

Evidentiary Value of *Panchnama*

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Abstract

The word Panchnama is not defined anywhere in law. The judges and lawyers often search for this word in different books. The word has a significant value as it is used by almost all the courts every day in some matter or form, depending upon case to case. Not only criminal courts, but civil courts too rely on this document to check veracity and truthfulness of the action taken by officers of state or courts. In criminal cases, it is used to support substantive evidence and in civil courts, it is used to show that the decree of civil court has been executed by handing over possession as directed in the decree. The provision of Panchnama is made to convince the court that the officers have in fact carried out such search or made such seizure. Guidelines can be taken from section 100 sub-section 4 and 5 of CrPC, 1973. In this project, the authors have tried to explain the intention of panchnama and incidental provisions which speak about it indirectly, as under CrPC and IEA and have also tried to look upon a few cases, where High Court and Supreme Court in different paras have given as to how a panchnama can be used as a corroborative piece of evidence.

Keywords: Panchnama, Evidence, Civil courts, Veracity, Criminal Codes, Document

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INTRODUCTION

The above-mentioned quote gives us an insight into the importance of *panchnamas* and their relevance in order to ensure that the investigation carried out by the police is fair and just.

It is not viable to define the term *panchnama* and it is interesting to note that the term *panchnama* fails to find definition in the Penal Codes of India. However, it has been described to refer to any document, or a written account, of some transaction, which had taken place in the presence of respectable persons. In fact, the term '*panchnama*' traces its roots to the Sanskrit language where the term '*panch*' means '*a respectable person*' and the term '*nama*' means '*a written thing*' [1]. Even though the term has not been recognized in the Criminal Codes of the country [2], it has not failed to secure popular usage. The courts have recognized the term and given it some description. For instance, in *Emperor v. Mohanlal Bahabhai* [3], Chief Justice Beaumont has explained the nature and purpose of the document styled as *panchnama* as follows:

"A panchnama is essentially a document recording certain things which occur in the presence of panchas and which are seen and heard by them. Panchas are taken to the scene of the offence to see and hear certain things and subsequently they are examined at the trial to depose to those things and their evidence is relied upon in support of the testimony of an Investigating Officer."

The main question which the researcher seeks to answer through this paper, after analyzing the concerned Sections of the Evidence Act, 1872 and their application by the court is whether *panchnamas* have much evidentiary value and whether the courts can rely solely on the evidence of *panch* witnesses corroborated by the *panchnama* to convict the accused?

PANCHNAMAS: CRIMINAL PROCEDURE CODE

The word *panchnama* does not find mention in the Code of Criminal Procedure, 1973. However, it can be construed from Sections 100 and 174 of the Criminal Procedure Code [4]. The former provision (Section 100) deals with search of a closed place by the police officer under a warrant issued by the court and the

latter provision (Section 174) deals with ascertainment of the cause of death, an inquest will be held in the presence of two respectable inhabitants of the neighborhood by observing the dead body and examining the witnesses who were acquainted with the facts of the case [5]. The police shall draw up an inquest report containing the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body [6].

The procedure laid down in Section 100 [7] is followed for conducting search of any closed place with a warrant issued by the Court under Sections 93, 94, 95 and 97 [8] of the Criminal Procedure Code, and without warrant issued by the Court under Sections 165 [9] and 166 [10] of the Criminal Procedure Code. The text in Section 100(4) [11] and (5) is explicit and reads as follows:

“(4) Before making a search under this Chapter [12], the officer or other person about to make it shall call upon two or more independent and respectable inhabitants [13] of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them to do so.

(5) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this Section shall be required to attend the Court as a witness of the search unless specially summoned by it.”

The intention of the legislature behind incorporating this provision is to guard against possible chicanery and unfair dealings on the part of the officers entrusted with the execution of the search and to ensure that anything incriminating which was found in the premises searched was really found there and not introduced or planted by the officers conducting the search and also to ensure that nothing is stolen while the search is being conducted [14]. Thus, to control and check the malpractices of the officers, the presence of

independent and respectable witnesses is made compulsory in the case of search of a closed place and seizure of any item therein [15]. In all above important functions performed by investigation agency, they have to prepare a *panchnama* in order to collect concerned record of investigation so as to use for [12] Chapter VII, Cr. P.C.: Process to compel the production of things (Sections 91-105).

A respectable person refers to one who is not in disrepute. However, it is necessary to note that the debate over the categorization of a person as ‘respectable’ is beyond the scope of the present paper [13].

