

**HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE**

**BEFORE HON. SHRI JUSTICE ALOK VERMA,J**

**Cr.R. No.115/2015**

**Madan**

**Vs.**

**State of M.P.**

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Shri Vikas Jain, learned counsel for the applicant.

Ms. Mini Ravindran, learned counsel for the respondent/State.

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**ORDER**

**(Passed on 23/11/2015)**

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 under NDPS Act in Special Sessions Trial No.27/2012 dated 17.06.2014 whereby the learned Special Judge framed charges against the present applicant Madan S/o Devram Patidar under section 8/15 r/w section 29 NDPS Act.

2. According to the prosecution story, on 03.06.2012 a source information was received by Police Station Y.D. Nagar, District Mandsaur that in multi excel vehicle bearing registration No.RT09-G-4154 contraband poppy straw was being transported by the accused persons. Acting on this source information, the

vehicle was intercepted and it was found that the vehicle was being driven by co-accused Samundar Singh S/o Chutraram Vishnoi. Other persons travelling in the vehicle was Bharat S/o Sohanram Vishnoi. A search was made and during the search 176 bags of contraband poppy straw was seized. Total weight of contraband poppy straw was 53 quintals and 98 kilograms. During investigation, they gave their disclosure memo in which it was stated that one Shankar @ Samrath loaded the contraband poppy straw in the vehicle. The said Shankar @ Samrath was also arrested and in his disclosure memo, it was stated that the present applicant was sitting in the Pipliya Jungle with the contraband poppy straw and he along with Piyush Patidar and Gudwant loaded the poppy straw in the vehicle. On this disclosure the present applicant was arrested. No seizure was made from his possession.

3. After investigation, the charge-sheet was filed and charges were framed by the learned Special Judge by the impugned order.

4. Aggrieved by this order, this revision is filed on the ground that information given by co-accused to the Police, hit by the provision of section 25 of Evidence Act. Apart from the information given by the co-accused, no other legal evidence is available against him.

5. Learned counsel for the applicant places reliance on order of

this Court in Criminal Revision No.245/2015 dated 03.09.2015 in which reliance was placed on order passed by the co-ordinate Bench of this Court in case of **Sharif Khan vs. State of M.P.;** **1997(II) M.P. Weekly Notes page 254 N 173.**

6. The co-ordinate Bench of this Court observed in case of **Sharif Khan (supra)** as under:-

“As against the applicant No.2 Ayubkhan, the only circumstance is the statement made by co-accused Albert to the police to the effect that the former had brought the car alongwith the contraband to him and that under the plan he was to meet him again at Pune. This case is investigated and the charge-sheet is filed by the police not by the Narcotic Department. The alleged confessional statement of the co-accused Albert did not, therefore, fall within the purview of section 67 of the N.D.P.S. Act. The statement did not constitute evidence admissible in law and that being so it cannot be considered even at the stage of framing of charge. It is true that the judge at that initial stage of the trial is not to meticulously judge the evidence proposed to be adduced by the prosecution but at the same time the judge cannot act merely as a post office for a mouthpiece of prosecution, but has to consider the broad probabilities of the case, the total effect of evidence and the document produced, any basic infirmities and find out whether a prima facie case against the accused has been made out. Needless to add, any such evidence and the documents relied upon by the prosecution should be admissible under the law of evidence. No inadmissible or irrelevant evidence or document can be taken into consideration for the purpose of framing charge. In the instant case there being no admissible evidence much less sufficient one against the applicant-accused Ayubkhan, he is entitled to be discharged under section 227 Cr.P.C.”

7. However, in this case, after going through the impugned

order it appears that the aforesaid case law was not brought to the notice of the learned Additional Sessions Judge and also this point was not raised before him that except the fact stated in the disclosure memo by the co-accused under section 27 of the Evidence Act, no other evidence is available against the present applicant and in consequence, it appears necessary to remand the case back to the trial Judge with a direction to consider the matter in light of the aforementioned case law afresh. Accordingly, this revision is allowed. The impugned order so far as it relates to the present applicant is set aside. The matter is remanded back to the trial Judge with a direction to consider the matter in respect of the present applicant in the light of case law cited in this order as well as other relevant case law and provisions of law afresh.

8. With aforesaid direction, this revision stands disposed of.

**( ALOK VERMA )  
JUDGE**