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Witness Protection Scheme, 2018

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PREFACE

Objective

Ability of witnesses to give testimony in a judicial proceeding to cooperate with law enforcement agencies and judicial officers. This capability is one of the essential elements in maintaining the rule of law. The objective of this scheme is to ensure that the investigation, prosecution and trial of criminal offences is not prejudiced because witnesses are intimidated or frightened to give evidence without protection from violent or other criminal retribution. It aims to promote law enforcement by facilitating the protection of persons who are involved directly or indirectly in providing assistance to criminal law enforcement agencies and general administration of justice. It is needed to be given the confidence to come forward to assist law enforcement and judicial Authorities with full assurance of safety. It is aimed to identify series of measures that may be adopted to safeguard witnesses and their family members from intimidation and threats against their lives, reputation and property.

Need and justification for the scheme

Jeremy Bentham has said that 'Witnesses are the eyes and ears of justice'. In cases involving heinous crimes, witnesses turn hostile because of threat to life and property. Witnesses feel that there is no statutory legal obligation on the part of the State to extend any protection to them.

Hon'ble Supreme Court of India also held in *State of Gujarat v. Anandh Singh* (1997) 6 SCC 514 that "it is the salutary duty of every witness who has the knowledge of the commission of the crime to assist the State in giving evidence". *Mahimati Committee on Reforms of Criminal Justice System, 2003* said in its report that "By giving evidence relating to the commission of an offence, he performs a sacred duty of assisting the court to discover the truth". *Zahira Habibullah H. Sheikh and Another v. State of Gujarat* (2004) 14 SCC 458 while defining Fair Trial *Hon'ble Supreme Court of India observed* "If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial".

First ever reference to Witness Protection in India came in 14th Report of the Law Commission of India in 1958. Further reference on the subject are found in 154th and 178th report of the Law Commission of India. 198th Report of the Law Commission of India titled as 'Witness Identity Protection and Witness Protection Programmes, 2006' is dedicated to the subject.

Hon'ble Supreme Court observed in *Zahira case supra* "no country can afford to expose its morally correct citizens to the peril of being harassed by anti-social elements like rapists and murderers. The 4th National Police Commission Report, 1980 noted prosecution witnesses are turning hostile because of pressure of accused and there is need of regulation to check manipulation of witnesses".

Legislature has introduced Section 195A IPC in 2006 making Criminal Intimidation of Witnesses a criminal offence punishable with seven years of imprisonment. Likewise, in statutes namely Juvenile Justice (Care and Protection of children) Act, 2015, Whistle Blowers Protection Act, 2011, Protection of Children from Sexual Offences Act (POCSO Act), 2012 and National Investigation Agency Act, 2008 and Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 also provides for safeguarding witnesses against the threats. However no formal structured programme has been introduced as on date for addressing the issue of witness protection in a holistic manner.

... organized crime groups are...
... investigate and...
... witnesses have...
... influence to come forward to assist law enforcement and prosecuting agencies. They need to be assured that they will receive support and protection from intimidation and the harm that criminal groups might seek to inflict upon them in order to discourage them from cooperating with the law enforcement agencies and appearing before the court of law. Hence it is suggested that a scheme should be placed for addressing the issues of witness protection uniformly in the country.

Scope of the Scheme

Witness Protection may be as simple as providing a police escort to the witness up to the courtroom or using modern communication technology (such as audio video means) for recording of testimony. In other more complex cases involving organized criminal group extraordinary measures are required to ensure the witness's safety viz anonymity, offering temporary residence in a safe house, giving a new identity and relocation of the witness at an undisclosed place. However, Witness protection needs of a witness may have to be viewed on case to case basis depending upon their vulnerability and threat perception.

1. SHORT TITLE AND COMMENCEMENT

- (a) The Scheme shall be called "Witness Protection Scheme, 2013
- (b) It shall come into force from the date of Notification

Part

2. DEFINITIONS

- (a) "Code" means the Code of Criminal Procedure, 1973 (2 of 1974)
- (b) "Concealment of Identity of Witness" means and includes any condition prohibiting publication or revealing, in any manner, directly or indirectly of the name, address and other particulars which may lead to the identification of the witness during investigation, trial and post-trial stage,
- (c) "Competent Authority" means a Standing Committee in each District chaired by District and Sessions Judge with Head of the Police in the District as Member and Head of the Prosecution in the District as its Member Secretary
- (d) "Family Member" includes parents/guardian, spouse, live-in partner, siblings, children, grandchildren of the witness,
- (e) "Form" means "Witness Protection Application Form" appended to this Scheme

... witnesses and other persons involved in the investigation of the offence and those persons who are likely to be present at the trial and other proceedings in connection with the offence.

... witnesses shall include any person who is involved in the investigation of the offence and who is likely to be present at the trial and other proceedings in connection with the offence.

