

HIGH COURT OF MADHYA PRADESH:

BENCH AT INDORE

Single Bench: Hon'ble Shri Justice Virender Singh

1. CRR.No.482/2012

Ismail Khan and another Vs. State of M.P

2. CRR.No.3271/2017

Narayan S/o Mukesh Chandra Nagda Vs. State of M.P.

3. CRR.No.1966/2018

Dashrath @ Manju Vs. State of M.P

4. CRR.No.3221/2018

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Santosh Bairagi Vs. State of M.P

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Ramlal Vs. State of M.P

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Gopal Vs. State of M.P

10. CRR.No.2394/2019

Ramratan @ Ramnarayan Vs. State of M.P.

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Bhagatram Vs. State of M.P.

13. MCRC.No.25682/2017

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14. MCRC.No.26409/2017

Janu @ Jankilal S/o Karulal Meghwal Vs. State of M.P

15. MCRC.No.43546/2018

Madanlal Balai & another Vs. State of M.P

16. MCRC.No.50777/2018

Shankar Singh Rajput Vs. State of M.P

Shri Sapnesh Jain, learned counsel for the petitioner

in CRR.No.482/2012.

Shri Nilesh Dave, learned counsel for the petitioner in CRR.No.3271/2017, MCRC.No.25682/2017.

Shri Abhay Saraswat, learned counsel for the petitioner in MCRC No.26409/2017, CRR No.1966/2018, CRR No.3221/2018, CRR No. 3914/2018, CRR. No.4173/2018, CRR No.4825/2018, CRR No.2394/2019, CRR No.469/2019 & CRR No.949/2019.

Shri Jitendra Sharma, learned counsel for the petitioner in CRR No.3370/2018.

Shri Himanshu Thakur, learned counsel for the petitioner in MCRC No.50777/2018.

Shri Abhishek Rathore, learned counsel for the petitioner in CRR No.5687/2018.

Shri R.R.Trivedi, learned counsel for the petitioners in MCRC No.43546/2018.

Shri Gaurav Verma, learned public prosecutor for the respondent State in MCRC No.25682/2017, MCRC. No.26409/2017, CRR No.3271/2017, CRR No.1966/2018, CRR No.3221/2018, CRR No.3370/2018, CRR No.3914/2018, CRR No.4173/2018 & MCRC No.43546/2018.

Shri Paresh Joshi, learned public prosecutor for the respondent State in CRR. No. 4825/2018, CRR No.5687/2018 & CRR No.2394/2019.

Shri Sandeep Mehta, learned public prosecutor in CRR No. 482/2012, MCRC No.50777/2018 & CRR No.949/2019.

Shri R.Pathak, learned counsel for the respondent State in CRR No.469/2019.

ORDER**(Delivered on 30/05/2019)**

1. As common question of law, as to information given by the co-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"), is admissible in law against any co-accused or as to whether a co-accused can be convicted only on the basis of the information given by the accused in his disclosure statement under Section 27 of the Act of 1872, is involve in all these petitions, therefore, they all are heard analogously and are being decided by this common order.

2. All the petitioners have invoked inherent 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 of the co-accused person, 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. In all these petitions, the petitioners are impleaded in the array of the accused only on the basis of information given by the co-accused before

the police under Section 27 of the Act of 1872 irrespective of the fact that their cases 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).

CRR.No.482/2012.

This petition is filed by **Ismail Khan and Nadeem** in crime No.17/2007 registered at Police Station G.R.P, Ujjain (Shyamgarh) for the offence under Section 8/21 of the NDPS Act, who have been impleaded in the array of the accused only on the basis of disclosure statement of co-accused **Shantilal and Sumer Singh** from whose possession total 400 grams (200 grams each) Brown sugar has been recovered.

CRR No. 3271/2017

This petition is filed by **Narayan** in crime No.268/2016 registered at Police Station Neemuch Cantt., District Neemuch for the offence under Section 8/15(c), 25 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 **Balkishan** and **Kamlesh** from whose possession 12 Quintal poppy straw has been recovered from the tractor and Motorcycle. Registered owner of the motorcycle bearing registration No. MP 44 MA 7606 is **Narayan S/o Mukesh chand Nagda** and registered

owner of the tractor bearing registration No. MP 44 AA 7854 is **Gopal S/o Kesarimal Sharma**.