State of U.P. v. Arun Kumar Gupta, (2003) 2 SCC 202; *State of Punjab v. Wassan Singh*, AIR 1981 SC 2005, p. 56 [15].

Refreshing memory during trial. There are different kinds of *panchnamas* prepared during investigation, which are categorized as search, seizure, recovery, discovery, arrest, inquest, test identification parade, etc. Out of these, some are a part of mandatory procedure laid down in different provisions of CrPC and others are performed to establish the genuineness of investigation.

EVIDENTIARY VALUE

The evidentiary value of *panchnamas* has caused a great cause for debate. The Supreme Court and the High Courts have faced the task of determining its evidentiary value on a plethora of occasions [16].

The situation in practicality works in the following manner. The police go to search the premises and search them in the presence of two independent respectable inhabitants (“*panch* witnesses” or “*panchas*”) of the locality. After conducting the search, the police prepares a report (*panchnama*) of the items seized and the situation at the site of the offence (or the inquest report under Section 174, Cr PC) since the primary and essential purpose of making such *panchnamas* is to make a record of things which occur in the presence of *panchas* and which are seen and heard by them. Thereafter, at the stage of the trial, the *panch* witnesses depose before the court and give their testimony. Now at this stage, the *panchnama* is

also submitted before the court, which contains all the details concerning which the *panch* witness bases his testimony [17].

The questions, which have to be answered, are as follows: what is the evidentiary value of *panchnamas*? Is it merely corroborative evidence or the same can also be treated as substantive evidence? What is the evidentiary value of *panch* witnesses? [18].

Corroborative Evidence (Section 157)

In answer to the first question, the courts have been consistent in holding that a *panchnama* is not admissible as substantive evidence of the fact recorded therein [19]. It can merely be used as corroborative evidence [20] under Section 157 [21]. It can merely be used to corroborate the testimony of the *panch* witnesses, under Section 157 [22], which would be the substantive evidence if given by them from the witness box at the trial [23]. The significance of the testimony of the *panch* witnesses cannot be emphasized more than the decision in *Devidas v. State of Maharashtra* [24] wherein the court held that when *panch* witnesses are examined but stated that no information was given by the accused in their presence, the court will not rely on the police evidence.

Aid Memoir (Sections 159-161)

In addition to corroboration under Section 157, the other purpose, which is served by these *panchnamas* is that such record should serve as *aid memoir* to the *panchas* when they enter the witness box in the court at the time of the trial and depose about the things that they had seen and heard [25]. This would attract Sections 159 to 161 of the Indian Evidence Act, 1872, under which a *panch* witness can refresh his memory by referring to the *panchnama* as provided in Sections 159 to 161 [26]. Section reads as follows:

“Section 159: Refreshing Memory: A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory.”

Thus, a *panchnama*, it is submitted, and has been held by the Courts in the cases cited above

and in several recent cases [27], would serve as ‘writing’ under Section 159 and can be used to refresh the memory of the *panch* witness at the stage of the trial [28]. It is pertinent to note that neither Sections 159 nor 160 [29] render the document itself admissible as substantive evidence [30]. In addition to the above, Section 161 [31] awards to the adverse party the right to the production and inspection of and cross-examination upon, all that is made use for the purpose of refreshing the memory of the witness. Even a *panchnama* can be used for refreshing the memory of a witness, and if used in that manner, it must be shown to the opposite party under Section 161 [32].

Cross-Examination (Section 145) and Identification Parade³³

Another provision of the Evidence Act, which warrants mention, is Section 145, which deals with cross-examination as to previous statements in writing. As was held by the Supreme Court in *Kanu Ambu Vish v. The State of Maharashtra* [34] that any statement used in a *panchnama* cannot be used in evidence except for the purposes of contradicting the witness whose statement is contained in *panchnama* under Section 145 of the Evidence Act [35].

Another instance where the evidentiary value of a *panchnama* has been considered relevant is in the instance of an identification parade [36], where it has been considered to be important and desirable to have independent evidence to show that the parade has been conducted properly and fairly, because there is nothing easier than for the police to stage an unfair identification parade, in which the witness is shown the accused before he identifies [37].

PANCHNAMAS AND SECTION 162

Another issue, which needs to be addressed while dealing with *panchnamas*, is whether the admissibility of *panchnamas* would be restricted by Section 162 [38] of the Criminal Procedure Code? The courts have discussed this issue at great length and there is a view that where a *panch* hears certain statements made to him and himself reduces what is stated into writing, the writing is a statement made by the person to the *pancha* [39]. But if a *panch* sees something and tells the police officer what he had seen and the police officer then reduces into

writing what the *panch* had told him of what he had seen, then that writing would be a record made by the police officer of a statement made to him by the *panch* of what the *panch* had seen. Such a *panchnama* would be hit by section 162 of the Criminal Procedure Code [40].

