

POLICE



DEPARTMENT

KERALA

No.U6-35692/2025/PHQ

Police Headquarters,
Thiruvananthapuram

✉ phq.pol@kerala.gov.in

☎ 04712721547

Dated. 19-02-2025

Circular. 5/2025/PHQ

Sub : The proviso to Section 23 of Bharatiya Sakshya Adhiniyam (Section 27 of the Indian Evidence Act) - Instructions issued for compliance - reg:

Ref : Judgment of the Hon'ble Supreme Court of India in Crl.A Nos.64-65/2022 dated 13-10-2022.

The Hon'ble Supreme Court of India has pronounced a Judgment in Criminal Appeal Nos. 64-65 of 2022 filed by **Ramanand @ Nandlal Bharti Vs State of Uttar Pradesh**, on 13/10/2022, wherein the Hon'ble Court has pointed out certain defects noticed in the discovery of facts under Section 27 of the Evidence Act whereby the same becomes inadmissible in evidence.

The Proviso of Section 23 of Bharatiya Sakshya Adhiniyam (Section 27 of the Indian Evidence Act) reads as follows:

“Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.”

As per Para 53 of the aforesaid Judgement, it is stated that :

“If, it is say of the investigating officer that the accused appellant while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence along with his blood stained clothes then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence. When the accused while in custody makes such statement before the two independent witnesses (panch witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or blood-stained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the



U6-35692/2025/PHQ



b66c89

investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act.”

In Para 54 of the said Judgement, it is stated that:

“....We are conscious of the position of law that even if the independent witnesses to the discovery panchnama are not examined or if no witness was present at the time of discovery or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the discovery evidence unreliable. In such circumstances, the Court has to consider the evidence of the investigating officer who deposed to the fact of discovery based on the statement elicited from the accused on its own worth.”

In Para 56 of the Judgement, it is stated that:

“The requirement of law that needs to be fulfilled before accepting the evidence of discovery is that by proving the contents of the panchnama. The investigating officer in his deposition is obliged in law to prove the contents of the panchnama and it is only if the investigating officer has successfully proved the contents of the discovery panchnama in accordance with law, then in that case the prosecution may be justified in relying upon such evidence and the trial court may also accept the evidence.”

In para 67 of the Judgement, it is stated that:

“...Mere discovery cannot be interpreted as sufficient to infer authorship of concealment by the person who discovered the weapon. He could have derived knowledge of the existence of that weapon at the place through some other source. He may have even seen somebody concealing the weapon, and, therefore, it cannot be presumed or inferred that because a person discovered weapon, he was the person who concealed it, least it can be presumed that he used it. Therefore, even if discovery by the appellant is accepted, what emerges from the panchnama of the discovery of weapon and the evidence in this regard is that he disclosed that he would show the weapon used in the commission of offence....”

Also, the scope and ambit of Section 27 of the Evidence Act were illuminatingly stated in **Pulukuri Kottaya and Others v. Emperor, AIR 1947 PC 67**, which have become locus classicus, in the following words:

"10. It is fallacious to treat the "fact discovered" within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that "I will produce a knife concealed in the roof of my house" does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added "with which I stabbed A" these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."

In **Bodhraj alias Bodha and Others Vs. State of Jammu and Kashmir** reported in (2002) 8 SCC 45, the Hon'ble Supreme Court has stated that:

"18..... The statement which is admissible under Section 27 is the one which is the information leading to discovery. Thus, what is admissible being the information, the same has to be proved and not the opinion formed on it by the police officer. In other words, the exact information given by the accused while in custody which led to



recovery of the articles has to be proved. It is, therefore, necessary for the benefit of both the accused and the prosecution that information given should be recorded and proved and if not so recorded, the exact information must be adduced through evidence. The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true."

The following is the crux of the judgement pronounced by the Hon'ble Supreme Court in Criminal Appeal Nos. 64-65 of 2022 filed by **Ramanand @ Nandlal Bharti Vs State of Uttar Pradesh** dated: 13/10/2022.

1. Accused's Voluntary Statement:

- The accused must voluntarily make a statement about the discovery of a fact, which can be crucial evidence (e.g., location of the weapon or other articles).
- The statement must be made **freely**, without coercion or force.