CRR.No.1966/2018

This petition is filed by **Dashrath @ Manju** in crime No.102/2017 registered at Police Station Kalukheda District Ratlam for the offence under Section 8/15 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 **Vishnulal and Jankilal** from whose possession 52 Kg poppy straw has been recovered from motorcycle bearing registration No. MP 44 ML 1108. Registered owner of the aforesaid motorcycle is **Satish Kumar Pathrodh**.

CRR.No.3221/2018

This petition is filed by **Lalsingh** in crime No.418/2014 registered at Police Station Taal, District Ratlam for the offence under Section 8/15 and 25 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 **Pappulal**.

CRR.No.3370/2018

This petition is filed by **Ravindra Chaudhari** in crime No.153/2017 registered at Police Station GRP Ujjain, District Ujjain for the offence under Section 8/20, 29 of the NDPS Act, who has been impleaded in the array of the accused only on the basis of disclosure statement of the co-accused **Abhishek**

Chourasia from whose possession 30 Kg cannabis was recovered.

CRR.No.3914/2018

This petition is filed by **Amjad** in crime No.245/2017 registered at Police Station Jawad, District Neemuch for the offence under Section 8/15, 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 **Baldev and Ved Prakash**, from whose possession 315 Kg. poppy straw was recovered from the truck bearing registration No. PB 11 BU 8315 and who have stated that they had purchased the recovered contraband from the present petitioner Amjad. Registered owner of the aforesaid truck is **Baldev Singh**.

CRR.No.4173/2018

This petition is filed by **Santosh Bairagi** in crime No.309/2017 registered at Police Station Satwas, District Dewas for the offence under Section 8(C) read with 20 (B) (II) (B) of the NDPS Act, who has been impleaded in the array of the accused only on the basis of disclosure statement of co-accused **Santosh Rathore** from whose possession 2 Kg. Cannabis (*ganja*) has been recovered by the police and who has stated that he had purchased this cannabis from the petitioner Santosh Bairagi.

CRR.No.4825/2018

This petition is filed by **Ramlal** in crime

No.5/2018 registered at Police Station Neemuch City, District Neemuch for the offence under Section 8/15 and 29 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 **Prakash** from whose possession 189 Kg. poppy straw has been recovered from the Tata Indica car bearing registration No.UP15Q2345.

CRR.No.5687/2018

This petition is filed by **Gopal, Narendra and Ashok** in crime No.5/2018 registered at Police Station Neemuch City, District Neemuch for the offence under Section 8/15(C) and 29 of the NDPS Act, who have been impleaded in the array of the accused only on the basis of disclosure statement of co-accused **Prakash** from whose possession 189 Kg. poppy Straw has been recovered from the Tata Indica car bearing registration No.UP15Q2345.

CRR.No.2394/2019

This petition is filed by **Ramratan @ Ramnarayan** in crime No. 143/2018 registered at Police Station for the offence under Section 8/15 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 **Naresh, Sandeep and Munna Master** from whose possession 57 Kg poppy straw has been recovered Alto Car bearing registration No. RJ06CB3872.

CRR.No.469/2019

This petition is filed by Lokesh in crime No.389/2014 registered at Police Station Afzalpur District Mandsaur for the offence under Section 8/15 25 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 Shantilal.

On 30.6.2014, the police received information that two person are standing near bus stand waiting room with motor cycle No. MP 43 DN 9569 with illegal poppy straw. The police cordoned the area. The persons got wind of police and fled away from the spot leaving the Motorcycle behind. On search, six bags containing 173.6 Kg poppy straw. During investigation, the motorcycle was found registered in the name of one Babulal. On interrogation, Babulal stated that he had sold the vehicle to Royal Auto Deal, Mandsaur. Proprietor of Royal Auto stated that he had sold the said vehicle to one Shantilal. The Police arrested Shantilal on 17.7.2014 and recorded his statement under Section 27 of the Evidence Act. He stated that he had purchased the said vehicle with the financial aid of Lokesh (petitioner) and he had taken back the vehicle as he could repay the loan. On the basis of this statement of Shantilal, the petitioner has been implicated in the crime.

CRR.No.949/2019

This petition is filed by **Bhagatram** in crime No.

276/2017 registered at Police Station Bhavgarh, District Mandsaur for the offence under Section 8/15 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 Krishnalal from whose tractor bearing registration No.MP.14MT-4709, the police recovered 280 Kg poppy straw. Registered owner of the vehicle is Dineshlal.

