

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

Single Bench: Hon'ble Shri Justice Virender Singh

1. CRR.No.6181/2018

Afzal Vs. State of M.P

2. CRR.No.368/2019

Mohammad Shahid @ Bhaiya Vs. State of M.P

3. CRR.No.1901/2019

Vakil @ Shankar Vs. State of M.P

4. CRR.No.2984/2019

Anil Vs. State of M.P.

5. CRR.No.2988/2019

Sandeep Vs. State of M.P.

6. CRR.No.3186/2019

Sahir @ Sugriv Vs. State of M.P.

7. CRR.No.3370/2019

Kanhaiyalal Vs. State of M.P

8. CRR.No.3374/2019

Oparam @ Aatmaram Vs. State of M.P

9. CRR.No.3979/2019

Krishnapal Singh Vs. State of M.P

10. CRR.No.4120/2019

Naresh @ Bablu Vs. State of M.P

11. MCRC.No.10603/2018

Surendra Vs. State of M.P

12. MCRC.No.628/2019

Raju Bai Vs. State of M.P.

13. MCRC.No.26604/2019

Sameer @ Shabbir Vs. State of M.P.

14. MCRC.No.29471/2019

Rampal @ Yogendra Vs. State of M.P

Shri Palash Choudhary, learned counsel for the petitioner in CRR No.6181/2018.

Shri Abhay Saraswat, learned counsel for the petitioner in CRR No.3370/2019, CRR No.2984/2019, CRR No.2988/2019, CRR No.4120/2019, CRR No.3374/2019, CRR No.3186/2019, MCRC No.10603/2018, MCRC No.628/2019, MCRC No.26604/2019.

Shri Dinesh Chouhan, learned counsel along with Ms. Pooja Jain, learned counsel for the petitioner in CRR No.3979/2019.

Shri Maqbool Ahmed Mansoori, learned counsel for the petitioner in CRR No.368/2019.

Shri Abhishek Rathore, learned counsel for the petitioner in CRR No.1901/2019, MCRC No.29471/2019.

Shri R. K. Pathak, learned Public prosecutor for the respondent State in CRR No.3979/2019.

Shri Saransh Jain, learned public prosecutor for the respondent/State in CRR No.2984/2019, CRR No.6181/2018, CRR No.3374/2019, CRR No.3186/2019, CRR No.368/2019, CRR No.1901/2019, CRR No.3370/2019, MCRC No.10603/2018.

Shri R. K. Shashtri, learned Public Prosecutor for respondent/State in MCRC No.29471/2019, MCRC No.26604/2019.

Shri Pranay Joshi, learned Public Prosecutor for the respondent/State in CRR No.2988/2019, CRR No.4120/2019.

Shri Vinit Hardia, learned public prosecutor in MCRC No.628/2019.

ORDER

(Delivered on 31/10/2019)

1. As common question of law, as to whether information given by an accused in his disclosure statement before the police recorded under Section 27 of the Indian Evidence Act, 1872 (hereinafter referred to as “Act of 1872”) which does not lead to discovery of any fact when there is/with no discovery in pursuant thereto, is admissible in law more particularly against any co-accused or as to whether a person can be convicted only on the

basis of such information, is involve in all these petitions, therefore, they were heard analogously and are being decided by this common order.

2. All the petitioners have invoked extraordinary powers of this Court provided under Section 482 of the Cr.P.C. or have challenged their prosecution under the revisional jurisdiction of this Court under Section 397/401 Cr.P.C. asserting that they are being prosecuted only on the basis of totally inadmissible evidence i.e. the disclosure statement made by the co-accused to the police, which is blatant infringement of their fundamental right and cannot be allowed to continue even for a day, therefore, their prosecution be quashed or they be discharged immediately.

3. Irrespective of the fact that the cases of the petitioners are under the different laws like the Indian Penal Code, 1860 (IPC), M.P. Excise Act, 1915 or the Narcotic Drugs and Psychotropic Substances, Act, 1985 (for short NDPS, Act), in all these petitions, their complicity is based only on the information given by the co-accused to the police, which has been recorded under Section 27 of the Act of 1872, but has not led to discovery of any fact. Brief detail of facts of each petition is as follows:

CRR.No.6181/2018

This petition is filed by **Afzal Khan** in crime No.107/2018 registered at Police Station Piplauda, District Ratlam for the offence under Section 8/18 (b) read with Section 29 of the NDPS Act. Afzal has been impleaded in the array of the accused only on the basis of disclosure statement of co-accused Javed Khan and Mohammad @ Kala from whose possession 2.600 Kg. Opium was recovered. Nothing has been recovered from the present applicant.