Witness Protection Measures means measures specified in Clause 7 Part I Part II and Part V of the Scheme

Offence means those offences which are punishable with death or imprisonment or an imprisonment up to seven years and above and also offence punishable under Section 354, 354A, 354B, 354C, 354D and 509 of IPC

Threat Analysis Report means a detailed report prepared and submitted by the head of the Police in the District investigating the case with regard to the seriousness and credibility of the threat perception to the witness or his family members. It shall contain specific details about the nature of threats faced by the witness or his family to their life, reputation or property apart from analyzing the extent the person or persons making the threat have the intent, motive and resources to implement the threats

It shall also categorize the threat perception apart from suggesting the police witness protection measures which deserves to be taken in the matter

Witness means any person who possesses information or document about any offence

Witness Protection Application means an application moved by the witness in the prescribed form before a Competent Authority through its Member Secretary for seeking Witness Protection Order. It can be moved by the witness, his family member, his duly engaged counsel or IO/SO/SDPO/Jai Superintendent concerned

Witness Protection Fund means the fund created for bearing the expenses incurred during the implementation of Witness Protection Order passed by the Competent Authority under this scheme,

Witness Protection Order means an order passed by the Competent Authority detailing the witness protection measures to be taken

Witness Protection Cell means a dedicated Cell of State/UT Police or Central Police Agencies assigned with the duty to implement the witness protection order

Part II

3 CATEGORIES OF WITNESS AS PER THREAT PERCEPTION

- Category 'A' Where the threat extends to life of witness or his family members during investigation/trial or thereafter
- Category 'B' Where the threat extends to safety reputation or property of the witness or his family members during the investigation/trial or thereafter
- Category 'C' Where the threat is moderate and extends to harassment or intimidation of the witness or his family member's, reputation or property, during the investigation/trial or thereafter

4 STATE WITNESS PROTECTION FUND

- (a) There shall be a Fund namely, the Witness Protection Fund from which the expenses incurred during the implementation of Witness Protection Order passed by the Competent Authority and other related expenditure, shall be met
- (b) The Witness Protection Fund shall comprise the following
- Budgetary allocation made in the Annual Budget by the State Government
 - ii Receipt of amount of costs imposed/ ordered to be deposited by the courts/tribunals in the Witness Protection Fund
 - iii Donations/contributions from Philanthropist/ Charitable Institutions/Organizations and individuals permitted by the Government
 - iv Funds contributed under Corporate Social Responsibility
- (c) The said Fund shall be operated by the Department/Ministry of Home under State/UT Government

5 FILING OF APPLICATION BEFORE COMPETENT AUTHORITY

The application for seeking protection order under this scheme can be filed in the prescribed form before the Competent Authority of the concerned District where the offence is committed, through its Member Secretary along with supporting documents, if any

6 PROCEDURE FOR PROCESSING THE APPLICATION:

- (a) As and when an application is received by the Member Secretary of the Competent Authority, in the prescribed form, he shall forthwith pass an order for calling for the

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Threat Analysis Report from the ACP/DSP in charge of the concerned Police Sub

- dealing with the urgency of the matter owing to imminent threat to the Competent Authority, an pass orders for interim protection of the witness and his family members during the pendency of the application.
- Provided that nothing shall preclude police from providing immediate protection in case of grave and imminent threat to the life of applicant and his family members.
- (d) The Threat Analysis Report shall be prepared expeditiously while maintaining full confidentiality and it shall reach the Competent Authority within five working days of receipt of the order.
 - (e) The Threat Analysis Report shall categorize the threat perception and also include suggestive protection measures for providing adequate protection to the witness or his family.
 - (f) While processing the application for witness protection, the Competent Authority shall also interact preferably in person and if not possible through electronic means with the witness and/or his family members/employers or any other person deemed fit so as to ascertain the witness protection needs of the witness.
 - (g) All the hearings on Witness Protection Application shall be held in-camera by the Competent Authority while maintaining full confidentiality.
 - (h) An application shall be disposed of within five working days of receipt of Threat Analysis Report from the Police Authorities.
 - (i) The witness Protection Order passed by the Competent Authority shall be implemented by the Witness Protection Cell of the State/UT or the Trial Court, as the case may be. Overall responsibility of implementation of all witness protection orders passed by the Competent Authority shall lie on the Head of the Police in the State/UT.
- || However, the Witness Protection Order passed by the Competent Authority for change of identity and / or relocation shall be implemented by the Department of Home of the concerned State/UT ||
- (j) Upon passing of a Witness Protection Order, the Witness Protection Cell shall file a monthly follow-up report before the Competent Authority.
 - (k) In case the Competent Authority finds that there is a need to revise the Witness Protection Order or an application is moved in this regard and upon completion of trial, a fresh Threat Analysis Report shall be called from the ACP/DSP in charge of the concerned Police Sub-Division.