MCRC.No.25682/2017

This petition is filed by **Dharmendra** in crime No.122/2017 registered at Police Station Pipliya Mandi, District Mandsaur for the offence under Section 8/15 of the NDPS Act, who has been impleaded in the array of the accused only on the basis of disclosure statement of co-accused **Nepal Singh** from whose possession 2525 Kg poppy straw was recovered from Bolero Pickup bearing registration No. MP14GB1038 registered in the name of **Ishwar Singh Sekhawat**.

MCRC.No.26409/2017

This petition is filed by **Janu @ Jankilal** in crime No.507/2010 registered at Police Station Neemuch Cantt., District Neemuch for the offence under Section 8/15 and 29 of the NDPS Act, who has been impleaded in the array of the accused only on basis of the disclosure statement of co-accused **Dev kishan** from whose possession 374 Kg. poppy straw

has been recovered from Scorpio bearing registration No.RJ09UA5148.

MCRC.No.43546/2018

This petition is filed by petitioners **Madanlal and Ramkishan** in crime No.9/2018 registered at Police Station GRP Neemuch, District Neemuch for the offence under Section 8/18 and 29 of the NDPS Act, who have been impleaded in the array of the accused only on the basis of disclosure statement of the co-accused **Nagusingh** from whose possession 380 gram Opium was recovered.

MCRC.No.50777/2018

This petition is filed by petitioner **Shankar Singh Rajput and Umesh** in crime No. 125/2018 registered at Police Station Raghvi, District Ujjain for the offence under Section 34(2) of the Excise Act, who has been impleaded in the array of the accused only only on the basis of disclosure statement of co-accused **Pintu Mandur** from whose possession 432 bulk liters country made liquor was recovered from Bolero pick up jeep bearing registration No. MP 05 G 7283. Registered owner of the said vehicle is **Pintu Mandur** S/o Gowardhan lal.

4. Thus, in all these petitions, complicity of all the petitioners 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.

5. Before proceeding further, I would like to have a glance of the law laid down on the subject by the highest Court of the land or by the several High Court of the country. First we have a look of the concerned provision. For the sake of convenience Section 27 of the Evidence Act 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. Since pre-independence era, the Courts have consistently taken a view that the disclosure statement of any accused can only be used against its author and not against any other co-accused. First such judgement, which I would like to refer, is

authored by justice Burn speaking on behalf of the Division Bench of the Madras High Court in **Abdul Basha Sahib Vs. R 1940 SCC On Line Mad 79 : AIR 1941 Mad 316** (Before Burn and Lakshmana Rao, JJ.). It was held that where, in a case of murder, the first accused made a confession to the Circle Inspector which led to the discovery of certain jewels of the murdered woman, and also a blood-stained brick which, the first accused stated, the second accused had used to beat her with and in consequence of which she died, the statement of the first accused could not be taken into consideration as against the second accused under section 30 of the Indian Evidence Act. Under section 27 of the Evidence Act the only portions of the information given by the first accused which are admissible are those which relate distinctly to the facts discovered thereby. It cannot be said that the statements made by the first accused involving the second accused relate in any way to such facts and therefore, it cannot be used against second accused.

7. Then comes the Division Bench of the Calcutta High Court, who stated in **Satish Chandra Seal v. Emperor, 1943 SCC OnLine Cal 208 : AIR 1945 Cal 137 : 1945 Cri LJ 580 at page 140** that reading S. 27 with S. 26 to which it is a proviso it appears clear to us that the statements or if the whole of any of them is not admissible, the parts of

them which are admissible, can be proved only against the person who made it. Section 27 in our opinion does not sanction the letting in of the statement of one person made to a police officer, while in police custody, as evidence as against another person. The position appears to us to be that generally speaking these statements are hit by the provisions of Section 162(1) of the Cr PC, and cannot under this sub-section be used for any purpose except as therein mentioned. By reason, however, of sub-s. (2) of that section, as it stands at present, only certain kinds of statements which are hit by sub-s. (1) of that section but which come within Section 27 of the Evidence Act, may be proved as against the person making it. In this view of the matter, we are of opinion that the admission in evidence of the whole of all the statements said to have been made by Brojendra, Sudhir and Charubala and at any rate the use thereof against persons other than the maker thereof was erroneous and illegal."