2. In the Presence of Independent Witnesses (Mahazar Witnesses):

- The investigating officer (IO) should call two independent witnesses (mahazar witnesses) to be present when the accused makes the statement. These witnesses should be impartial and not related to the case.
- The presence of these independent witnesses ensures the statement is credible and not made under duress.

3. Recording the Statement:

- The statement made by the accused must be exactly recorded by the IO, in the words used by the accused, in the presence of the independent witnesses.
- The first part of the Mahazar must be drawn up at this stage, ensuring that the statement is documented for legal purposes.
- The Section allows the statement made by the accused about the **discovery** to be admissible in court, but only if the exact information provided is recorded and proven.

4. Discovery of the Fact:

- After the statement, the accused, along with the police and the independent witnesses, shall proceed to the location indicated by the accused.
- If the weapon, blood-stained clothes, or any other article is found at the location, it is considered the discovery of a fact.

5. Second Part of the Mahazar:

- Once the article is discovered, the second part of the Mahazar is drawn. This part includes details of the discovery and the evidence found.
- This process documents the relevant fact discovered through the accused's statement, making it admissible in Court.

6. Legal Validity:

- The procedure ensures that the discovery is valid and credible. Since the statement is made voluntarily and witnessed by independent individuals, it is considered reliable evidence.
- The discovery of the fact under this section is admissible in court under the proviso to section 23 of Bharatiya Sakshya Adhinyam (Section 27 of the Indian Evidence Act),

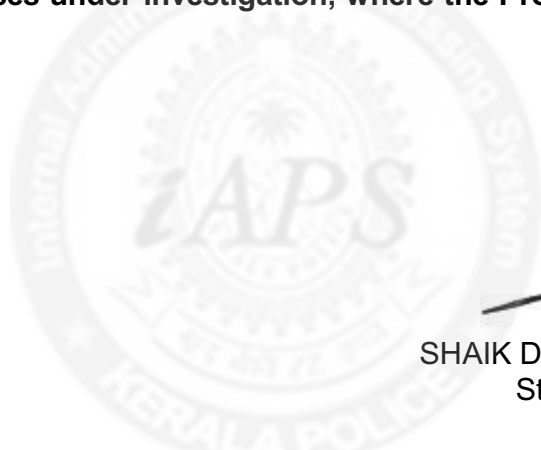


provided the conditions are met.

7. Legal requirement for accepting discovery evidence is that the contents of the discovery Mahazar must be proved properly.

- **Proving the Mahazar:** The investigating officer (IO) is legally obligated to prove the contents of the discovery Mahazar during their deposition. This means that the IO must testify about the facts of the discovery, including the accused's statement, the procedure followed, and the subsequent discovery of evidence (such as a weapon or other relevant items).
- **Proof of Contents:** The IO must demonstrate that the Mahazar was correctly drawn up in compliance with the legal procedure, including the presence of independent witnesses, and that the accused made a voluntary statement leading to the discovery of evidence.
- **Acceptance by the Court:** If the IO successfully proves the contents of the Mahazar according to the law, it makes the discovery evidence as credible and admissible in Court. Then the prosecution can rely on the discovery evidence.
- **Legal Justification for reliance:** Once the IO proves the Mahazar contents, the prosecution is justified in using the discovery evidence to support the case, and the Court can base its decision on this evidence.
- **Evaluation of the Discovery Evidence:** The Court will determine if the evidence, including the discovery of facts and the statement made by the accused is reliable and admissible, based on the circumstances and facts of the case.

All District Police Chiefs, DIG ATS, SsP Crime Branch and SP Railways are directed to be aware the aforesaid Judgments pronounced by the Hon'ble Apex Court and instruct all the Investigating Officers under their respective jurisdiction to strictly comply the directions, in all the cases under investigation, where the Proviso of Section 23 of BSA is applicable.



SH

SHAIK DARVESH SAHEB IPS
State Police Chief

To : 1. ADGP (L&O) / ADGP CB/ ADGP SCRB/ IsGP Zones /IGP(Traffic) /DIsG Ranges/ATS, SsP Crime Branch, SP Railways
2. All District Police Chiefs for necessary action.

Copy To : 1. All CA's in PHQ.
2. Circular Register.



U6-35692/2025/PHQ



b66c89