7 TYPES OF PROTECTION MEASURES

The witness protection measures ordered shall be proportionate to the threat and shall be for a specific duration not exceeding three months at a time. These may include

- (a) Ensuring that witness and accused do not come face to face during investigation or trial,
- (b) Monitoring of mail and telephone calls,
- (c) arrangement with the telephone company to change the witness's telephone number or assign him or her an unlisted telephone number.

- (d) Installation of security devices in the witness's home such as burglar detectors, ICT alarms, fencing etc.
- (e) Concealment of identity of the witness by referring to him/her with the changed name or alphabet.
- (f) Emergency contact persons for the witness.
- (g) Close protection, regular patrolling around the witness's house.
- (h) Temporary change of residence to a relative's house or a nearby town.
- (i) Escort to and from the court and provision of Government vehicle or a State funded conveyance for the date of hearing.
- (j) Holding of *in-camera* trials.
- (k) Allowing a support person to remain present during recording of statement and deposition.
- (l) Usage of specially designed vulnerable witness court rooms which have special arrangements like live video links, one way mirrors and screens apart from separate passages for witnesses and accused, with option to modify the image of face of the witness and to modify the audio feed of the witness voice, so that he/she is not identifiable.
- (m) Ensuring expeditious recording of deposition during trial on a day-to-day basis without adjournments.
- (n) Awarding time to time periodical financial aids/grants to the witness from Witness Protection Fund for the purpose of re-location, sustenance or starting a new vocation/profession, as may be considered necessary.
- (o) Any other form of protection measures considered necessary.

8 MONITORING AND REVIEW

Once the protection order is passed the Competent Authority would monitor its implementation and can review the same in terms of follow-up reports received in the matter. However, the Competent Authority shall review the Witness Protection Order on a quarterly basis based on the monthly follow-up report submitted by the Witness Protection Cell.

Part III

9 PROTECTION OF IDENTITY

During the course of investigation or trial of any offence an application for seeking identity protection can be filed in the prescribed form before the Competent Authority through its Member Secretary.

Upon receipt of the application, the Member Secretary of the Competent Authority shall call for the Threat Analysis Report. The Competent Authority shall examine the witness or his family members or any other person it deem fit to ascertain whether there is necessity to pass an identity protection order.

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During the course of hearing of the application, the details of the witness shall not be revealed to any other person, including the court, unless it is specifically directed by the

Competent Authority can thereafter, dispose of the application and the material available on record.

Once, an order for protection of identity of witness is issued by the Competent Authority, it shall be the responsibility of the Witness Protection Cell to ensure that identity of such witness, his or her family members, including name/parentage/occupation/address/digital footprints are fully protected.

As long as identity of any witness is protected under an order of the Competent Authority, the Witness Protection Cell shall provide details of persons who can be contacted by the witness in case of emergency.

Part IV

10. CHANGE OF IDENTITY -

In appropriate cases, where there is a request from the witness for change of identity and based on the Threat Analysis Report, a decision can be taken for conferring a new identity to the witness by the Competent Authority.

Conferring new identities includes new name/profession/parentage and providing supporting documents acceptable by the Government Agencies. The new identities should not deprive the witness from existing educational/ professional/ property rights.

Part V

11. RELOCATION OF WITNESS

In appropriate cases, where there is a request from the witness for relocation and based on the Threat Analysis Report, a decision can be taken for relocation of the witness by the Competent Authority.

The Competent Authority may pass an order for witness relocation to a safer place within the State/UT or territory of the Indian Union keeping in view the safety, welfare and wellbeing of the witness. The expenses shall be borne from the Witness Protection Fund.

Part VI

12. WITNESSES TO BE APPRISED OF THE SCHEME:

Every state shall give wide publicity to this Scheme. The IO and the Court shall inform witnesses about the existence of "Witness Protection Scheme" and its salient features.

13 CONFIDENTIALITY AND PRESERVATION OF RECORDS

All stakeholders including the Police, the Prosecution Department, Court Staff, Lawyers from both sides shall maintain full confidentiality and shall ensure that under no circumstance, any record, document or information in relation to the proceedings under this scheme shall be shared with any person in any manner except with the Trial Court/Appellate Court and that too on a written order.

All the records pertaining to proceedings under this scheme shall be preserved till such time the related trial or appeal the case is pending before a Court of Law. After one year of disposal of the last Court proceedings, the hard copy of the records can be weeded out by the Competent Authority after preserving the scanned soft copies of the same.

14 RECOVERY OF EXPENSES

In case the witness has lodged a false complaint, the Home Department of the concerned Government can initiate proceedings for recovery of the expenditure incurred from the Witness Protection Fund.

15 REVIEW

In case the witness or the Police authorities are aggrieved by the decisions of the Competent Authority, a review application may be filed within 45 days of passing of the orders by the Competent Authority.