8. Decision of the Privy Council in **Pulukuri Kottaya Vs. Emperor AIR 1947 PC 67 : 48 Cri LJ 533** is the most-quoted authority for supporting the interpretation that information given under Section 27 of the Act, 1872 has no evidentiary value if there is no discovery of fact in pursuant thereto. The information permitted to be admitted in evidence is confined to that portion of the information which

"distinctly relates to the fact thereby discovered" The "fact discovered" envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect. If the information does not pass the test, certainly it has no probative value and cannot be used against its maker of it as well as against any other person.

9. The law on the subject was discussed by the **Hon'ble Apex Court in Harichara Kurmi and Jogia Hajam reported in AIR 1964 SC 1184.** It was observed that:

12. As we have already indicated, this question has been considered on several occasions by judicial decisions and it has been consistently held that a confession cannot be treated as evidence which is substantive evidence against a co-accused person. In dealing with a criminal case where the prosecution relies upon the confession of one accused person against other accused person, the proper approach to adopt is to consider the other evidence against such an accused person, and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the charge framed against the said accused person, the court turns to the confession with a view to assure itself that the conclusion which it is inclined to draw from the other evidence is right. As was observed by Sir Lawrence Jenkins in *Emperor v. Lalit Mohan Chockerburty*, ILR 38 Cal 559 at p. 588 a confession can only be used to "lend assurance to other evidence against a co-accused". In *Periyaswami Moopan v. Emperor*. ILR 54 Mad 75 at p. 77: (AIR 1931 Mad 177 at p. 178) Reilly, J., observed

that the provision of S. 30 goes not further than this, "where there is evidence against the co-accused sufficient, "if believed, to support his conviction, then the kind of confession described in S. 30 may be thrown into the scale as a additional reason for believing that evidence." In *Bhuboni Sahu v. The King*, 76 Ind App. 147 at p. 155: (AIR 1949 PC 257 at p. 260) the Privy Council has expressed the same view. Sir. John Beaumont who spoke for the Board, observed that

" a confession of a co-accused is obviously evidence of a very weak type. It does not indeed come within the definition of "evidence" contained in S. 3 of the Evidence Act. It is not required to be give on oath, nor in the presence of the accused, and it cannot be tested by cross-examination. It is a much weaker type of evidence than the evidence of an approver, which is not subject to any of those infirmities. Section 30, however, provides that the Court may take the confession into consideration and thereby, no doubt, makes it evidence on which the court may act; but the section does not say that the confession is to amount to proof. Clearly there must be other evidence. The confession is only one element in the consideration of all the facts proved in the case; it can be put into the scale and weighed with the other evidence."

It would be noticed that as a result of the provisions contained in S. 30, the confession has no doubt to be regarded as amounting to evidence in a general way. Because whatever is considered by the Court is evidence; circumstances which are consider by the court as well as probabilities do amount to evidence in that generic sense. Thus, though confession may be regarded as evidence in that generic sense because of the provisions of S. 30, the fact remains that is not evidence as defined by S. 3 of the Act. The result, therefore, is that in dealing with a case against an

accused person, the court cannot start with the confession of co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. That, briefly stated, is the effect of the provisions contained in S. 30. The same view has been expressed by this Court in *Kashmira Singh v. State of Madhya Pradesh*, 1952 SCR 526: (AIR 1952 SC 159) where the decision of the Privy Council in *Bhuboni Sahu's case*, 76 Ind. App 147 (AIR 1949 PC 257) has been cited with approval.

10. Scope and ambit of Section 27 of the Evidence Act was comprehensively considered by Hon'ble the Supreme Court in para 13 to 17 of the judgement passed in ***Anter Singh v. State of Rajasthan, (2004) 10 SCC 657 : 2005 SCC (Cri) 597 at page 664***, which are as under:

13. Although the interpretation and scope of Section 27 has been the subject of several authoritative pronouncements, its application to concrete cases in the background events proved therein is not always free from difficulty. It will, therefore, be worthwhile at the outset, to have a short and swift glance at Section 27 and be reminded of its requirements. The section says:

"27. 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."

