

**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE ANIL VERMA**

**ON THE 30<sup>th</sup> OF JANUARY, 2024**

**MISC. CRIMINAL CASE No. 3436 of 2024**

**BETWEEN:-**

**SONU RAGHUVANSHI S/O SHRI NARENDRA SINGH  
RAGHUVANSHI, AGED ABOUT 31 YEARS, OCCUPATION:  
LABOR, R/O: P-57, KALANDI CITY, INDORE, BANGANGA  
INDORE (MADHYA PRADESH)**

**.....APPLICANT**

***(SHRI PALASH CHOUDHARY - ADVOCATE)***

**AND**

**THE STATE OF MADHYA PRADESH STATION HOUSE  
OFFICER THROUGH POLICE STATION BANGANGA,  
DISTT. INDORE (MADHYA PRADESH)**

**.....RESPONDENT**

***(SHRI K.K.TIWARI - GOVERNMENT ADVOCATE.)***

.....  
***WHETHER APPROVED FOR REPORTING : YES.***  
.....

*This application coming on for admission this day, the court passed the following:*

**ORDER**

This petition under Section 482 of the Code of Criminal Procedure (in short 'Cr.P.C.') is preferred by applicant for quashment of charge-sheet arising out of FIR bearing crime No.910/2021 for the offence under Section 34(2) of M.P. Excise Act, 1915 registered at Police Station Banganga, Indore and all other consequential proceedings arising therefrom.

2. Brief facts of the case are that on 18.07.2021 police got a discrete information with regard to a vehicle, which was carrying alleged liquor. Acting

upon the said information, police party reached on the spot and intercepted the vehicle bearing registration No.MP-09-GG-6674 at Super Corridor and during the search, recovered 468 bulk litres illicit liquor from the possession of co-accused Narendra Singh and Indrajeet Singh. On the basis of memorandum given by co-accused, present applicant has been implicated as a accused in this case.

3. Learned counsel for the applicant contended that he is innocent and has been falsely implicated in this matter. His name neither mentioned in the secret information nor in the FIR. During the investigation, not a single piece of evidence has been produced by the prosecution, which shows the guilt or involvement of the applicant in the instant matter. Neither any liquor was recovered from the possession of present applicant and nor any vehicle or property belonged to the present applicant. Applicant has been implicated only on the basis of memorandum under Section 27 of Evidence Act, but in absence of any recovery, it is not to be considered as admissible piece of evidence. No *prima facie* case is made out against the present applicant. Under these circumstances, learned counsel for the applicant prays that impugned charge-sheet, FIR bearing Crime No.910/2021 and all other consequential proceedings arising therefrom be quashed.

4. In support of his contention, learned counsel for the applicant placed reliance upon the judgment of Hon'ble Privy Council in a Landmark Judgment of **Pulukuri Kottayya Vs. Emperor AIR 1947 P.C. 67** and co-ordinate bench of this Court in the case **Narendra Kumar Vs. The State of Madhya Pradesh** order dated **15.03.2019** passed in **CRR No.341/2019**, **Bhanwar Singh Vs. The State of Madhya Pradesh** order dated **20.01.2023** in **MCRC No.17232/2022**, **Rahul @ Abhishek Rathore Vs. The State of M.P.** order

dated **05.09.2022** in **MCRC No.35272/2021** and **Deepak Patil Vs. The State of M.P.** order dated **25.01.2024** passed in **MCRC No.25743/2023**.

5. On the other hand, learned counsel for the respondent / State opposes the prayer and prays for its rejection by submitting that there is *prima facie* evidence available on record against the applicant and no case is made out for any interference.

6. Heard learned counsel for both the parties at length and perused the record.

7. From perusal of the material available on record, it reveals that the applicant is neither named in the secret information nor in the FIR. No contraband has been recovered from his possession. Neither he is the owner of the said vehicle nor he was present in the vehicle at the time of alleged incident. He was not apprehended from the spot. Co-accused Narendra Singh in his discovery statement under Section 27 of Evidence Act mentioned that present applicant Sonu has telephoned him, but no mobile phone has been recovered from the possession of co-accused Narendra Singh or from the possession of applicant. Even no call details have been provided by the prosecution. No liquor was recovered from the possession of present applicant. Witness Constable Heeramani Mishra, Constable Rajeev Yadav, Constable Malaram Singh, Head Constable Shailendra Singh Meena, Constable Raju Dixit, Constable Trilochan Bhuwan did not disclose the name of the present applicant regarding the aforementioned offence. Applicant was implicated in the instant case only on the basis of disclosure statement given by the co-accused Narendra Singh, in which he stated that the liquor belonged to the applicant Sonu. The memorandum of the co-accused is nothing except a confessional

statement given before the Police Officials, which is not an admissible under Section 27 of Indian Evidence Act. Apart from this, prosecution has not produced any evidence to show that the applicant was implicated in this offence.