CRR.No.368/2019

This petition is filed by **Mohammad Shahid @ Bhaiya** in crime No.50/2018 registered at Police Station Jaora District Ratlam for the offence under Section 20 (b) (ii) (c) read with Section 29 of the NDPS Act, who has been impleaded in the array of the accused only on the basis of disclosure statement of co-accused **Mazhar and Vasim**. The police intercepted motor cycle bearing registration No. 43 DY 5871 and on search recovered 1 Kg 10 grams Cannabis (*Charas*) from the possession Mazhar and 0.900 kg Cannabis (*Charas*) from the possession of Vasim. They disclosed that the present petitioner is the supplier of the said Cannabis, but nothing incriminating article is recovered from the present petitioner.

CRR.No.1901/2019

This petition is filed by **Vakil @ Shankar** in crime No.408/2016 registered at Police Station Manasa District Neemuch for the offence under Section 8/15 and 8/29 of the NDPS Act, who has been impleaded in the array of the accused only on the basis of disclosure statement of co-accused **Kanhaiyalal @ Kanha and Piyush @ Pappu**, who have stated that they had procured the illegal poppy straw from the present petitioner. The police have recovered 150 Kg poppy straw from one white colour Verna Car bearing registration No. GJ 05 CK 4966 found in unattended condition. The petitioner is not owner of the vehicle. Sanjay Bhai is the owner of the vehicle as mentioned in the Screen Report of Vehicle (Vehicle No.GJo5CK4966). The name of the owner has not been changed in the Insurance Policy papers.

Counsel for the petitioner as well as counsel for the respondent State has submitted that the petitioner is not the owner of the vehicle.

CRR.No.2984/2019

This petition is filed by **Anil** in crime No.61/2018 registered at Police Station Nahargarh District Mandsaur for the offence under Section 8(c)/15(c), read with Section 29 of the NDPS Act, who has been impleaded in the array of the accused only on the basis of disclosure statement of co-accused **Ramesh and Suresh**, from whose possession 101 Kg Poppy Straw was recovered from a Maruti Car bearing registration No. GJ-01-RF-3360. Registered owner of the vehicle is Lovjibhai Patel. After agreement of sale the owner of the Vehicle is Prabhu Ram. There is no recovery from the petitioner.

CRR No. 2988/2019

This petition is filed by **Sandeep** in crime No.143/2018 registered at Police Station Jeeran District Neemuch for the offence under Section 8/15(c) of the NDPS Act, who has been impleaded in the array of the accused only on the basis of disclosure statement of co-accused **Munnalal @ Munna** from whose possession 57 Kg poppy straw has been recovered from a Silver colour car bearing registration No.R.J.06 CB 3872. Owner of the Vehicle is Pramod Kumar S/o Gangaram. Nothing is recovered from the present petitioner.

CRR No.3186/2019

This petition is filed by **Sahir @ Sugriv** in crime No.141/2017 registered at Police Station Sunera District Shajapur for the offence under Section 8/20, read with Section 29 of the NDPS Act, who has been impleaded in the array of the accused

only on the basis of disclosure statement of co-accused **Rajesh Sharma**. 100 Kg cannabis was recovered from Tavera car bearing registration No.MP-09BC-2906 being driven by one Naveen Sharma. He was caught on the spot. The person sitting beside fled away from the spot. Navin revealed that he was Raja @ Rajesh. The police apprehended Rajesh, who disclosed that he along with Navin Sharma had procured the seized cannabis from Tekchand and Rajesh S/o Mohanlal and were going to deliver it to the present applicant. Therefore, the police arrested and chargesheeted the petitioner. Owner of the vehicle is Prateek Jain S/o Om Prakash. Nothing is recovered from the present petitioner.

CRR No.3370/2019

This petition is filed by **Kanhaiyalal** in crime No.510/2018 registered at Police Station Neemuchkant, District Neemuch for the offence under Section 8/15(c) read with Section 29 of the NDPS Act, who has been impleaded in the array of the accused only on the basis of disclosure statement of co-accused **Pankaj Patidar** from whose possession 3 plastic bags containing 72 Kg Poppy Straw was recovered from white Maruti Alto 800 Car without registration number bearing Engine No.F8DN6051693 and Chassis No. MA3EUA81SOOC96033. Owner of the Vehicle is Prahlad S/o Damarlal Patidar. Insurance of the Vehicle is in the name of Prahlad Patidar. Nothing is recovered from the petitioner.