14. The expression "provided that" together with the phrase "whether it amounts to a confession or not" shows that the section is in the nature of an exception to the preceding provisions particularly Sections 25 and 26. It is not necessary in this case to consider if this section qualifies, to any extent, Section 24, also. It will be seen that the first condition necessary for bringing this section into operation is the discovery of a fact, albeit a relevant fact, in consequence of the information received from a person accused of an offence. The second is that the discovery of such fact must be deposed to. The third is that at the time of the receipt of the information the accused must be in police custody. The last but the most important condition is that only "so much of the information" as relates distinctly to the fact thereby discovered is admissible. The rest of the information has to be excluded. The word "distinctly" means "directly", "indubitably", "strictly", "unmistakably". The word has been advisedly used to limit and define the scope of the provable information. The phrase "distinctly" relates "to the fact thereby discovered" and is the linchpin of the provision. This phrase refers to that part of the information supplied by the accused which is the direct and immediate cause of the discovery. The reason behind this partial lifting of the ban against confessions and statements made to the police, is that if a fact is actually discovered in consequence of information given by the accused, it affords some guarantee of truth of that part, and that part only, of the information which was the clear, immediate and proximate cause of the discovery. No such guarantee or assurance attaches to the rest of the statement which may be indirectly or remotely related to the fact discovered. (See *Mohd. Inayatullah v. State of Maharashtra* [(1976) 1 SCC 828 : 1976 SCC (Cri) 199 : AIR 1976 SC 483].)

15. At one time it was held that the expression "fact

discovered” in the section is restricted to a physical or material fact which can be perceived by the senses, and that it does not include a mental fact, now it is fairly settled that the expression “fact discovered” includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this, as noted in Pulukuri Kottaya case [AIR 1947 PC 67 : 74 IA 65 : 48 Cri LJ 533] and in Udai Bhan v. State of U.P. [AIR 1962 SC 1116 : (1962) 2 Cri LJ 251]

16. The various requirements of the section can be summed up as follows:

- (1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with the question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.
- (2) The fact must have been discovered.
- (3) The discovery must have been in consequence of some information received from the accused and not by the accused's own act.
- (4) The person giving the information must be accused of any offence.
- (5) He must be in the custody of a police officer.
- (6) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.
- (7) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible.

17. As observed in Pulukuri Kottaya case [AIR 1947 PC 67 : 74 IA 65 : 48 Cri LJ 533] it can seldom happen that information leading to the discovery of a fact forms the foundation of the prosecution case. It is one link in the chain of proof and the other links must be forged in a

manner allowed by law. To similar effect was the view expressed in *K. Chinnaswamy Reddy v. State of A.P.* [AIR 1962 SC 1788 : (1963) 1 Cri LJ 8]

11. This view is later followed in **State of Maharashtra v. Kamal Ahmed Mohammed Vakil Ansari, (2013) 12 SCC 17: 2013 SCC OnLine SC 230 at page 36** stating that admissions/confessions are exceptions to the "hearsay rule". It was held that :

17.5 There is, therefore, a common thread in the scheme of admissibility of admissions/ confessions under the Evidence Act, namely, that the admission/confession is admissible only as against the person who had made such admission/confession. Naturally, it would be inappropriate to implicate a person on the basis of a statement made by another.

12. Further, the Apex court has interpreted the provision in the case of **Mustkeem Vs. State of Rajasthan, (2011) 11 SCC 724**, and has observed as under :-

25. With regard to Section 27 of the Act, what is important is discovery of the material object at the disclosure of the accused but such disclosure alone would not automatically lead to the conclusion that the offence was also committed by the accused. In fact, thereafter, burden lies on the prosecution to establish a close link between discovery of the material object and its use in the commission of the offence. What is admissible under Section 27 of the Act is the information leading to discovery and not any opinion formed on it by the prosecution.

13. Different High Courts of the country have also adopted the similar view. We can usefully refer some of such judgements like;

Surendra Prasad Vs. State of Bihar 1992 CRI. L. J. 2190 Patna HC - statements admissible under Section 27 of the Indian evidence Act are not admissible against person other than maker of the statements.

Asar Mohammad and Ors. Vs. State of U. P. AIR 2018 SC 5264 - Confession of co-accused cannot be basis to proceed against other accused unless something more produced to indicate their involvement in commission of crime.

Kusal Toppo Vs. State of Jharkhand 2018 SCC OnLine SC 1563 - A confession cannot be treated as substantive evidence against a co-accused.

Ramakrishnan v. State of Kerala (1987) 1 Ker LT (SN) 21 held that recovery in pursuance of the disclosure made by one accused cannot be used against a co-accused.