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WITNESS PROTECTION APPLICATION

Form

Witness Protection Scheme, 2010

Before

To be filled by

in

The Competent Authority
District

Application for

- 1) Witness Protection
- 2) Witness Identity Protection
- 3) New Identity
- 4) Witness Relocation

1) Particulars of the Witness (Fill in Capital)

- 1) Name
- 2) Age
- 3) Gender (Male/Female/Other)
- 4) Father's/Mother's Name
- 5) Residential Address
- 6) Name and other details of family members of the witness who are receiving or peceiving threats
- 7) Contact details (Mobile/Email)

2) Particulars of Criminal matter

- 1) FIR No
- 2) Under Section
- 3) Police Station
- 4) District
- 5) D.D. No (in case FIR not yet registered)
- 6) Cr. Case No (in case of private complaint)

3) Particulars of the Accused (if available/known)

- 1) Name
- 2) Address
- 3) Phone No
- 4) Email id

4) Name & other particulars of the person giving/suspected of giving threats

Witness Protection Scheme 1998

5. Nature of threat. Please give brief details of threat received in the matter with specific date, place, mode and words used.

6. Type of witness protection measures prayed by/for the witness.

7. Details of Interim / Urgent Witness Protection needs if required.

* Applicant/witness can use extra sheets for giving additional information.

(Full Name with signature)

Date

Place

UNDERTAKING

1. I undertake that I shall fully cooperate with the competent authority and the Department of Home of the State and Witness Protection Cell.
2. I certify that the information provided by me in this application is true and correct to my best knowledge and belief.
3. I understand that in case, information given by me in this application is found to be false, competent authority under the scheme reserves the right to recover the expenses incurred on me from out of the Witness Protection Fund.

(Full Name with signature)

Date

Place

Let Complainants should be
addressed to Registrar,
Responsible for Court, New Delhi
Date: 14/12/16

Delivery Mode: And stored

14/12/16 10:59 AM
SUPREME COURT OF INDIA
NEW DELHI
14/12/16 10:59 AM

From

The Assistant Registrar,
Supreme Court of India, New Delhi

To,

1 UNION OF INDIA, THROUGH THE
SECRETARY,
MINISTRY OF HOME AFFAIRS, NORTH
BLOCK, CENTRAL SECRETARIAT,
DISTRICT- NEW DELHI, DELHI