This issue was also discussed by the Gujarat High Court at great length in *Valibhai Omarji v. State* [41] wherein the court was of the opinion that Section 157 of the Evidence Act is controlled by Section 162 of the Code of Criminal Procedure and therefore if a statement, though falling under Section 157 of the Evidence Act, were also to fall under Section 162 of the Code, it would be Section 162 of the Code that would prevail and such a statement would be inadmissible. The court emphasized that Section 157 of the Evidence Act and Section 162 of the Code of Criminal Procedure have to be read together and on a joint reading of the two provisions it is clear that the word *statement* in Section 157 of the Evidence Act, 1872, has a wider connotation than the same word used in Section 162 of the Code.

In order that a previous statement of a witness falls under Section 162 of the Criminal Procedure Code, two conditions have to be fulfilled, namely, (i) that it be a statement to a police officer [42] and that it is made in the course of investigation under Chapter XIV, Criminal Procedure Code [43].

The question therefore is whether a *panchnama* is a record of a statement, which falls within the ban of Section 162 of the Code? Whether a *panchnama* is one which is hit or not hit by Section 162, Criminal Procedure Code or whether it is one which can be used under the provisions of Sections 159 to 161 of the Evidence Act [44] would depend on the facts of each case.

As regards the first condition laid down in Section 162, the important words in Section 162 of the Code are “*No statement made by any person to a police officer*”.

Therefore, the statement must be one to a police officer and unless it is to a police officer, it does not fall within the mischief of Section 162 of

the Code. Therefore, it is necessary that the statement in question must have the element of communication to a police officer. If a *panchnama* is merely a record of facts which took place in the presence of *panchas* and of what the *panchas* saw and heard [45], but is not a record of a *statement* communicated to a police officer, it would be admissible under Section 157 of the Evidence Act and would not fall within the ban of Section 162 of the Code of Criminal Procedure [46]. Therefore, every time when a *panchnama* is tendered in evidence, it would be the duty of the court to ascertain whether any part of it falls within the mischief of Section 162 of the Code of Criminal Procedure and if it does fall, the court should take out that portion from being admitted in evidence [47]. So long as a *panchnama* is a mere record of things heard and seen by *panchas* and does not constitute a statement communicated to a police officer in the course of investigation by him, it would not fall within the mischief of Section 162 of the Code.

GROUND REALITIES

It is disgusting to note that the Criminal Justice System is being gravely abused with respect to the testimonies of *panchas*. The requirement under the provisions mandating the presence of *panchas* is that they should be ‘respectable inhabitants of that particular locality’. This requirement has been grossly abused by the police officers. The following views of the researcher are based on an observation of the system as executed in the city of Mumbai and is thus not making any general statements [48]. The practice, unfortunately, that is followed by several police officers is as follows: they enter into an arrangement with people who have been convicted in the past for petty offences in each locality. Now when the police go to conduct a search, they either intimate these persons who arrive at the spot, sign the *panchnama* or they do not even go to the spot but subsequently arrive at the police station, when beckoned and sign the necessary *panchnama*.

This issue has drawn the attention of Advocate Manjula Rao [49], who is the public prosecutor in the city of Bombay, who lambasts this system adopted by the police officers [50]. She pointed out the instance of the famous *Alistair Perriera* case, which is currently *sub judice*

before the Bombay High Court, wherein she noted that the persons who deposed before the Sessions Court as *panchas* [51], were subsequently seen to be deposing in three other matters as *panchas* and had a criminal record [52]. Now it is my submission that the possibility of this being a coincidence is indeed remote and this markedly brings out the lacuna in the system [53].

The position can be best summed up in the words of the Honorable Supreme Court in *State of Gujarat v. K.P. Singh* [54], wherein the court pointed out the dangers of relying solely on the testimonies of the *panchas* and observed:

“...because of appearing as police witnesses in a number of cases and they are being pliable and untrustworthy, their evidence cannot be relied upon.”

This particular issue is related to the question as to what amount of weight should be given to the testimony of the *panch* witness? This is because there is always a significant amount of uncertainty as to whether the *panch* witness is an independent witness or a partisan witness?