Valiyaveetil Ashraf v. State, S.H.O. Kottakkal Police Station, 1992 SCC OnLine Ker 441 : 1994 Cri LJ 555 at page 561

26. No doubt, in Ext. P-26 A-1 has implicated A-2 and A-3 for strangulating the deceased. Ext. P-26 being the confession of A-1 cannot be used against the co-accused A-2 and A-3. In *Nathu v. State of Uttar Pradesh*, AIR 1956 SC 56 : (1956 Cri LJ 152) the Supreme Court held that confessions of co-accused are

not evidence as defined in S. 3 of the Evidence Act and no conviction can be founded thereon. Of course, if there is other evidence on which a conviction can be based it can be referred to as lending assurance to that conclusion and for fortifying it. In dealing with a case against an accused Court cannot start with the confession of a co-accused and seek corroboration thereafter. The Court has necessarily to scan the evidence excluding the confession and if it finds that that evidence is cogent and convincing it may not be necessary to advert to the confession of the co-accused. But even in such cases the Court may advert to it to lend assurance for its conclusion. The Supreme Court in *Haricharan Kurmi v. State of Bihar*, AIR 1964 SC 1184 : (1964 (2) Cri LJ 344) observed that the confession of a coaccused person cannot be treated as substantive evidence and can be pressed into service only when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusion deducible from the said evidence. In the said decision, the Supreme Court held (para 16):—

“As we have already indicated, it has been a recognised principle of the administration of criminal law in this country for over half a century that the confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusion deducible from the said evidence.”

14. This view is being persistently followed also by our own High Court. In **Sushil Kumar Sharma v. State of M.P. 1995 0 Supreme (MP) 388 : 1995 JLJ 444** it is held that 'the only piece of evidence considered sufficient by 'the Magistrate for taking

cognizance against the petitioner is the mention of his name in the memorandum of co-accused recorded u/s 27 of the Evidence Act, which is clearly inadmissible and cannot be proved against him.'

15. In Pappu v. State of Madhya Pradesh, 2000 SCC OnLine MP 442 : 2001 Cri LJ 875 at page 876 SB the Court observed that:

7. So far as the merit of this case is concerned, the State itself has admitted in the reply filed by it that the only evidence against the petitioners is to be found in the statement of co-accused Tahir Ali recorded under Section 27 of the Indian Evidence Act. I am of the view that the provisions of Section 27 of the Indian Evidence Act are appended by way of a proviso to Section 26 dealing with the confession of an accused while in police custody, which has no evidentiary value. Sec. 27 of the Indian Evidence Act carving out a proviso to Sec. 26 deals with a fact deposed to as discovered in consequence of the information received from a person accused of an offence, in the custody of a Police Officer, and only so much of that information is relevant and may be proved which relates distinctly to the fact thereby discovered. Naturally, the fact discovered on the information of such person shall be relevant and may be proved against that person, obviously because such fact is discovered on the information given by that person. Therefore, apparently, such a discovered fact cannot be used and proved against any other person, meaning thereby that it would not be treated as an evidence against any other person. In the instant case, as it prima-facie appears from the challan papers, the information was given by one of the co-accused Tahir Ali, against the petitioner/accused Papoo, that he had hidden the Jeep No. MPZ-4663 near the house of Papoo; and, against the other petitioner/accused Lalloo,

that he had kept seven silver coins with him. This information, if at all relevant, can at the most be proved against co-accused Tahir Ali and not against the petitioners. Thus, merely on this basis, I am of the view that the petitioners cannot be implicated with the crimes in question. Admittedly, there is no other evidence connecting them with the crimes in question.

16. We can illustrate some more judgements of this Court passed in Anant Kumar Vs. State of MP 1993 Cr.L.J. 1499, Raghu Thakur Vs. State of M.P. 2012 (4) MPHT 116, Suresh Upadhyay Vs. State of M.P.; Mc.R.C. 837/2014 dated 5th March 2014, Rajveer Singh Vs. State of M.P. 2015 (1) MPHT 265, Gajendra Singh Bhadoria Vs. State of M.P. MANU/MP/0976/2016, Faijal & others Vs. State of M.P. Mc.R.C. 10904/2017 dated 19th February 2018, Dashrath Vs. State of M.P.; Mc.R.C. 5452/2017 dated 26 November 2018, Mohamad Wasim Mewati Vs. State of M.P.; Mc.R.C. Dated 11th March 2019.

17. Thus, sum and substance of the law laid down on the subject is that only the statement with regard to having possession of the article (contraband) is admissible against the makers of the statements, the petitioners are third persons and his disclosure, which does not lead to any recovery of fact, is not admissible against him.

