



## FACULTY OF JURIDICAL SCIENCES

NAME OF FACULTY: Dr. Ravi Kant Gupta

COURSE: B.B.A.LL.B. VI Semester

SUBJECT: Law of Evidence

SUBJECT CODE: BBL 604

# Lecture-14



## **Confession When Irrelevant**

**Confession caused by the Inducement threat of promise is irrelevant (sec 24)**

***A confession made by an accused person is irrelevant in criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient in the opinion of the reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him***

Sec 24 provides that if a confession appears to be caused by the inducement threat or promise it becomes involuntary and is irrelevant as evidence. To apply the sec 24 following conditions must satisfied

- i. The confession made by an accused to a person in authority
- ii. It must appear to the Court that confession has been caused or obtained by reason of any inducement, threat or promise proceeding from a person in authority
- iii. The inducement, threat or promise must have reference to the charge against the accused person
- iv. The inducement, threat or promise must be such that it would appear to the Court that the accused, in making the confession, believed or supposed that he would, by making it, gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

**Confession made to Police officers cannot be proved (sec 25)**

Sec 25 provides "***No confession made to a Police officer shall be proved against a person accused of any offence***".

The purpose of the sec 25 is to prevent the extraction of confession from the accused by the police officers by using malpractice such as force, fear or torture. Confessions made to the Police Officer any time either before or after investigation are inadmissible except so far as provided under sec 27. The person accused of any offence here means 'against whom evidence is sought to be led in criminal proceeding, whether or not he was so when he made

the statement’.

A police officer means a person has power to investigate an offence with a power to initiate a prosecution under the provisions of the Cr.P.C. (power to submit police report under sec 173 of the Cr.P.C). For example Superintendent of Excise is Police officer (See Abdul Rashid v State of Bihar AIR 2001SC 2422), while Custom Officer, forest Officer, Chaukidar, Village Mukhia are not Police Officer.

Confession here required to be made to Police Officer, When Police officer is casually be there or over here, sec 25 not apply. But in case, such police officer is spy or is a secret agent of the police for the purpose of taken confession, sec 25 will apply.

Sec 25 is not apply to the special legislation such as Terrorist and Disruptive Activities Act (TADA), 1987 and Prevention of Terrorism Act, (POTA) 2001. (See the Lal Singh v State of Gujarat (2001) 3 SCC 221 and Abdulvahad Skeikh v State of Gujarat (2007) 4 SCC 257.)

### **Confession in Police Custody (sec 26)**

**Sec 26 provides “No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person”.**

Sec 26 provides that confessions made in the custody of the Police officer cannot be proved against him unless it is made before a Magistrate. This is an extension to the principle of the sec 25 i.e confession to any other person in police custody is also inadmissible. The purpose is to provide a protection to an accused person from the influence of the Police the custody. Police custody provides an easy opportunity of coercion for extorting confession from the accused person.

Custody for the purpose of sec 26 is not limited to ‘formal custody by the police officer’ or mere ‘physical custody of the accused’ but it includes ‘police control over the liberty of the accused’. It may be at home, at open place in journey, or elsewhere not restricted to the four walls of the prison. The test is ‘restriction over the movement of the person’ making confession, means he is not allowed to go any where, and such restrictions imposed by the police officer indirectly.

For example:

1. Confession of the woman to the villagers, when she was left to the custody of them and

the Chaukidar who arrested her went the Police Station to call police is irrelevant under sec 26(see facts of the case Emperor v Jagia AIR 1938 Pat 308).

2. In case where accused was left alone with the tanga Driver by the Police Officer, and he confessed to the Tanga Driver. Such confession is irrelevant.(see the case R. Lester , IIR 1895 20 Bom 165).
3. Where the accused was take to the medical examination by the Police and confession made to the Doctor while Police was out of the room. Such confession idirrelevant.

(See Emp v Mellangauda 11 Bom LR 6823)

Exception to the sec 26

If the confession made in the immediate presence of the Magistrate, it become admissible, as presence of the magistrate ruled out the presumption of the torture, fear or use of coercion.

#### **Distinction between sec 25 and 26**

Sec 25 provides a principle of the exclusion of the confession on the ground 'to whom it was made' if to the police officer, is inadmissible. On the other hand sec 26 applies the rule of exclusion of the confession on the ground 'under what circumstances it was made', if it was made in the police custody, unless magistrate is present is inadmissible.

Further sec 25 raises an embargo as regards proof of the confession before a Police officer, while sec 26 raises a bar as regards the admissibility of such confession made inthe police custody by the accused even to the person who is not a police officer.