CRR No.3374/2019

This petition is filed by **Oparam @ Aatmaram** in crime No.510/2018 registered at Police Station Neemuch Kant, District Neemuch for the offence under Section 8/15(c) and 29 of the

NDPS Act, who has been impleaded in the array of the accused only on the basis of disclosure statement of co-accused **Pankaj Patidar** from whose possession the police have recovered 72 Kg Poppy Straw from unregistered white Maruti Alto 800 Car bearing Engine No.F8DN6051693 and Chasis No.MA3EUA81SOOC96033 and he was going to deliver it to the petitioner. Owner of the Vehicle is Prahlad S/o Damarlal Patidar. Insurance of the Vehicle is in the name of Prahlad Patidar. Nothing is recovered from the present petitioner.

CRR No.3979/2019

The petitioner **Krishnapal Singh** has filed this petition in crime No.31/2017 registered at Police Station Manasa District Neemuch for the offence under Section 8/18 read with Section 29 of the NDPS Act. He has been impleaded in the array of the accused only on the basis of disclosure statement of **co-accused Pappu** from whom the police have recovered 15.4 Kg opium. Motor cycle MP44MA7578 has been seized from the petitioner **Krishnapal Singh**.

CRR No.4120/2019

This petition is filed by **Naresh @ Bablu** in crime No.143/2018 registered at Police Station Jeeran District Neemuch for the offence under Section 8/15 (c) of the NDPS Act, who has been impleaded in the array of the accused only on the basis of the disclosure statement of co-accused **Munna** from whose possession the police have recovered 57 Kg poppy straw from a Silver colour Alto car bearing registration No.R.J.06 CB 3872. Owner of the Vehicle is Pramod Kumar S/o Gangaram. Nothing is recovered from the petitioner.

MCRC No.10603/2018

This petition is filed by petitioner **Surendra** in crime No. 73/2018 registered at Police Station Manak Chowk, District Ratlam for the offence under Section 25,27 of the Arms Act, 1959, who has been impleaded in the array of the accused only on the basis of disclosure statement of co-accused **Usman**.

According to the prosecution case, on 16.02.2018, the police arrested one Salim and recovered one 12 bore country made pistol (*desi katta*). On interrogation, Salim disclosed that he procured the *Katta* from one Usman. The police apprehended him. He disclosed to the police in his statement recorded under Section 27 of the Evidence Act that he was indulged in illegal trade of arms and ammunitions. He used to purchase firearms from licensee dealer Gotu Seth @ Surendra Chauhan and had sold many firearms of various type to several persons. On receiving this information, the police nabbed the petitioner and have arrayed him as accused. Nothing has been recovered from his possession. There is no evidence that some irregularity or illegality was found in his dealing with the firearms.

MCRC No.628/2019

This petition is filed by petitioner **Raju Bai** in crime No.357/2017 registered at Bhavgarh District Mandsaur for the offence under Section 8/15, 25 and read with Section 29 of the NDPS Act, who has been impleaded in the array of the accused only on the basis of disclosure statement of her son co-accused Kanwarlal from whose possession the police have recovered 144 Kg Poppy Straw from motorcycle bearing registration No.MP-o8-G-6119. He disclosed that the recovered poppy straw was produce

of land of his mother petitioner Raju Bai and had been grown under the lease granted to her. There is nothing on record to show that the petitioner has violated any condition of the lease granted in her favour or has misappropriated any produce grown under the lease. Owner of the Vehicle is Munna S/o Kesuram. 144 Kg poppy straw has been recovered from the Kunwarlal Son of the the present petitioner Rajubai. Kunwarlal in his statement under Section 27 of the Evidence Act has stated that the licence of the cultivation of Opium was in the name of the present petitioner Rajubai.

MCRC No.26604/2019

This petition is filed by petitioner **Sameer @ Shabbir** in crime No.231/2018 registered at police Station Piploda District Ratlam for the offence under Section 8/18 read with 29 of the NDPS Act, who has been impleaded in the array of the accused only on the basis of disclosure statement of co-accused **Rohit and Abhishek** from whose possession the police have recovered 850 grams opium. There is no other evidence except these memos of the co-accused persons to show involvement of the petitioner in the alleged crime. Registered owner of the motorcycle bearing registration No.MP45ME9114 is Dinesh S/o Nandram as per RTO. Through agreement to sale Dinesh Sold the Vehicle to Abhishek S/o Kachrulal.