18. Information given by the accused at the time of recording statement under section 27 of the Act of

1872 is not admissible against other co-accused even under section 10 of the Evidence Act. It has been held by the the Apex court in the case of **Sardul Singh Caveeshar Vs. State of Bombay, AIR 1957 SC 747**. Further relying on the aforesaid judgment in the case of **State of Gujarat Vs. Mohammed Atik, reported in (1998) 4 SCC 351**, it has been determined that "thus, the principle is no longer res integra that any statement made by an accused after his arrest, whether as a confession or otherwise, cannot fall within the ambit of Section 10 of the Evidence Act". Therefore, it is not admissible against other co-accused persons even in the case of charge of criminal conspiracy. Apart from it, in the case of **Kehar Singh Vs. State (Delhi Administration) reported in (1988) 3 SCC 609**, the Apex Court has held that "From an analysis of the section, it will be seen that Section 10 will come into play only when the Court is satisfied that there is reasonable ground to believe that two or more persons have conspired together to commit an offence. There should be, in other words, a prima facie evidence that the person was a party to the conspiracy before his acts can be used against his co-conspirator. Once such prima facie evidence exists, anything said, done or written by one of the conspirators in reference to the common intention, after the said intention was first entertained, is relevant against the others. It is

relevant not only for the purpose of proving the existence of conspiracy, but also for proving that the other person was a party to it".

19. In the present cases also, it is fairly and unanimously admitted by the learned Public Prosecutors representing the State in their respective assigned matters that there is no material except the disclosure made by the co-accused that they had procured or were going to deliver the substance recovered from them to the petitioners. Neither anything was recovered from the petitioners Nor were they found registered owner of the vehicles carrying the contraband or liquor as the case may be. There is also nothing on record to get satisfaction that there is a reasonable ground to believe that the applicant and other co-accused persons have conspired together to commit the offence alleged against them. In other words, there is no prima facie evidence that the petitioners were party to the conspiracy to the acts done by the other accused persons. Therefore, the confessional statements of the co-accused persons cannot be read or be used against the petitioners. The only piece of evidence considered sufficient by the Magistrates for taking cognizance or by the Police to file charge-sheet against the petitioners is the mention of their names in the memorandum of co-accused recorded u/s 27 of the Evidence Act, which is clearly inadmissible and cannot be proved against

him.

20. Thus, it is lucid that the information given or disclosure made by the accused, which does not lead to any recovery is not admissible in evidence against other co-accused persons and on the basis of such inadmissible evidence the prosecution of the petitioners is nothing but abuse of process of law, which should not be 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 I am 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 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 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.

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

22. While studying the records of these cases, I have observed some peculiar gloomy facts commonly

appeared in all these petitions, which have pinched me a lot and I think to finish the order without mentioning them, would be failure on my part too. Without blaming anyone concerned, with intent to highlight them for betterment of the system, I am mentioning them.

23. I have observed that in all these cases, the police have received vital information from the co-accused persons that either they have procured or bought contraband or were going to deliver the same to some particular person or someone escorted them with intent to give them cover for their safe landing to the destination. The normal course adopted by the police in such cases is that after receiving information, they record this information in the form of memorandum prepared under section 27 of the Evidence Act, arrest the person named by the deponent, complete the other formalities and file the charge-sheet before the concerned court and here they think that their responsibility is over. It is apparent that the investigation agencies, after arresting a person on the strength of the memo prepared under Section 27 of the Evidences Act, do not make any proper efforts or take pains to collect evidence against such person named by the co-accused to connect them with the crime, who otherwise would have been the main culprit or kingpin of the obnoxious network, without further

realizing the material aspect of the matter that the scope of the memo prepared under Section 27 of the Evidence Act is very limited and confined only to the factum of 'discovery' and the Court will acquit/discharge them observing that there is no legally admissible evidence tendered by the prosecution against such persons or the information given by the co-accused under section 27 of the Evidence Act is not admissible against such person.

24. It is worth mentioning here that the Supreme Court and High Courts in all over the country are consistently passing such orders of acquittal, discharge or quashment, where a person has been made accused only on the strength of a memo prepared under Section 27 of the Evidence Act. it appears *Prima facie* that the information given in the memo by the person apprehended by the police indicates existence of cyclopean nexus and network of the contrabandists. Otherwise also, this is well known fact that many mighty people, who have muscle and money power both are indulged in damnable illegal trade of intoxicants/contrabands. They have great power to influence the persons responsible to deter, dissuade or combat such lucrative ignoble trade. They are the actual menace and serious threat to the society, especially to our innocent next generation, who are the soft targets for them and often get trapped in their dragnet. It is

again a well known secret that in this dishonorable trade, normally the police reaches only upto the carriers, who are mostly poor, innocent persons, tempted or lured for a penny knowingly or some time unknowingly. Taking advantage of unawareness, greed and casual attitude, whether for lack of knowledge or resource or for any other reason, the actual culprits remain escort-free.

