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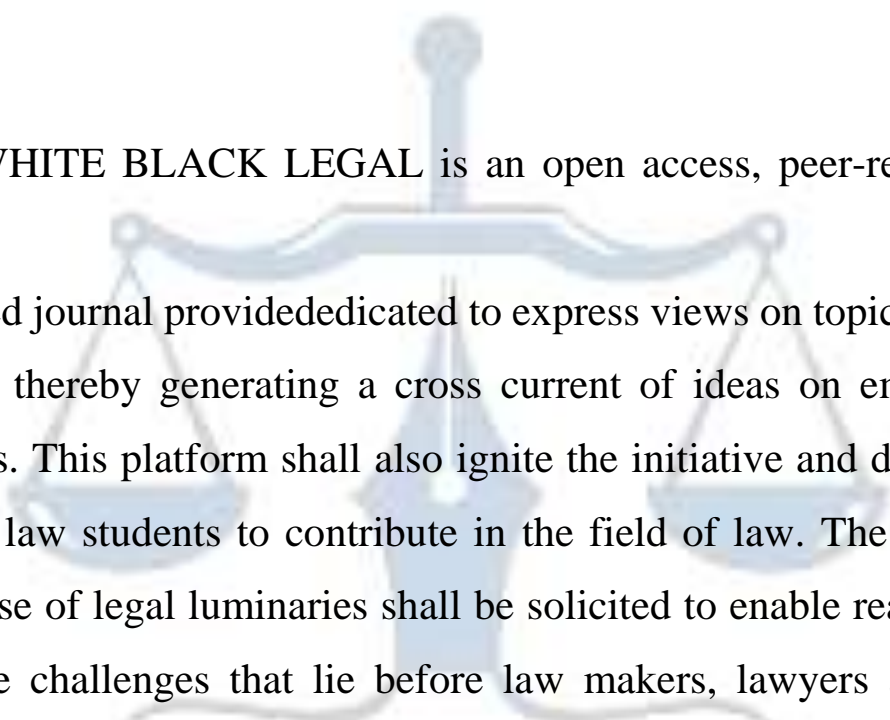


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

R.M. MALKANI V. STATE OF MAHARASHTRA

AUTHORED BY - SOHAM SAHA

INTRODUCTION

In Indian jurisprudence, the case of R.M. Malkani v. State of Maharashtra¹ is significant, especially in the area of evidence law. This case, which was decided by the Indian Supreme Court in 1973, dealt with how to strike a balance between the need to protect the rights of the accused as guaranteed by Indian law and the admissibility of confessions given to police. The Indian Evidence Act, 1872, specifically forbids the use of confessions made to police personnel as evidence against the accused, and this provision was at the centre of the legal debate. Following a thorough legal review, the Supreme Court reiterated that confessions obtained by law enforcement should always be viewed with suspicion because of the power dynamics and possibility for coercion involved.

FACTS OF THE CASE

In this case, the appellant is the Bombay Coroner. According to the prosecution, on May 3, 1964, Jagdish Prasad Ram-Narayan Khandelwal was admitted to Dr. Adatia's nursing home and given an acute appendicitis diagnosis. The patient was monitored closely. He was told to proceed with the operation right away after a 24-hour period. The surgery was carried out by Dr. Adatia. The patient's ileum had paralyzed and the appendix had turned gangrenous. After six days, he was sent to Bombay Hospital to receive medical attention from Dr. Motwani. The hospital released a Death Intimation Card stating that the patient's cause of death was "paralytic ileus and peritonitis following an operation, for acute appendicitis," and the patient passed away in three days. Without requesting a post-mortem, the appellant let the dead body to be disposed of. However, because it was a hospital instance of post-operation death, the Police Station requested an inquest. On May 13, 1964, the Coroner's Court opened the inquest. In order to get the statements of the physician who operated or treated the patient, the Coroner's Court had a practice of writing letters to the professionals who were mentioned or associated with the inquest. The appellant had informed Dr. Adatia that he would be appearing in court; he claimed that even though the operation went well, the circumstances surrounding his passing would

¹ 1973 AIR SC 157

establish prima facie negligence on the part of the doctor.

The appellant gave Dr. Adatia instructions to see Dr. Motwani in order to resolve the case's technical concerns. He instructed Dr. Motwani to demand payment of Rs. 20,000 from Dr. Adatia. When the appellant eventually lowered the demand to 10,000, Dr. Adatia once more declined to provide any unlawful satisfaction. In order to ascertain whether the hospital's claim made in the death notification card could be verified, the appellant consulted with Dr. Jadhav, the superintendent of the Bombay Hospital. That afternoon, Dr. Jadhav learned from Dr. Motwani that the fraudulent cause of death that was reported damaged Dr. Adatia's reputation. On October 5th, Dr. Motwani filed a complaint with the Anti-Corruption Bureau, citing repeated calls from Dr. Adatia regarding payment of the outstanding amount from the coroner, the appellant in this case. The harassment culminated on October 7 at 10:00 a.m., when Dr. Adatia was called and asked to relay a message to Dr. Motwani, forcing her to choose between paying or not. Calling Mugwe, the Director of the Anti-Corruption Branch, Dr. Motwani complained that a higher-ranking government official was requesting a substantial bribe from a medical professional. On October 7, staff members were scheduled to be outside Dr. Motwani's residence with recording equipment in order to record the conversation.