PID 336907/2018 (SEC X)(W.P.(CRL))
NO 156/2016

2 THE CHIEF SECRETARY, GOVERNMENT OF
ANDHRA PRADESH,
DISTRICT- HYDERABAD, ANDHRA PRADESH

PID 336908/2018 (SEC X)(W.P.(CRL))
NO 156/2016

3 THE CHIEF SECRETARY, GOVERNMENT OF
ASSAM
DISTRICT- DISPUR, ASSAM

PID 336909/2018 (SEC X)(W.P.(CRL))
NO 156/2016

4 THE CHIEF SECRETARY, GOVERNMENT OF
ARUNACHAL PRADESH
DISTRICT- ITANAGAR, ARUNACHAL PRADESH

PID 336910/2018 (SEC X)(W.P.(CRL))
NO 156/2016

5 THE CHIEF SECRETARY, GOVERNMENT OF
BIHAR,
DISTRICT- PATNA, BIHAR

PID 336911/2018 (SEC X)(W.P.(CRL))
NO 156/2016

6 THE CHIEF SECRETARY, GOVERNMENT OF
GUJARAT,
DISTRICT- GANDHINAGAR, GUJARAT

PID 336912/2018 (SEC X)(W.P.(CRL))
NO 156/2016

7 THE CHIEF SECRETARY, GOVERNMENT OF
GOA
DISTRICT- PANAJI, GOA

PID 336913/2018 (SEC X)(W.P.(CRL))
NO 156/2016

8 THE CHIEF SECRETARY, GOVERNMENT OF
HARYANA
DISTRICT- CHANDIGARH, HARYANA

PID 336914/2018 (SEC X)(W.P.(CRL))
NO 156/2016

9 THE CHIEF SECRETARY, GOVERNMENT OF
HIMACHAL PRADESH,
DISTRICT- SHIMLA, HIMACHAL PRADESH

PID 336915/2018 (SEC X)(W.P.(CRL))
NO 156/2016

10 THE CHIEF SECRETARY, GOVERNMENT OF
KARNATAKA,
DISTRICT- BANGALORE, KARNATAKA

PID 336916/2018 (SEC X)(W.P.(CRL))
NO 156/2016

11 THE CHIEF SECRETARY, GOVERNMENT OF
KERALA,
DISTRICT- THIRUVANANTHAPURAM, KERALA

PID 336917/2018 (SEC X)(W.P.(CRL))
NO 156/2016

12 THE CHIEF SECRETARY, GOVERNMENT OF
MANIPUR
DISTRICT- IMPHAL, MANIPUR

PID 336918/2018 (SEC X)(W.P.(CRL))
NO 156/2016

13 THE CHIEF SECRETARY, GOVERNMENT OF
MAHARASHTRA,
DISTRICT- MUMBAI, MAHARASHTRA

PID 336919/2018 (SEC X)(W.P.(CRL))
NO 156/2016

21 DEC 2016

no. 1410/2016
C.R. No. 1410/2016
C.R. No. 1410/2016

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- 14 THE CHIEF SECRETARY, GOVERNMENT OF
MADHYA PRADESH
DISTRICT- BHOPAL, MADHYA PRADESH PID: 336920/2018 (SEC X)(W.P.(CRL))
NO.156/2016)
- 15 THE CHIEF SECRETARY, GOVERNMENT OF
MEGHALAYA,
DISTRICT- SHILLONG, MEGHALAYA PID: 336921/2018 (SEC X)(W.P.(CRL))
NO.156/2016)
- 16 THE CHIEF SECRETARY, GOVERNMENT OF
MIZORAM,
DISTRICT- AIZAWL, MIZORAM PID: 336922/2018 (SEC X)(W.P.(CRL))
NO.156/2016)
- 17 THE CHIEF SECRETARY, GOVERNMENT OF
NAGALAND,
DISTRICT- KOHIMA, NAGALAND PID: 336923/2018 (SEC X)(W.P.(CRL))
NO.156/2016)
- 18 THE CHIEF SECRETARY, GOVERNMENT OF
ORISSA,
DISTRICT- BHUBANESWAR, ORISSA PID: 336924/2018 (SEC X)(W.P.(CRL))
NO.156/2016)
- 19 THE CHIEF SECRETARY, GOVERNMENT OF
PUNJAB,
DISTRICT- CHANDIGARH, PUNJAB PID: 336925/2018 (SEC X)(W.P.(CRL))
NO.156/2016)
- 20 THE CHIEF SECRETARY, GOVERNMENT OF
RAJASTHAN,
DISTRICT- JAIPUR, RAJASTHAN PID: 336926/2018 (SEC X)(W.P.(CRL))
NO.156/2016)
- 21 THE CHIEF SECRETARY, GOVERNMENT OF
TAMIL NADU,
DISTRICT- CHENNAI, TAMIL NADU PID: 336927/2018 (SEC X)(W.P.(CRL))
NO.156/2016)
- 22 THE CHIEF SECRETARY, GOVERNMENT OF
TRIPURA,
DISTRICT- AGARTALA, TRIPURA PID: 336928/2018 (SEC X)(W.P.(CRL))
NO.156/2016)
- 23 THE CHIEF SECRETARY, GOVERNMENT OF
UTTAR PRADESH,
DISTRICT- LUCKNOW, UTTAR PRADESH PID: 336929/2018 (SEC X)(W.P.(CRL))
NO.156/2016)
- 24 THE CHIEF SECRETARY, GOVERNMENT OF
WEST BENGAL,
DISTRICT- KOLKATA, WEST BENGAL PID: 336930/2018 (SEC X)(W.P.(CRL))
NO.156/2016)
- 25 THE CHIEF SECRETARY, GOVERNMENT OF
CHHATTISGARH,
DISTRICT- RAIPUR, CHHATTISGARH PID: 336931/2018 (SEC X)(W.P.(CRL))
NO.156/2016)
- 26 THE CHIEF SECRETARY, GOVERNMENT OF
UTTARAKHAND,
DISTRICT- DEHRADUN, UTTARAKHAND PID: 336932/2018 (SEC X)(W.P.(CRL))
NO.156/2016)
- 27 THE CHIEF SECRETARY, GOVERNMENT OF
JHARKHAND
DISTRICT- RANCHI, JHARKHAND PID: 336933/2018 (SEC X)(W.P.(CRL))
NO.156/2016)
- 28 THE CHIEF SECRETARY, GOVERNMENT OF
TELANGANA,
DISTRICT- HYDERABAD, TELANGANA PID: 336934/2018 (SEC X)(W.P.(CRL))
NO.156/2016)
- 29 THE CHIEF SECRETARY, GOVERNMENT OF
JAMMU AND KASHMIR,
DISTRICT- SRINAGAR, JAMMU & KASHMIR PID: 336935/2018 (SEC X)(W.P.(CRL))
NO.156/2016)

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26

THE CHIEF SECRETARY, GOVERNMENT OF
N.C.T. OF DELHI (P. ESTATE,
DISTRICT- NEW DELHI, DELHI

PID. 336906/2018 (SEC X)(W.P.(CRL))
NO 156/2016,

31. THE ADMINISTRATOR, UNION TERRITORY OF DAMAN & DIU
DISTRICT-DAMAN, DAMAN, DAMAN & DIU
PID. 336937/2018 (SEC X)(W.P.(CRL))
NO 156/2016,

32. THE ADMINISTRATOR, UNION TERRITORY OF ANDAMAN & NICOBAR ISLANDS,
DISTRICT- PORT BLAIR, ANDAMAN & NICOBAR ISLAND
PID. 336938/2018 (SEC X)(W.P.(CRL))
NO 156/2016)

33. THE ADMINISTRATOR, UNION TERRITORY OF LAKSHADWEEP
DISTRICT- KAVARATTI, LAKSHADWEEP
PID. 336939/2018 (SEC X)(W.P.(CRL))
NO 156/2016)

34. UNION TERRITORY OF CHANDIGARH,
THROUGH HOME SECRETARY, 4TH FLOOR,
SECRETARIAT, SECTOR-9
DISTRICT- CHANDIGARH, CHANDIGARH
PID. 336940/2018 (SEC X)(W.P.(CRL))
NO 156/2016)

35. THE ADMINISTRATOR, UNION TERRITORY OF PONDICHERRY
DISTRICT- PONDICHERY, PONDICHERY
PID. 336941/2018 (SEC X)(W.P.(CRL))
NO 156/2016.