The Supreme Court in *State of Bihar v. Basawan Singh* [55] formulated the correct rule in the following words, *“if any of the witnesses...are not accomplices but are partisan or interested witnesses, who are concerned in the success of the trap, their evidence must be tested by the application of diverse considerations which must vary from case to case, and in a proper case, the Court may even look for independent corroboration before convincing the accused person....”*[56]

Thus, a person who is concerned in the success of the trap is to be treated as a partisan [57] or interested witness. In *Ramanlal v. State of Bombay* [58], the *panchas* were also with the raiding party and witnessed the preparation and carrying out of the raid. The court held that *“...it cannot be said that these two witnesses were not independent witnesses even though they consented to become search or panch witnesses.”* Thus, the evidence of *panch* witnesses was treated not on the same footing as the evidence of partisan or interested witnesses but as additional evidence to be considered on its own merits. The mere fact that they accompanied the police and witnessed the

raid does not make them interested witnesses. They may stand on that footing if the circumstances show that they share in the intention to raid or have become parties to that intention by any subsequent conduct on their part such as being actually interested in the result of the raid [59].

PROCEDURE TO RECORD PANCHNAMA

In the course of prosecution, when any witness who is summoned to witness any *panchnama*, it is very important for the prosecutor to know how to conduct prosecution in such cases.

Initially, we must consider legal aspect for the proof of *panchnama*, i.e., as per §100(5) any witness who has prepared *panchnama* shall not be compulsorily required to attend court unless specially summoned by the court. Also, in § 165 it has been laid down to follow procedure as per § 100. Therefore, it is crystal clear from this provisions that, *panch* witnesses are required to be examined to prove contents of *panchnama*. *Panch* witness in the course of prosecution be first of all examined in the witness box, be asked whether he has made any *panchnama* in the presence of investigator? Thereafter he be shown document of *panchnama* and his signature. If he recognizes and states facts contained in the *panchnama*, it is enough to prove it. But if he forgets the content of that *panchnama* his memory can be refreshed by showing document with permission of court, in this situation also *panchnama* is proved. During examination-in-chief, the witness affirms his signature but even after giving chance to refresh his memory, does not support prosecution then he may be asked question with permission of the court u/§ 154 which can be asked in cross examination and by this way prosecution can impeach his credit.

WHAT IS THE RESULT WHEN PANCH WITNESS TURNS HOSTILE?

This argument we very often hear by defence counsel in the court-room while he is arguing in defence and sometimes also in the judgement of criminal court that *panch* witnesses are turned hostile; and therefore, it creates serious doubt in prosecution case. But if we consider actual position of decided ratio time and again it has been reiterated in the judgements of SC as well

as our own HC that only by turning hostile or by not supporting prosecution case by *panch* witness is not fatal, if testimony of police witness who prepared *panchnama* and conducted search, seizure, arrest, recover or discover is found trustworthy and truthful and clear doubts regarding *panchnama*.

In the matter of *State of Gujarat v. Satish @ Kalu @ Hathoda Bhikhabhai Patel*, our HC observed that ‘It is well settled that merely because the *panch* witnesses do not support the case of the prosecution, the case of the prosecution need not be thrown over-board as unreliable. It must be realized that the phenomenon of *panch* witnesses turning hostile to the prosecution is not unknown and is ever on the increase. It needs hardly to be emphasized that the decision of a case does not depend solely on the question whether the *panch* witnesses support the prosecution or turn their back on it. If the decision of the case were to depend solely on the testimony of *panch* witnesses regardless of the evidence of police officers, in theory, it would be giving a right to veto to the *panchas* so far as that question of culpability of an accused is concerned, which is not permissible in criminal jurisprudence. It is well settled that without good ground being pointed out, testimony of police officer, if otherwise found to be true and dependable, cannot be discarded by court on the ground that he is a police officer.’

In the serious cases of Arms Act, NDPS ACT, ACB, etc., *panchnama* plays a very important role. Hon’ble Gujarat HC in *State Of Gujarat v. Brahmin Babulal Haribhai*, laid down guideline for appreciation of such cases in this circulated judgement that, ‘It is but natural that in such serious cases like the one under the N.D.P.S. Act and the Arms Act, where a *panch* even if he is honest and truthful, would never dare, like to give evidence in the open court against the accused, who in all probability, obviously and always may be connected with some underground dreaded criminals, resulting into conviction and sentence which could ultimately easily boomerang upon him and his family members putting their lives, limbs and liberty in danger at any time, at any place for giving evidence implicating the accused. Quite rightly so because in case if any such

apprehended things happen, who is indeed going to protect, and save lives of such witnesses from being victimized by the convicted accused. Under such tale-telling circumstances, the court should not readily discard the evidence of the police witnesses, merely because it finds that the *panch* witnesses do not support the prosecution more particularly when there is no reason to doubt the credibility of the police officer who actually caught the accused red-handed.’