Dr. Adatia paid Dr. Motwani Rs. 15,000, and Dr. Motwani brought the money to his residence. Over the phone, the appellant was notified that he had received the money from Dr. Adatia, who requested that Dr. Motwani keep it. Additionally, on October 10, 1964, the appellant instructed him to deliver the funds to his residence. The Assistant Commissioner Sawant visited Dr. Motwani's home on October 10th and requested that he schedule a time to pay the appellant in person. At ten in the morning, Dr. Motwani visited the appellant's home. Since the appellant was not at home, he went to meet his wife and informed her that he had come to make the payment.

At 10:00 in the morning, Dr. Motwani visited the appellant's home. Since the appellant was not at home, he went to meet his wife and informed her that he had come to make the payment. He responded that he had no instructions to pay the appellant's wife when she stated he could. Dr. Motwani was met by the Assistant Commissioner as he was leaving Sawant. Sawant requested that Dr. Motwani visit Dr. Adatia's residence and make a call to the appellant from there. At approximately 4:00 p.m., Dr. Adatia was greeted at his home by the police officers and Dr. Motwani. The raiding team hooked up the tape recorder to Dr. Motwani's phone, who then

called the appellant's home and conducted a conversation with the appellant in front of police officers. The conversation between them is recorded. On October 12, 1964, it was agreed that Dr. Motwani would give the appellant's wife the money. In order to avoid raising any red flags, Dr. Motwani was requested to take a letter written to the appellant in which he stated that he was repaying a loan of Rs. 15,000 that he had taken out when purchasing an apartment. The appellant called Dr. Motwani on October 11, 1964, requesting that he come to his home and meet the person who would receive the money. The appellant informed Dr. Motwani on October 12, 1964, that the appointment was cancelled since he had not visited the appellant's home on October 11. Dr. Motwani conveyed the news to the Assistant Commissioner.

ISSUES OF THE CASE

The main issues addressed in this case were-

- **Admissibility of Confessions to Police Officers:** The primary issue was whether confessions made to police officers could be considered admissible as evidence in criminal proceedings. Section 25² of the Indian Evidence Act, 1872, categorically prohibits the use of such confessions due to concerns about coercion and the potential for abuse of power by law enforcement.
- **Voluntariness of the Confession:** Another significant issue was the voluntariness of the confession made by the accused. The court had to determine whether the confession was obtained freely and voluntarily, without any form of coercion, intimidation, or inducement.
- **Relevance of the Confession:** Additionally, the court examined the relevance and reliability of the confession in establishing the guilt of the accused. Even if a confession is found to be voluntary, it must still be considered reliable and material to the case to be admissible as evidence.

JUDGEMENT

In *Magraj Patodia v. R. K. Birla & Ors.*³, this Court addressed the admissibility of two files containing multiple documents submitted by the election petitioner as evidence. Correspondence concerning respondent No. 1's election was found in those files. The elected

² No confession made to a [police-officer] [As to statement made to a police officer investigating a case, see the Code of Criminal Procedure, 1973 (2 of 1974), Section 162.] shall be proved as against a person accused of any offence.

³ AIR 1971 SC 1295

candidate, respondent No. 1, and a few other individuals corresponded. The witness who produced the file stated that he received the file from respondent No. 1 for safekeeping. The candidate had been arrested during a raid at his home in relation to tax or duty evasion. This Court did not accept the witness's account of how he learned about the file. This Court held that if the relevance and genuineness of a document could be demonstrated, its acquisition through unethical or illegal means would not prevent it from being admitted. A tape recording of a conversation that the participants were unaware was recorded without their knowledge can also become relevant and admissible, much like a picture taken without the subject's knowledge. The Court will be cautious when admitting this kind of evidence in two ways. Prior to anything else, the Court will confirm that it is authentic and unaltered. Second, the Court has the authority to ensure that the Police act with integrity. The rationale is that if the judge is likely to view improperly obtained evidence cautiously, the police officer is more likely to act appropriately. In each case, the surrounding circumstances and relevant facts must be taken into consideration when evaluating the accused's position, the scope of the investigation, and the seriousness of the offense.

If a court considers the intonation of words to be authentic and relevant, then allowing a tape recording to be played over is an act on real evidence. The Court also keeps in mind that conversations captured on tape can be altered. Since Dr. Motwani gave permission for the tape-recording device to be attached to his instrument, it cannot be claimed that the recording of their conversation—which took place in this instance—was unlawful. Actually, Dr. Motwani gave the police officers permission to listen in on their talk. Police officers would be able to provide direct proof of what they heard if the conversation was recorded and played back over a microphone or amplifier connected to the phone.

ROLE OF STAKEHOLDERS

- Accused (R.M. Malkani): As the primary party directly involved in the case, R.M. Malkani had a vested interest in the outcome of the proceedings. Malkani's defence team would have advocated for the exclusion of the confession obtained by the police, arguing that it was coerced or involuntary. Malkani's rights and freedoms were at stake, and their legal representation would have vigorously defended against any violation of these rights.