36. THE ADMINISTRATOR UNION TERRITORY OF DADRA & NAGAR HAVELI,
DISTRICT- SILVASA, DADRA & NAGAR HAVELI
PID. 336942/2018 (SEC X)(W.P.(CRL))
NO 156/2016)

37. THE CHIEF SECRETARY, GOVERNMENT OF SIKKIM
DISTRICT- GANGTOK, SIKKIM
PID. 336943/2018 (SEC X)(W.P.(CRL))
NO 156/2016.

WRIT PETITION (CRIMINAL) No. 156 OF 2016

MAHENDER CHAWLA & ORS

Petitioner(s), Appellant(s)

VERSUS

UNION OF INDIA & ORS

Respondent(s)

Sir

Please find enclosed herewith a certified copy of this Hon'ble Court's Judgment dated 05th December, 2016, passed in the matter above mentioned, for your information, necessary action and compliance, if any

Please acknowledge receipt

Yours faithfully,

ASSISTANT REGISTRAR

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL) NO. 156 OF 2016

MAHENDER CHAWLA & ORS.

.....PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

.....RESPONDENT(S)

J U D G M E N T

A.K. SIKRI, J.

The instant writ petition filed by the petitioners under Article 32 of the Constitution of India raises important issues touching upon the efficacy of the criminal justice system in this country. In an adversarial system, which is prevalent by India, the court is supposed to decide the cases on the basis of evidence produced before it. This evidence can be in the form of documents. It can be oral evidence as well, i.e., the deposition of witnesses. The witnesses, thus, play a vital role in facilitating the court to arrive at correct findings on disputed questions of facts and to find out where the truth lies. They are, therefore, backbone in decision

validity unknown
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DEEPAK KUMAR
Date: 20/02/2016
Page: 41 of 41
Reason:

making process. Whenever, in a dispute, the two sides come out with conflicting version, the witnesses become important tool to arrive at right conclusions, thereby advancing justice in a matter. This principle applies with more vigor and strength in criminal cases inasmuch as most of such cases are decided on the basis of testimonies of the witnesses, particularly, eye-witnesses, who may have seen actual occurrence/crime. It is for this reason that Bentham stated more than 150 years ago that "witnesses are eyes and ears of justice".

- 2) Thus, witnesses are important players in the judicial system, who help the judges in arriving at correct factual findings. The instrument of evidence is the medium through which facts, either disputed or required to be proved, are effectively conveyed to the courts. This evidence in the form of documentary and oral is given by the witnesses. A witness may be a partisan or interested witness, i.e., a witness who is in a near relation with the victim of crime or is concerned with conviction of the accused person. Even his testimony is relevant, though, stricter scrutiny is required while adjudging the credence of such a victim. However, apart from these witnesses or the witnesses who may themselves be the victims, other witnesses may not have any personal

interest in the outcome of a case. They still help the judicial system. In the words of **Whittaker Chambers**, a witness is “a man whose life and faith are so completely one that when the challenge comes to step out and testify for his faith, he does so, disregarding all risks, accepting all consequences¹.”

- 3) The importance of the witness, particularly in a criminal trial is highlighted in a book in the following manner:

“In search of truth, he plays that sacred role of the sun, which eliminates the darkness of ignorance and illuminates the face of justice, encircled by devils of humanity and compassion.

xxx xxx xxx

The value of witnesses can't be denied, keeping in view the dependency of the criminal proceedings on the testimonies and cooperation of witnesses in all the stages of the proceedings, especially in those cases where the prosecution has to establish the guilt with absolute certainty via oral cross-examination of witnesses in hearings open to the world at large. In such cases, the testimony of a witness, even if not as an eye witness, may prove to be crucial in determining the circumstances in which the crime might have been committed..²

Notwithstanding the same, the conditions of witnesses in Indian Legal System can be termed as 'pathetic'. There are many threats faced by the witnesses at various stages of an investigation and then during the trial of a case. Apart from facing

1 Whittaker Chambers, WITNESS QUOTES (January 7, 2014, 10.30 am), <http://www.brainyquote.com/quotes/keywords/witness>

2 Witness Protection in Criminal Trial in India by Girish Abhyankar & Asawari Abhyankar

life threatening intimidation to himself and to his relatives, he may have to face the trauma of attending the court regularly. Because of the lack of Witness Protection Programme in India and the treatment that is meted out to them, there is a tendency of reluctance in coming forward and making statement during the investigation and/or testify in courts. These witnesses neither have any legal remedy nor do they get suitably treated. The present legal system takes witnesses completely for granted. They are summoned to court regardless of their financial and personal conditions. Many times they are made to appear long after the incident of the alleged crime, which significantly hampers their ability to recall necessary details at the time of actual crime. They are not even suitably remunerated for the loss of time and the expenditure towards conveyance etc.