8. Section 27 of 'The Act', in terms, provides that only that information which distinctly relates to the discovery of fact is admissible in evidence. In the landmark decision of Privy Council in the case of **Pulukuri Kottaya vs. Emperor, AIR 1947 P.C. 67**, it has been held that unless there is discovery of fact, statement made u/S. 27 of 'The Act' has no evidentiary value. It has further been held that in a case, it can seldom happen that information leading to discovery of a fact can be made, the foundation of the prosecution case because it is one link in the chain of proof and the other links must be forged in the manner allowed by law.

9. In the case of **Hari Charan Kurmi and Jogia Hajam Vs. State of Bihar, (1964) 6 SCR 623** it was observed by the Apex court :-

“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 another 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 Chuckerbutty, (1911) I.L.R. 38 Cal. 559 at p. 588. a confession can only be used to "lend assurance to other evidence against a co-accused". In In re. Peryaswami Noopan,(2) 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 an additional reason for believing that evidence." In *Bhuboni Sahu v. King*, (1913) I.L.R. 54 Mad. 75 at p. 77. 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 given 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 considered 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 it 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 a 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 S.C.R. 526 where the decision of the Privy Council in *Bhuboni Sahu's*(2) case has been cited with approval.

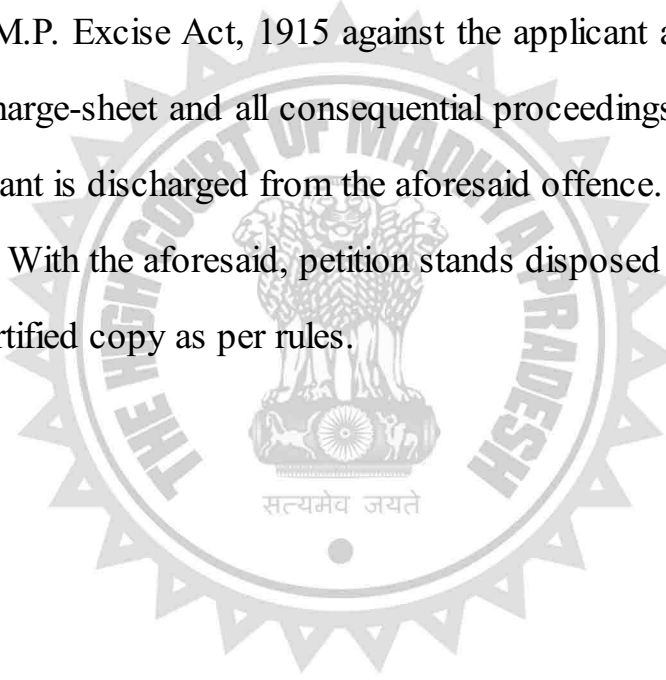
10. Considering the fact that in the instant case the only material to

implicate the present applicant is the disclosure statement made by the co-accused Narendra Singh, which is not a legally admissible evidence in respect of overact of any other accused persons, therefore, this Court is of the considered opinion that no purpose would be served to try the applicant for the offence framed against him as the same would only result is an exercise in futility as the prosecution has miserably failed to collect any evidence against the applicant except the memo prepared under Section 27 of the Evidence Act.

11. Resultantly, the petition preferred under Section 482 of Cr.P.C. stands allowed and the FIR registered at Crime No.910/2021 under Section 34(2) of M.P. Excise Act, 1915 against the applicant at P.S. Banganga, Indore as also charge-sheet and all consequential proceedings are hereby quashed and the applicant is discharged from the aforesaid offence.

12. With the aforesaid, petition stands disposed off.

Certified copy as per rules.



**(ANIL VERMA)  
JUDGE**