25. Similar things happens with the owner of the lorry/vehicle used in transporting illegal/unauthorized liquor/contraband. Nobody cares to investigate their involvement in the crime.

26. I have experienced and it is a matter of great concern that the persons, who are responsible, do not go upto the roots of the menace. They trim only the branches and do not cut it at roots to prevent the problem from growing/escalating. They do not nab the kingpins of the world of crime. It may be a reason for the cops, who are assigned the duty to combat the offenders of seductive substance, may not be aware about the process to be followed after receiving such information regarding co-accused but it is really unfortunate that their superiors, who are much qualified and have been posed faith by the law of the land and more importantly by the citizens of the country failed to effectively guide and supervise them to discharge their duties upto the expectation.

27. Record of the petitions; I have gone through,

does not show that after receiving such information under Section 27 of the Evidence Act, the investigating officers have taken any pains to collect evidence to establish/bust nexus between the persons named by the person in custody. Record shows that none of the investigating officer in the cases under consideration in this order himself had tried to collect call details of the person arrested and the person named in the memo to establish their nexus or network. It would not be out of place to mention here that in so many other cases, they are normally adopting this practice, but I failed to understand as to why in these particular cases under the Excise or the NDPS Act, this recourse is not being adopted for the reasons best known to them, which is really shocking. Record further does not reflect that even after receiving information, the concerned officers tried to find out any evidence of involvement of such person named by the co-accused. There is no material on record to show that any attempts were made to search their houses, godowns, shops, institutions etc. They never tried to find out the source of livelihood of those persons or their other details. What they are actually doing is that they arrest them on the strength of memo prepared u/s 27 of the Evidence Act and file charge sheet with this belief that their duty is over, leaving them in the side of the Court; either to prosecute or to leave them.

They do not bother or are least interested in the result of their own investigation, as no liability is fastened on them in the event of failure of the cases not properly investigated by them. Nobody bothers to find out the reasons as to why the Courts have acquitted or discharged, as the case may be, the accused for want of *prima facie* evidence.

28. It appears that there are various reasons for this lackadaisical approach of the investigating officers. It may be unawareness, absence of proper training or overburden with the duty to maintain law and order, due to which they could spare least time to investigate the case. At the same time, they feel tremendous pressure to conclude the investigation in time bound manner and file charge sheet, therefore, they do not bother to go upto the roots of the crime. They feels themselves relieved after filing of the charge-sheet, because after filing of the charge sheet, the focus of the concerns shifts towards the Court and nobody further questions them about the case.

29. If that is the reason, then I think that the time has come to adopt some remedial measures at the earliest. I would like to suggest that the investigation wing should be separated from the force involved in maintaining the law and order. It will solve both the problems, interference from outside and lack of time. Proper training and sensitization of the investigating

officer will further improve the condition. Carrier progression of the officials deputed for prevention or investigation of crimes may be linked with the results of the case investigated by them. Some points may be awarded for successful culmination of the case, which may be taken into account in their annual evaluation or for their appraisal for any specific purpose/period. I think, it will improve the condition and will persuade and encourage the officers to perform better and to generate constructive results. Following may be a method to calculate and award such points:

| Catagory | Offences | Points Allotted | Total Allotted Points | Total Points Earned | % | Comments |
|----------|--|-----------------|-----------------------|---------------------|---|----------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| A | Offences punishable with death and life imprisonment | 20 | | | | |
| B | Offences punishable with RI of 10 years or more | 15 | | | | |
| C | Offences punishable with RI of 5 to 10 years | 10 | | | | |
| D | Offences punishable with RI of less than 5 years | 5 | | | | |
| | Total | | | | | |

30. This assessment may be monthly or/and annual

both.

31. I hope and expect that the legislature/executive may discuss and consider the issue and come out with a solution, for betterment of the society as after all, it is pious duty of all of us and actually we all are responsible for it i.e. the welfare of the society for which we are working for and being paid for. With this optimistic note, I conclude this order expecting something better to come out in near future.

32. With the aforesaid, all the petitions stand **disposed off.**

(Virender Singh)
Judge

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