IMPORTANT CASE LAW

Aghnoo Nagesia v. State of Bihar

This is a landmark judgment regarding admissibility of the content of discovery/recovery which is obtained during police custody of accused which is tested on the touchstone of judicial as well as constitutional scrutiny and remains intact till today.

Ratio laid down in this judgment is “confession or an admission is evidence against the maker of it if its admissibility is not excluded by some provisions of law—no part of the confessional statement is receivable in evidence except to the extent that ban of Sec. 25 is lifted by Sec. 27 of the Act—test of severability that if a part of report is properly severable from the strict confessional part then the severable part could be tendered in evidence is misleading and the entire confessional statement is hit by S. 27 of the Act.”

Mohd. Aslam v. State of Maharashtra

Police officer's evidence about recovery—*panch* witnesses to recovery *panchnama* turned hostile—held, evidence of police officer not vitiated.

Vishnu Krishna Belurkar v. The State of Maharashtra

In case of *Vishnu Krishna Belurkar v. The State of Maharashtra*, the question was whether the *panchnamas* are hit by provisions of section 162 of CrPC and in Para 8, the Hon’ble full bench observed, “In our view, the fact that *panchnama* is written out by police officer or police scribe as dictated to him by *panchas* would not make any difference, for that be a mode in which *panchnama* is recorded. Of course, if a *panchnama* does incorporate a statement which amounts to a statement

intended as a narration to police officer during his investigation, it would fall within section 162 of CrPC and must be excluded but that is the duty which the court must perform every time a *panchnama*, is tendered in evidence.”

Yakub Abdul Razak Memon v. State of Maharashtra

Yakub Abdul Razak Memon v. State of Maharashtra, decided on 21st March, 2013, one of the ground challenging conviction was the recoveries which were made was not in proper procedure and seizure *panchnamas* were not in accordance with the procedure as laid down in section 27 of IEA, 1872, and the court in Para 218 held, “*Panchnama* is a document having legal bearings which records evidence and findings that an officer makes at the scene of an offence/crime. However, it is not only the recordings of the scene of crime but also of anywhere else which may be related to offence and from where incriminating evidence is likely to be collected. The document so prepared needs to be signed by investigating officer who prepares the same and at least by two independent and impartial witness called ‘*panchas*’. One should also check if the witnesses are in their senses at the time of *panchnama* proceedings. Only majors are to be taken as witness as minor witness may not withstand the legal scrutiny.”

Further in Para 224, SC observed that, “on any deviation from the procedure, the entire *panchnama* cannot be discarded and proceedings are not vitiated and if any deviation occurs because of practical impossibility, then that should be recorded by IO in his file so as to enable him to answer during the time of his examination as a witness in the court of law. Where there is no availability of *panch* witness, the IO will conduct search and seize the articles without *panchas* and draw a report of the entire such proceedings which is called a ‘Special Court’.”

CONCLUSION

In light of the aforementioned observations concerning the importance of *panchnamas* and the evidentiary value of *panchnamas* and the testimonies of *panch* witnesses, it is pertinent to conclude that *panchnamas* are not admissible as substantive evidence and are merely

corroborative in nature under Section 157 of the Indian Evidence Act, 1872 and are also useful for refreshing the memory of the *panch* witnesses under Sections 159 to 161 of the Evidence Act. In addition to this, the document is also significant in the context of cross-examination under Section 145 of the Evidence Act. Furthermore, Section 162 of the Criminal Procedure Code serves as a partial restriction on the admissibility of the *panchnama* as evidence under Section 157 of the Indian Evidence Act, 1872. The Court should exercise caution and ascertain whether any part of the *panchnama* falls within the mischief of Section 162 of the Code of Criminal Procedure. However, one should not forget the ground realities and the abuse of the system by the police officers while implementing these procedural requirements, which have been made to protect the interests of the accused and to ensure a fair investigation. Keeping these realities in mind, the Court should be circumspect in accepting the testimony of a *panch* witness and should strive to identify the nature of the witness and accordingly categorize him as an ‘independent’ or a ‘partisan’ witness. The Court should accept these testimonies with caution and seek to rely on supporting independent evidence in arriving at a decision. This cannot be emphasized more in a period of the Indian Legal System wherein the courts fail to hesitate in declaring the innocence of the accused purely on the ground that “*the entire investigation is a tainted piece of investigation and the evidence led by the prosecution in this behalf cannot be accepted at all.*”

