

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

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

**Cr.R. No.245/2015**

**Banshilal**

**Vs.**

**State of Madhya Pradesh**

---

Shri Sanjay Sharma, learned counsel for the applicant.

Shri Yogesh Mittal, learned P.L. for respondent/State.

---

**ORDER**

**(Passed on 03/09/2015)**

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.06/2014 dated 03.01.2015 whereby the learned Special Judge framed charges against the present applicant Banshilal S/o Mangilal Porwal under section 8/29 NDPS Act.

2. According to the prosecution story, on 13.06.2014 the station in-charge of Police Station Bilpank, District Ratlam received a source information at about 8.00 pm in the night that the truck bearing registration No.MP09-GF-4922 which was being driven by accused Anand Charan who is a resident of Maharashtra,

contraband substance was being transported from Ratlam. Acting on the source information, the station in-charge of the Bilpank police station formed a police party and the vehicle was intercepted. During the search, it was found that 29 quintal and 61 kgs. of poppy straw was being transported in 72 gunny bags. After completion of formalities, the driver of the vehicle Anand Charan was arrested. During investigation, said Anand Charan gave an information to the police under section 27 of Evidence Act that the contraband was loaded in his truck by co-accused persons Rama, Lala, Lakkha @ Santoor from the mobile shop of the present applicant who is referred to as Porwal Seth. Subsequently, the present applicant was also implicated in the matter as accused and by the impugned order, the learned Special Judge framed charges as aforesaid section against him.

3. Aggrieved by the order, this revision is filed on the ground that the information given by the co-accused Anand Charan to the police hit by the provisions of section 25 of Evidence Act. Apart from the information given by the co-accused no other legal evidence available against him. Learned counsel for the applicant also submits that there are many persons in the locality who write their surname as Porwal and this present applicant cannot be said to be the same person who was involved in the crime. On these two main grounds, inter-alia, he submits that the order framing

charges against the present applicant is bad in law and liable to be set aside. Accordingly, he prays that the impugned order be set aside and present applicant be discharged.

4. Learned counsel for the State on the other hand submits that the co-accused showed the shop from where the contraband was loaded. The present applicant is the owner of the shop and, therefore, he can be implicated in the present case.

5. Learned counsel for the applicant places reliance on order of this Court in Criminal Revision No.650/2002 dated 25.07.2003 wherein the co-ordinate Bench of this Court held that an intimation given to the police under section 27 of Evidence Act is hit by the provisions of section 25 of Evidence Act and, therefore, any information which do not lead to discovery of an article which is associated with the offence and is in exclusive knowledge of the person giving such information. No other information given under section 27 to the police can be admissible under this Act. The fact of that case is also similar to the present case. He placed reliance on another order of this Court in case of **Sharif Khan vs. State of M.P.; 1997(II) M.P. Weekly Notes page 254 N 173**. In this case, however, two accused challenged the order of framing charges against them. One was the owner of the vehicle which was seized during the search and in which the contraband was being transported. The another person Ayub Khan was the person who

brought the vehicle from Pune to Sendhwa and according to the plan the contraband was to be transported again to Pune in the car which belonged to co-accused Sharif Khan.

6. The co-ordinate Bench of this Court observed that 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. Applying the principle laid down in the above two orders of co-ordinate Benches of this Court in the the present case also accept the memorandum given by the co-accused Anand Charan

under section 27 of Evidence Act, no other evidence is available. No recovery is made from the shop of the present applicant and, therefore, in considered opinion of this Court, prima-facie, no case is made out against the present applicant. Accordingly, this revision thus succeeds the order framing charge under section 8 r/w section 29 of NDPS Act against the applicant is set aside. He is discharged from charge under section 8 r/w section 29 of NDPS Act.

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

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