. In view of the above, it is held that the circular no. 20/2008 issued by Delhi Police is in accordance with law and should be complied with. The said circular should also be brought to the notice of the Juvenile Justice Board.

9. During the course of hearing before us, it was brought to our notice that juvenile children, who are in conflict with law after being apprehended by the police officers are taken to police stations. It is at the police station that thumb impressions or signatures are obtained on

the statement of juvenile and these are subsequently filed along with the charge sheet.

10. Section 10 of the Juvenile Justice (Care and Protection of Children) Act, 2000 reads as under :

**"Apprehension of juvenile in conflict with law**

(1) As soon as a juvenile in conflict with law is apprehended by police, he shall be placed under the charge of the special juvenile police unit or the designated police officer, who shall produce the juvenile before the Board without any loss of time but within a period of twenty-four hours of his apprehension excluding the time necessary for the journey, from the place where the juvenile was apprehended, to the Board:

Provided that in no case, a juvenile in conflict with law shall be placed in a police lockup or lodged in a jail.

(2) The State Government may make rules consistent with this Act, -

(i) to provide for persons through whom (including registered voluntary organisations) any juvenile in conflict with law may be produced before the Board;

(ii) to provide the manner in which such juvenile may be sent to an observation home."

11. The aforesaid section in clear and unambiguous terms stipulates that a juvenile child, who is in conflict with law once apprehended should be immediately produced before the Juvenile Justice Board. Section 10(1) requires that juvenile after being apprehended should be placed under the charge of special juvenile police unit or the designated police officer and thereafter "without loss of time" produced before the Juvenile Justice Board. The expression "without any loss of time" indicates the urgency and the requirement to immediately produce the juvenile before the Juvenile Justice Board. The period of 24 hours mentioned in the latter part of Section 10(1) is the outer limit. The requirement of Section 10(1), however, is immediate production of the juvenile before the Juvenile Justice Board and not mere production within 24 hours. Both parts of

hours is not sufficient. The proviso to Section 10(1) specifically stipulates that a juvenile shall not be placed in a police lockup or in a jail. This aspect must be kept in mind by the Juvenile Justice Board as well as the police officers.

12. Rule 11 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 states that whenever a police officer apprehends a juvenile alleged to be in conflict with law, he is required to inform the designated juvenile or child welfare officer in the nearest police station to take charge of the matter and also the parents or the guardian of the juvenile and inform him about the address of the Board where the juvenile will be produced and the parents or the guardian should be present.

13. These aspects and provisions must be kept in mind by the police as well as Juvenile Justice Board and whenever any allegation of misuse or violation of the provisions of Act and the Rules are brought to their notice, appropriate steps should be taken as provided in Section 23 of the Juvenile Justice (Care and Protection of Children) Act, 2000. In cases where allegation of ill treatment by the police or any person is made the Board must follow the procedure prescribed in Rule 13(2)(a).

14. Accordingly, we issue afforesaid directions, which will be complied with by the Delhi Police. This decision will also be brought to the notice of the Juvenile Justice Board, who shall ensure that there is proper compliance and whenever required appropriate steps will be taken by them as per law. The writ petition stands disposed of.



**March 03, 2009**

dk

*Sd/-*  
**CHIEF JUSTICE**

*Sd/-*  
**(SANJIV KHANNA)**  
**JUDGE**