- **State of Maharashtra (Prosecution):** The State of Maharashtra, representing the prosecution, sought to uphold the legality and admissibility of the confession as evidence against Malkani. The prosecution would have argued for the confession's relevance and reliability in establishing Malkani's guilt, while also defending the actions of the law enforcement officers involved in obtaining the confession.
- **Police Officers:** The police officers involved in obtaining the confession played a pivotal role in the case. Their conduct in procuring the confession, as well as any allegations of coercion or duress, would have been closely scrutinized during the legal proceedings. The actions of the police officers could either bolster or undermine the admissibility of the confession as evidence.
- **Judiciary (Supreme Court of India):** The judiciary, represented by the Supreme Court of India, served as the arbiter of the case. The court was tasked with interpreting and applying relevant laws and legal principles to determine the admissibility of the confession and the fairness of the trial proceedings. Its judgment would have significant implications for the rights of the accused, the administration of justice, and legal precedent.
- **Legal Counsel:** Legal counsel representing both the defence and the prosecution played instrumental roles in presenting arguments, examining witnesses, and advocating for their respective positions before the court. Their expertise in evidence law, criminal procedure, and constitutional rights helped shape the legal arguments and strategies employed throughout the case.

ANALYSIS

According to Section 25 of the Indian Telegraph Act of 1885, anyone who intends to intercept or become familiar with the contents of any message, damages, removes, tampers with, or touches any battery, machinery, telegraph line, post, or other thin whatsoever that is part of or used in or around any telegraph or in the working thereof, faces up to three years in prison, a fine, or both. In Section 3 of the Indian Telegraph Act, "telegraph" refers "to any device, instrument, material, or apparatus that can be used or is capable of being used to transmit or receive writing, signals, signs, images, sounds, or intelligence of any kind by wire, visual, or other electromagnetic emissions, radio waves or hertzian waves, galvanic, electric or magnetic means". The appellant's attorney claimed that attaching the tape-recording device to Dr. Motwani's phone was illegal under section 25 of the Indian Telegraph Act. Additionally, it was

stated that a police officer would be in violation of the Telegraph Act if he intended to familiarize himself with the contents of any message, touched machinery, or anything else used in or around a telegraph or in its operation. The Telegraph Authority may lawfully monitor or intercept a message or messages transmitted through a telephone in order to verify any violations of these rules or to maintain the integrity of the system. This is stated in Rule 149 of the Telegraph Rules. This Rule was cited to clarify that, in accordance with the Act and Rules, only the Telegraph Authorities were permitted to intercept messages; police officers were not. The act of tying the tape recorder to the phone was not forced or compelled in any way. The Indian Telegraph Act had not been broken. That is where the High Court is mistaken. It was stated that Articles 20(3) and 21 of the Constitution were violated by the tape-recorded evidence's admissibility. The argument was that the appellant was implicated and that the process used to obtain the conversation tape was not authorized by law. The appellant engaged in voluntary conversation. Nothing was forcing them. The appellant was unaware that the tape-recording device had been attached. Despite this, the conversational evidence is still admissible. There was no coercion or duress used to obtain the appellant's conversation. In the event that the conversation was captured on tape, it was a mechanical ruse to simulate an eavesdropper.

At the time of the conversation there was no case against the appellant. He was not compelled to speak or confess. Article 21 was invoked by submitting that the privacy of the appellant's conversation was invaded. Article 21 contemplates procedure established by law with regard to deprivation of life or personal liberty. The telephonic conversation of an innocent citizen will be protected by Courts against wrongful or high handed' interference by tapping the conversation. The protection is not for the guilty citizen against the efforts of the police to vindicate the law and prevent corruption of public servants.

When a police officer conducts an oral examination of a person, they are conducting an investigation, according to Sections 161 and 162 of the Criminal Procedure Code. The appellant and Dr. Motwani had the phone conversation. Everybody exchanged words with each other. Neither of them spoke with the policeman. Section 162 is not violated.

CONCLUSION

The appellant's lawyer asserted that unlawful means were used to obtain the conversation captured on tape. The court determined that the facts and circumstances of the current case did not constitute a violation of section 25 of the Telegraph Act. Judges apply the rule that evidence is admissible even if it was obtained illegally to a variety of trials. Because it is impossible to distinguish between eavesdropping and tampering with the machinery, there is no violation of the provision when someone talking on the phone permits someone else to record or hear it. The act of connecting the tape recorder to the phone was not done under duress or compulsion. The Indian Telegraph Act was not violated. The High Court erred when it stated that although there was a violation, the evidence still needed to be admitted. That is untrue; there hasn't been no violation of the Act.

SOURCES

1. <https://indiankanoon.org/doc/1179783/>
2. <https://www.casemine.com/judgement/in/5609ab7fe4b014971140ca8e>
3. Indian Evidence Act, 1872
4. Indian Telegraph Act, 1885
5. Code of Criminal Procedure, 1973

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