

**HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE****BEFORE HON. SHRI JUSTICE ALOK VERMA,J****Cr.R. No.1077/2015****Aslam****Vs.****State of Madhya Pradesh**

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Shri Sanjay Sharma, learned counsel for the applicant.

Shri Romesh Dave, learned counsel for respondent/State.

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**ORDER****(Passed on 08/10/2015)**

This Criminal Revision under section 397 r/w section 401 of Cr.P.C. is filed against the order passed by the learned Special Judge, Indore under NDPS Act in Special Case No.12/2011 dated 07.08.2015 whereby the learned Special Judge rejected the application filed by the present applicant under section 293(2) of Cr.P.C.

2. The facts giving rise to this criminal revision are that the charge-sheet was filed by the Police Station- Aerodrome, District Indore in Crime No.218/2011 under section 8/21 and section 29 of NDPS Act against the present applicant as well as another accused Dashrath Patidar S/o Devilal Patidar. After

framing of charges the learned Special Judge proceeded with the trial. The statement of prosecution witnesses were recorded and the prosecution chose not to examine the Chemical Analyst- Dinesh Kumar Sharma whose name was included in the list of witness in the the charge-sheet and closed the case. Thereafter, before recording accused statement under section 313 of Cr.P.C. an application under section 293(2) of Cr.P.C. was filed for calling the chemical analyst as prosecution witness on the ground that the report of Forensic Science Laboratory did not disclose the details in respect of the quantity of sample used the remaining quantity of the sample, how much quantity is preserved and where the sample was kept when it was received in the laboratory.

3. The learned Public Prosecutor filed the application on the ground that report of the chemical analyst is admissible in evidence without recording the statement of the chemical analyst and, therefore, he did not want to examine the chemical analyst and prayed that the application be dismissed. The learned Special Judge opined that if the prosecution do not want to examine a particular witness then the prosecution cannot be compelled to do that and following the principle laid down in the case of **Mohanlal vs. State of M.P.; 2003(1) MPLJ 227** and

**Rajesh vs. State; (2008) 4 SCC 493**, the learned Special Judge dismissed the application.

4. Learned counsel for the State while supporting the impugned order prays that this revision be dismissed.

5. Learned counsel for the applicant/revisionist placed reliance on judgment of co-ordinate Bench of this Court in case of **Mohanlal (supra)** in which in para 7 the co-ordinate Bench of this Court observed that if the appellant wanted to examine Chemical Examiner, he could have filed appropriate application to this effect and Court has power under section 293(2) Criminal Procedure Code to call any such expert as to the subject matter of his report. It is not mandatory for the prosecution to examine Chemical Examiner or Assistant Chemical Examiner. The learned counsel also placed reliance on order passed by the co-ordinate Bench of this Court in case of **Ramchandra Joshi vs. State of M.P.** dated 21.12.2000 passed in M.Cr.C. No.5116/2000 in which the co-ordinate Bench of this Court held that the accused is entitled to challenge the veracity of the report of the FSL and is entitled to show that the analysis done which led to the conclusions drawn in the report are incorrect and erroneous. In that case the literature used by the chemical analyst for analyzing the sample was not given to the defence

counsel and it was informed to the Court that the Forensic Science Laboratory reports were given a manual by the department and they follow the instructions given in the manual. This manual being internal documents of the department cannot be given to the accused. However, the co-ordinate Bench of this Court observed that the accused entitled to know the method and literature used while analyzing the sample sent to the laboratory for analysis. In this case the co-ordinate Bench also observed that the accused cannot be permitted to make out a hobble goblin of such technicalities for purpose of delaying the trial and for enforcing the advantage to him at the cost of the prosecution and public justice.

6. Reverting back to the present case, the application was filed on the ground that the various details like quantity of sample, used quantity that remained after analysis, quantity that was preserved and place of keeping the sample while it was awaiting chemical analysis are not disclosed by the report. Taking the principle laid down in the case of **Ramchandra Joshi (supra)** and **Mohanlal (supra)**, it is apparent that the principle is that looking to the stringent provision of NDPS Act the defence has a right to cross-examine the chemical analyst such right cannot be denied to the accused facing trial under the

NDPS Act, and in this view of the matter, in considered opinion of this Court, the learned Special Judge erred while dismissing the application under section 293(2) of Cr.P.C. filed by the accused. Accordingly, this revision is deserve to be allowed and allowed accordingly.

7. It is directed that the Chemical Analyst or any appropriate person, who is aware of the facts of the case, may be called to be examined as the prosecution witnesses and an opportunity should also be granted to the applicant to cross examine the chemical analyst.

8. With this observation and direction, this criminal revision stands disposed of.

**( ALOK VERMA )**  
**JUDGE**