

## Shri Janardan Subrao Pai Vs Shri Chandra Kamalaksha Pai and The State of Maharashtra

**Court:** Bombay High Court

**Date of Decision:** Feb. 25, 2003

**Acts Referred:** Constitution of India, 1950 " Article 20(3)  
Evidence Act, 1872 " Section 132

**Citation:** (2003) 2 ALD(Cri) 80 : (2003) BomCR(Cri) 1365 : (2003) CriLJ 2909 : (2003) 4 MhLj 342

**Hon'ble Judges:** A.M. Khanwilkar, J

**Bench:** Single Bench

**Advocate:** A.P. Mundargi and Shailesh Kantharia, for the Appellant; M.B. Baadkar and B.H. Mehta, for the Respondent

**Final Decision:** Dismissed

### Judgement

A.M. Khanwilkar, J.

Heard both sides for final disposal, by consent.

2. The short question that arises in the present case is: whether the Petitioner, who is complainant in the criminal case filed against the Respondent

No. 1 for offence punishable u/s 420 of the Indian Penal Code, was entitled to read the certified copy of the deposition given by the Respondent

No. 1 in another criminal case filed by the Petitioner against the co-owners of the subject land as witness in that case? The Trial Court by order

dated 19th June, 2000, rejected that prayer by holding the production of that document would infringe the fundamental right guaranteed to the

accused Respondent No. 1 herein under Article 20(3) of the Constitution of India. The order reads thus :

Pursued heard advocate S.C. Shah for the complainant. Advocate Shri Ponda for the accused. Deposition of the accused as a witness in another

case is sought to be produced and exhibited. So far production is concerned, it can be allowed. However, in view of Article 20(3) of Constitution

of India exhibition the same will tantamount to compelling the accused to become a witness against himself, may be directly or indirectly.

Fundamental right cannot be breached. Hence exhibition prayed needs to be rejected. I order accordingly. Only production is allowed.

Against this decision, the Petition carried the matter in Revision before the District Judge, Palghar. The Revisional Court has affirmed the aforesaid

view taken by the Trial Court and dismissed the Revision Application preferred by the Petitioner by Judgment and Order dated 18th December,

2000.

3. Mr. Mundargi for the Petitioner contends that the Courts below were completely misdirected in rejecting the prayer pressed into service by the

Petitioner for production of the deposition of Respondent No. 1 in another criminal case, where, he was examined as prosecution witness, by

applying Article 20(3) of the Constitution of India. According to him, the Respondent No. 1 had deposed at his free will in the said proceedings,

may be pursuant to summons issued by the Court to appear as a prosecution witness. He submits that the Constitution Bench of the Apex Court in

the case of *The State of Bombay Vs. Kathi Kalu Oghad and Others*, has held that only statements which are given under compulsion would

receive protection by virtue of Article 20(3) of the Constitution of India and not the evidence such as the one given by the Petitioner in the

companion criminal case at his free will.

4. On the other hand, Mr. Baadkar for Respondent No. 1 contends that the Respondent No. 1 had no option but to depose before the Court

pursuant to the Court Summons, as prosecution witness in another criminal case filed by the Petitioner, as is the mandate of Section 132 of the

Evidence Act. He submits that however, evidence given by the Respondent No. 1 in another criminal case as prosecution witness cannot be used

against the Respondent No. 1 for criminal proceedings pending against him, except for a prosecution for giving false evidence. He has placed

reliance on the proviso to Section 132 of the Evidence Act to buttress this prosecution.

5. Having considered the rival submissions, I find force in the argument advanced on behalf of Respondent No. 1. Section 132 of the Evidence Act

would read thus:-

Witness not excused from answering on ground that answer will criminate.-A witness shall not be excused from answering any question as to any

matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will

criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to

a penalty or forfeiture of any kind:

Proviso.-Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved

against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

On plain language of this Section, if a person is summoned by the Court to appear as witness in another criminal case, or for that matter, as witness

in any Suit or in any civil proceeding, then he would be obliged to appear and depose on all matters relevant to the matter in issue in that

proceeding and could not be excused merely because any statement made by him during the evidence would criminate him or would tend directly

or indirectly to criminate him in the pending prosecution against him. To put it differently, the evidence of Respondent No. 1 in the companion

criminal case, cannot be assumed to be out of free will, but was obviously out of legal obligation. In such a situation, the proviso would come into

play and any answer given by the Respondent No. 1 as witness in another case can be used against him only for prosecution for giving false

evidence and for no other purpose. For the above reason, reliance placed on the decision of the Apex Court in the State of Bombay (Supra), is

inapposite. For there is statutory protection extended to the witnesses deposing before the Court by virtue of Section 132 of the Act. Understood

thus, the Trial Court was justified in rejecting the request of the Petitioner for reading the deposition of the Respondent No. 1 given in another

criminal case. That order ought to be sustained on the above reasoning.

6. To put it differently, the evidence given by Respondent No. 1 in the companion criminal case cannot be characterised as a mere voluntary

statement and without any compulsion, as he was obliged to depose, pursuant to Court's summons by virtue of mandate of Section 132 of the

Evidence Act. However, it is because of the proviso, the Respondent No. 1 gets protection from being prosecuted on the basis of that evidence or

his evidence being used in any pending prosecution against him, except for the limited purpose of giving false evidence.

7. In the circumstances, no interference is warranted with the conclusion reached by the Court below in rejecting the request of the Petitioner for

reading the certified copy of the deposition given by the Respondent No. 1 in another criminal case as evidence in the present trial pending against

Respondent No. 1 on the charges of cheating.

8. Hence, this Petition fails. The same is dismissed.