

M.Cr.C. No. 12652 OF 2016

10.01.2017

Shri Arjun Pathak, learned counsel for the petitioner.

Shri R.S.Parmar, learned Public Prosecutor for the State.

This is a petition under Section 482 of the Code of Criminal Procedure (for short 'The Code') praying for quashment of First Information Report registered at Police Station – Hatod, Distt. - Indore bearing Crime No.148/15 for an offence under Section 34(2) of the M.P.Excise Act, 1915. A charge-sheet in the matter has been filed against the petitioner and two other persons namely, Ishwar and Tungnath.

The prosecution case, briefly stated, is that Ishwar and Tungnath were apprehended by police on 11/06/16 and 63 bulk litres of country made liquor was recovered from their possession. It is further the case of the prosecution that on interrogation, Ishwar and Tumnath made a disclosure under Section 27 of the Indian Evidence Act to ASI N.S.Yadav in presence of Panch witnesses Monu and Jitendra that they have procured/purchased the illicit liquor from the present petitioner and that they can lead the investigating agency to the shop of the petitioner. Thereafter, these two persons had taken Shri N.S.Yadav to the shop of the petitioner. Resultantly, he has been charge-sheeted along with Ishwar and Tungnath.

The contention made by learned counsel for the

petitioner is that solitary evidence of disclosure under Section under Section 27 of the Evidence Act cannot be a basis to prosecute a co-accused. It is further submitted that unless a fact is discovered pursuant to a disclosure made under Section 27 of the Evidence Act, such disclosure statement has no evidential value. It is also contended that evidence on the basis of disclosure made under Section 27 of the Evidence Act can be used only against the maker of the statement and none else. Reliance in this regard is placed on a number of authorities including those referred to in the petition itself.

In *Prakash Singh Vs. State of M.P., 1994 (II) MPWN 72*, a case under Section 302, 201 and 109 of IPC relating to the murder of a child, the co-accused in his disclosure statement under Section 27 of the Evidence Act had revealed that he had disposed of the dead body of the child with the help of the applicant by burring the same. Though, a skeleton was recovered on the basis of this statement from the place pointed out by making of the statement, however, this Court held that the statement implicating the co-accused (applicant in that case) was inadmissible because that part of the statement had no correlation with the discovery of fact. The relevant observations are as under :-

“The statement admissible under Section 27 of the Evidence Act are the statements which could be used as evidence against the maker and not against any other person. Under Section 27 only portions of information given by an

accused which are admissible are those which relate distinctly to the facts discovered thereby. Consequently, statements by an accused which do not relate to aforesaid facts but involved other accused are inadmissible under Section 27 against the later.”

In *Bhoorelal Vs.State of M.P., 2008(4) MPHT 163 (DB)*, again a case under Section 302 of IPC, the Division Bench of this Court referring to Section 30 of the Evidence Act held that when more persons than one are being tried jointly for the same offence, and a confession made by any one such person affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person, who makes such confession. Referring to *Kashmira Singh Vs. State of M.P., 1952 Cri.L.J. 839*, it was held that as regards co-accused, the evidence based on confession made under Section 27 of the Evidence Act can be used only in aid of other evidence which in the opinion of this Court is safe for conviction.

In *Sushil Kumar Sharma Vs. State of M.P., 1995 JLLJ 444*, dealing with the issue it was held that the only piece of evidence taken into consideration by the Magistrate for taking cognizance against the petitioner was mention of the petitioner's name in the memorandum of co-accused recorded under Section 27 of the Evidence Act; being inadmissible in evidences, the same cannot be proved against the petitioner at the trial.

In *Ashok Nanda & Anr. vs. State of M.P. & Anr.*,

I.L.R. (2011) M.P. 300, a co-ordinate Bench of this Court has observed as under:

"12. As far as the evidence of memoranda given by the co-accused persons under Section 27 of the Evidence Act is concerned, their confessional statements to police cannot be accepted as legal evidence against petitioners in the absence of any other incriminating piece of evidence. Except the above circumstances, absolutely no other evidence has been collected and produced by the prosecution prima facie to indicate that petitioners hatched conspiracy with other accused persons to commit murder of complainant Rajendra Agal."

Again in *Raghu Thakur vs. State of M.P., 2012(4) M.P.H.T. 116*, this Court explaining the applicability ambit and scope of Section 27 of the Evidence Act observed as under:

"6. A plain reading of Section 27 of Indian Evidence Act indicates that the statement under Section 27 of Indian Evidence Act is an exception to the ban imposed upon the Courts to utilize the confessional statement made under Sections 25 & 27 of Indian Evidence Act, so as to protect a person making disclosure from being falsely implicated by the police in whose custody that person remains at the time of making disclosure. The provision of Section 27 of Indian Evidence Act further indicates that the facts disclosed under Section 27 of Indian Evidence Act can be used only against the person making disclosure and not against any other person. "

From the aforesaid pronouncements, it can well be gathered that confessional statement made by co-accused under Section 27 of the Evidence Act which does not lead to

discovery of a fact is inadmissible in evidence and, therefore, the fact that such statement was made before Panch witnesses will not make any difference in the situation. The law is settled that conviction cannot be recorded on the basis of inadmissible evidence. Section 27 of the Evidence Act permits confessional statement admissible in evidence only to the extent which relates distinctly to the discovery of the fact.

In the instant case, the co-accused has simply stated that he purchased the liquor from the shop of the petitioner, but that does not amount to discovery of new fact. There is no other incriminating material against the petitioner.

Learned counsel for the State has not disputed that there is no evidence against the present petitioner except the disclosure said to have been made by the co-accused- Ishwar and Tungnath that they procured the country made liquor from the shop of Badri Fauzi. It is not a matter of dispute that petitioner Badri Singh (Badri Fauzi) at the relevant point of time was licensee of the country made liquor, however, the contention is that there is no evidence except the aforesaid disclosure that they procured the liquor seized from them from the petitioner.

As regards question of quashment of criminal proceedings in exercise of powers conferred under Section 482 of the Code of Criminal Procedure, the apex Court in *Zandu Pharmaceutical Works Ltd. and others vs. Mohd. Sharaful Haque and another, (2005) 1 SCC 122*, referring to its earlier decision on the issue including in the case of *State*

of Haryana vs. Bhajan Lal, 1992 Supp (1) SCC 335, has held as under:

"9. In *R.P. Kapur vs. State of Punjab*, this Court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings.

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but '*there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge*'." (Emphasis supplied)

Considering the aforesaid, in absence of legal evidence to connect the petitioner with the alleged offence, it is a fit case for quashment of criminal proceedings because otherwise it will result in abuse of the process of the Court and wastage of valuable time of the Court.

Resultantly, this petition is hereby allowed and the proceedings qua the petitioner in Criminal Case No.196/15 pending before the Court of Judicial Magistrate, First Class, Hatod, Distt. Indore arising from Crime No. 148/15, P.S. Hatod are hereby quashed.

CC as per rules.

(Ved Prakash Sharma)
Judge