If investigation agency enthusiastically makes efforts to record genuine *panchnama* and follows all requirements of law in it preparing it would work as sharp and shining sword in the hands of prosecuting officer, who is vigorously fighting to prove guilt of accused. While formal and stereotype routine *panchnama* and its regular hostile *Panchas* are serious headache for prosecution and mockery of judicial system. We hope time will change to situation and routine *panchnama* would be moved out from police investigation as well as investigation and judiciary both develop an eye to justify criminal investigation and trial which leads towards social security to people and enhance trust of

common man in criminal justice delivery system.

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- 13 Ibid.
- 14 Section 174, Cr. P.C.
- 15 Section 100, Cr. P.C.: Persons in charge of closed place to allow search.
- 16 The same would be done under Sections 93, 94, 95 and 97, Cr. P.C.
- 17 Section 165, Cr. P.C.: Search by Police Officer.
- 18 Section 166, Cr. P.C.: When officer in charge of police station may require another to issue a search warrant.
- 19 Ibid.
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- 21 Ibid.
- 22 Ibid.
- 23 *Har Chand v. Diwan Singh*, AIR 1929 All 550.
- 24 "The word 'corroboration' connotes support or confirmation, and indicates, in relation to the law of evidence, that certain evidence is confirmed in its tenor and effect by other admissible and independent evidence."-Chandrachud (ed.), Ratanlal and Dhirajlal, "Law of Evidence", 18th ed. 2006, p. 77.
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- 26 Section 157, Indian Evidence Act, 1872
- 27 *Emperor v. Mohanlal Bababhai*, (1941) 43 Bom LR 163
- 28 1982 Cri LJ 2189
- 29 *Bhagirath v. State of Madhya Pradesh*, AIR 1959 MP 17.
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- 37 Section 9, Indian Evidence Act, 1872.
- 38 AIR 1971 SC 2256, ¶ 10:
- 39 Section 145, Indian Evidence Act, 1872: Cross-examinations as to previous statements in writing.
- 40 *Supra* n. 35 at ¶ 11.
- 41 *Emperor v. Mohanlal Bababhai*, (1941) 43 Bom LR 163.
- 42 Section 162, Cr. P.C.: Statements to police not to be signed: Use of Statements in Evidence:- “(1) No statement to a police officer in the course of an investigation under this chapter shall, if reduced to writing, be signed by the person making it, not shall any such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made...”
- 43 *Ibid*.
- 44 *Miyabhai v. State*, AIR 1963 Guj 188; *Kajaji Ramji v. State of Gujarat*, 1966 Cr LJ 331. P. Ramanatha
- 45 Aiyer, “Cross Examination: Principles and Precedents”, Vol. 1., 3rd ed. 2003, p. 318.
- 46 AIR 1943 Guj 145. The Court in this case relied upon a division bench opinion of the Court in *Naginlal Nandlal v. State of Gujarat*, 1961-2 Guj LR 664: “a panchnama made by the police cannot be regarded as a statement made by one panch witness to another. It can be regarded as a statement made by the panch witness to the police officer and if so, it would be-hit by Section 162 Cri. Pro. Code. If the panchnama was not made during the investigation, then it would not be hit by Section, 162 Cri. Pro. Code.”
- 47 *Ibid* ¶ 19.
- 48 *Ibid* ¶ 19.
- 49 *Miyabhai v. State*, AIR 1963 Guj 188.
- 50 AIR 1941 Bom 149.
- 51 *Supra* n. 31: “At the same time, if a Panchnama does contain a statement which amounts to a statement communicated to a police officer during the course of his investigation, it would fall within Section 162 of the Code.”
- 52 *Pulukuri Kotayya v. King-Emperor*, (1974) 74 IA 65.
- 53 *Ibid*.
- 54 *She was the Public Prosecutor in the famous Best Bakery Case*.
- 55 *She delivered a lecture at the St. Xavier’s College, Mumbai on “Forensic Science and the Criminal Justice System” on the 20th of September 2007, where she addressed this issue*.
- 56 Gopinath (rev.), John Woodroffe and Syed Amir Ali, “Law of Evidence”, 16th ed. 1996, p. 132.
- 57 *Ibid*.
- 58 *Ibid*.
- 59 1995 Cri LJ. 3623 (SC).

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