- 4) In ***Swaran Singh vs. State of Punjab***³, this Court speaking through Wadhwa, J. expressed view on conditions of witnesses by stating that:

“The witnesses are harassed a lot. They come from distant places and see the case is adjourned. They have to attend the court many times on their own. It has become routine that case is adjourned till the witness is tired and will stop coming to court. In this process lawyers also play an important role. Sometimes witness is threatened, maimed, or even bribed. There is no

³ (2000) 5 SCC 68 at 678
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protection to the witnesses. By adjourning the case the court also becomes a party to such miscarriage of justice. The witness is not given respect by the court. They are pulled out of the court room by the peon. After waiting for the whole day he sees the matter being adjourned. There is no proper place for him to sit and drink a glass of water. When he appears, he is subjected to prolonged stretched examinations and cross examinations. For these reasons persons avoid becoming a witness and because of this administration of justice is hampered. The witnesses are not paid money within time. The High Courts must be vigilant in these matters and should avoid harassment in these matters by subordinate staff. The witnesses should be paid immediately irrespective of the fact whether he examines or the matter is adjourned. The time has come now that all courts should be linked with each other through computer. The Bar Council of India has to play an important role in this process to put the criminal justice system on track. Though the trial judge is aware that a witness is telling a lie still he is not ready to file a complaint against such witness because he is required to sign the same. There is a need to amend section 340(3)(b) of Cr.P.C."

- 5) It hardly needs to be emphasised that one of the main reasons for witnesses to turn hostile is that they are not accorded appropriate protection by the State. It is a harsh reality, particularly, in those cases where the accused persons/criminals are tried for heinous offences, or where the accused persons are influential persons or in a dominating position that they make attempts to terrorize or intimidate the witnesses because of which these witnesses either avoid coming to courts or refrain from deposing truthfully. This unfortunate situation prevails because of the reason that the State has not undertaken any protective

measure to ensure the safety of these witnesses, commonly known as 'witness protection'.

- 6) Over the last many years criminal justice system in this country has been witness to traumatic experience where witnesses turn hostile. This has been happening very frequently. There may be many causes for this sordid phenomena.
- 7) In ***Ramesh and Others vs. State of Haryana***⁴, this Court had indicated some of the reasons which make witnesses turn hostile, as can be discerned from the following discussion.

"40. In some of the judgments in past few years, this Court has commented upon such peculiar behaviour of witnesses turning hostile and we would like to quote from few such judgments. In *Krishna Mochi v. State of Bihar* [*Krishna Mochi v. State of Bihar*, (2002) 6 SCC 81 : 2002 SCC (Cri) 1220] , this Court observed as under (SCC p. 104, para 31)

"31. It is a matter of common experience that in recent times there has been a sharp decline of ethical values in public life even in developed countries much less developing one, like ours, where the ratio of decline is higher. Even in ordinary cases, witnesses are not inclined to depose or their evidence is not found to be credible by courts for manifold reasons. One of the reasons may be that they do not have courage to depose against an accused because of threats to their life, more so when the offenders are habitual criminals or high-ups in the Government or close to powers, which may be political, economic or other powers including muscle power."

4 (2017) 1 SCC 529

"41. Likewise, in *Zahira Habibullah Sheikh (5) v. State of Gujarat* [*Zahira Habibullah Sheikh (5) v. State of Gujarat*, (2006) 3 SCC 374 (2006) 2 SCC (Cri) 8] , this Court highlighted the problem with the following observations (SCC pp. 396-98, paras 40-41)

"40. "Witnesses" as Bentham said: "are the eyes and ears of justice". Hence, the importance and primacy of the quality of trial process. If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralysed, and it no longer can constitute a fair trial. The incapacitation may be due to several factors, like the witness being not in a position for reasons beyond control to speak the truth in the court or due to negligence or ignorance or some corrupt collusion. Time has become ripe to act on account of numerous experiences faced by the court on account of frequent turning of witnesses as hostile, either due to threats, coercion, lures and monetary considerations at the instance of those in power, their henchmen and hirelings, political clouts and patronage and innumerable other corrupt practices ingeniously adopted to smother and stifle truth and realities coming out to surface.... Broader public and societal interests require that the victims of the crime who are not ordinarily parties to prosecution and the interests of the State represented by their prosecuting agencies do not suffer.... There comes the need for protecting the witness. Time has come when serious and undiluted thoughts are to be bestowed for protecting witnesses so that the ultimate truth presented before the court and justice triumphs and that the trial is not reduced to a mockery. ...