MCRC.No.29471/2019

This petition is filed by petitioner **Rampal @ Yogendra** in crime No.326/2017 registered at police Station Rampura District Neemuch for the offence under Section 8/15,25 read with Section 29 of the NDPS Act, who has been impleaded in the array of the accused only on the basis of disclosure statement of co-

accused **Nizam, Kunwarpal @ Baniya and Mohammad Imran** from whose possession the police have recovered four Grey bags containing 151 Kg Poppy Straw in the Vehicle Xylo bearing registration No.DL7CK2415 and who have stated that they had purchased the poppy straw from the present petitioner. Owner of the Vehicle is Nizman Ansari. Status of trial not known. Copy of the charge not

4. Thus, in all these petitions, complicity of the petitioners therein is based on the statement of the co-accused that liquor/contraband recovered from their possession was procured from or provided by the petitioners or they were going to deliver the same to them or in any other manner, the petitioners were involved in trafficking, transporting, or sale/purchase of the liquor/contraband, as the case may be but neither anything was recovered from their possession nor were they found owner of the vehicles carrying/transporting the contraband. No other evidence to connect them with the alleged crime or the criminal found involve in the crime could be collected during investigation.

5. Before proceeding further, it would be trite to have a look at the law. For the sake of convenience Section 27 of the Evidence Act, 1872 is reproduced below:

27. How much of information received from accused may be proved.—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.

6. The law is now well settled that the information given by the co-accused is inadmissible if the same does not lead to any recovery. In a string of judgment right from the pre-independence era, the Courts have settled this proposition of law. We can refer some of the judgments passed in **Harichara Kurmi and Jogia Hajam** reported in **AIR 1964 SC 1184**, **Anter Singh v. State of Rajasthan** reported in **(2004) 10 SCC 657 : 2005 SCC (Cri) 597**, **State of Maharashtra v. Kamal Ahmed Mohammed Vakil Ansari** reported in **(2013) 12 SCC 17: 2013 SCC OnLine SC 230 (page 36)**, **Mustkeem Vs. State of Rajasthan** reported in **(2011) 11 SCC 724**, **Asar Mohammad and Ors. Vs. State of U.P.** reported in **AIR 2018 SC 5264**, **Kusal Toppo Vs. State of Jharkhand** reported in **2018 SCC OnLine SC 1563**, **Valiyaveetil Ashraf v. State, S.H.O. Kottakkal Police Station** reported in **1992 SCC OnLine Ker 441 : 1994 Cri LJ 555 (page 561)** and **Pappu v. State of Madhya Pradesh** reported in **2000 SCC OnLine MP 442 : 2001 Cri LJ 875 (Page 876)**.

7. In this respect we can also illustrate some judgments of this Court rendered in **Anant Kumar Vs. State of MP** reported in 1993 Cr.L.J. 1499, **Raghu Thakur Vs. State of M.P.** reported in 2012 (4) MPHT 116, **Suresh Upadhayay Vs. State of M.P.** passed in MCRC 837/2014 dated 5th March 2014, **Rajveer Singh Vs. State of M.P.** reported in 2015 (1) MPHT 265, **Gajendra Singh Bhadoria Vs. State of M.P.** reported in MANU/MP/0976/2016, **Faijal & ors Vs. State of M.P.** passed in MCRC 10904/ 2017 dated 19th February 2018, **Dashrath Vs. State of M.P.** passed in MCRC 5452/2017 dated 26 November 2018, **Mohamad Wasim Mewati Vs. State of M.P.** passed in MCRC Dated 11th March 2019.

8. Thus, it is cogent that the information given or disclosure made by the accused to the police, which does not lead to any recovery, is not admissible in evidence against co-accused and on the basis of such inadmissible evidence, the prosecution of the petitioners is nothing but abuse of process of law, which should not and cannot be allowed to perpetuate. Though, the powers under Section 482 are extraordinary in nature and has to be used sparingly and cautiously, but these are the cases; where this Court is fully satisfied that non use of such inherent powers would lead to or would cause injustice. It would be in the interest of justice or necessary to achieve the object of the law that no innocent person shall be allowed to face unnecessary prosecution, if there being no evidence at all against him. Therefore, all the petitions are **allowed** and the proceedings pending against respective petitioners therein before the trial Court are **hereby quashed**. The petitioners of respective petitions are acquitted/discharged from the charges framed against them. Their bail bonds, if furnished, are discharged.

9. It is made clear that the prosecution against the other co-accused persons shall continue in accordance with law.

10. Copy of this order along with the order delivered by this Court earlier in **CRR.No.482/2012 Ismail Khan and another Vs. State of M.P.** order dated 30.5.2019 be sent to the DG, Police Madhya Pradesh, the Excise Commissioner, the Crime Analysis Department of the Government of Madhya Pradesh and to the Director, Prosecution to examine the weakness of the investigation and to find out solution; so that perpetrator may not take undue advantage of weakness of the system/prosecution as well as lackadaisical attitude of indolent Investigating Officers be dealt with appropriately.

11. With an optimistic note, all the petitions stand **disposed off.**

(Virender Singh)
Judge

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