41. The State has a definite role to play in protecting the witnesses, to start with at least in sensitive cases involving those in power, who have political patronage and could wield muscle and money power, to avert trial getting tainted and derailed and truth becoming a casualty. As a protector of its citizens it has to ensure that during a trial in court the witness could safely depose the truth without any fear of being haunted by those against whom he had deposed. Every State has a constitutional obligation and duty to protect the life and liberty of its citizens. That is the fundamental requirement for observance of the rule of law. There cannot be any deviation from

this requirement because of any extraneous factors like caste, creed, religion, political belief or ideology. Every State is supposed to know these fundamental requirements and this needs no retaliation (sic repetition). We can only say this with regard to the criticism levelled against the State of Gujarat. Some legislative enactments like the Terrorist and Disruptive Activities (Prevention) Act, 1987 (in short "the TADA Act") have taken note of the reluctance shown by witnesses to depose against people with muscle power, money power or political power which has become the order of the day. If ultimately truth is to be arrived at, the eyes and ears of justice have to be protected so that the interests of justice do not get incapacitated in the sense of making the proceedings before the courts mere mock trials as are usually seen in movies."

"42. Likewise, in *Sakshi v. Union of India* [*Sakshi v. Union of India*, (2004) 5 SCC 518 2004 SCC (Cri) 1645], the menace of witnesses turning hostile was again described in the following words (SCC pp. 544-45, para 32)

"32. The mere sight of the accused may induce an element of extreme fear in the mind of the victim or the witnesses or can put them in a state of shock. In such a situation he or she may not be able to give full details of the incident which may result in miscarriage of justice. Therefore, a screen or some such arrangement can be made where the victim or witnesses do not have to undergo the trauma of seeing the body or the face of the accused. Often the questions put in cross-examination are purposely designed to embarrass or confuse the victims of rape and child abuse. The object is that out of the feeling of shame or embarrassment, the victim may not speak out or give details of certain acts committed by the accused. It will, therefore, be better if the questions to be put by the accused in cross-examination are given in writing to the presiding officer of the court, who may put the same to the victim or witnesses in a language which is not embarrassing. There can hardly be any objection to the other suggestion given by the petitioner that whenever a child or victim of rape is required to give testimony, sufficient breaks should be given as and when required. The provisions of sub-section (2) of Section 327 CrPC should also apply in inquiry or trial of offences under Sections 354 and 377 IPC."

43. In *State v. Sanjeev Nanda* [*State v. Sanjeev Nanda*, (2012) 8 SCC 450 : (2012) 4 SCC (Civ) 487 . (2012) 3 SCC (Civ) 899] , the Court felt constrained in reiterating the growing disturbing trend (SCC pp. 486-87, paras 99-101)

“99. Witness turning hostile is a major disturbing factor faced by the criminal courts in India. Reasons are many for the witnesses turning hostile, but of late, we see, especially in high profile cases, there is a regularity in the witnesses turning hostile, either due to monetary consideration or by other tempting offers which undermine the entire criminal justice system and people carry the impression that the mighty and powerful can always get away from the clutches of law, thereby eroding people's faith in the system.

100. This Court in *State of U.P. v. Ramesh Prasad Misra* [*State of U P v. Ramesh Prasad Misra*, (1996) 10 SCC 360 : 1996 SCC (Cri) 1278] held that it is equally settled law that the evidence of a hostile witness could not be totally rejected, if spoken in favour of the prosecution or the accused, but it can be subjected to closest scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted. In *K Anbazhagan v. Supt. of Police* [*K Anbazhagan v. Supt of Police*, (2004) 3 SCC 767 2004 SCC (Cri) 882] , this Court held that if a court finds that in the process the credit of the witness has not been completely shaken, he may after reading and considering the evidence of the witness as a whole, with due caution, accept, in the light of the evidence on the record that part of his testimony which it finds to be creditworthy and act upon it. This is exactly what was done in the instant case by both the trial court and the High Court [*Sanjeev Nanda v. State*, 2009 SCC OnLine Del 2039 (2009) 160 DLT 775] and they found the accused guilty.

101. We cannot, however, close our eyes to the disturbing fact in the instant case where even the injured witness, who was present on the spot, turned hostile. This Court in *Manu Sharma v. State (NCT of Delhi)* [*Manu Sharma v. State (NCT of Delhi)*, (2010) 6 SCC 1 : (2010) 2 SCC (Cri) 1385] and in *Zahira Habibullah Sheikh (5) v. State of Gujarat* [*Zahira Habibullah Sheikh (5) v. State of Gujarat*, (2006) 3 SCC 374 : (2006) 2 SCC (Cri) 8] had highlighted the glaring defects in the system like non-recording of the statements correctly by the police and the retraction of the statements by the prosecution witness due to