

1
**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE PRAKASH CHANDRA GUPTA**

ON THE 22nd OF FEBRUARY, 2024

MISC. CRIMINAL CASE No. 7669 of 2024

BETWEEN:-

**BHERULAL S/O RAMLAL PATIDAR, AGED ABOUT 35
YEARS, OCCUPATION: AGRICULTURIST VILLAGE
ROJANA, TEHSIL JAORA DIST. RATLAM (MADHYA
PRADESH)**

.....PETITIONER

(SHRI ABHAY K. SARASWAT, ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH STATION HOUSE
OFFICER THROUGH P.S. ALOT DIST. RATLAM
(MADHYA PRADESH)**

.....RESPONDENT

(SHRI HEMANT SHARMA, GOVERNMENT ADVOCATE)

*This petition coming on for admission this day, the Court passed the
following:*

ORDER

Heard.

The petitioner has filed this petition under Section 482 of the Code of Criminal Procedure, for quashment of FIR No.281/2023 registered against the petitioner at Police Station Alot, District Ratlam for commission of offence u/S 8/18 and 29 of the NDPS Act.

2. Prosecution story, in brief is that on 11.05.2023, co-accused Vasudev was found having and transporting 07 kgs. of Opium by a motorcycle bearing registration no. MP-43-DR-1346, without having any licence or authority. The

police had seized the aforementioned contraband and motorcycle from the possession of co-accused. Accordingly, an FIR was lodged against him. During investigation, the petitioner was implicated in the case on the basis of memorandum statement given by co-accused Vasudev.

3. Learned counsel for the applicant/accused submits that the applicant has not committed the offence and he has falsely been implicated in the case solely on the basis of memorandum statement recorded u/S 27 of the Evidence Act of co-accused Vasudev. It has further been submitted that no evidence is available against him on record. It is also submitted that the petitioner was not present at the time of offence. It is hence submitted that since there is no material whatsoever on record against the petitioner besides the memorandum of co-accused recorded u/S 27 of the Evidence Act, which is not admissible in evidence and no recovery pursuant to the same has been made, the proceedings against the petitioner deserves to be quashed. Learned counsel has placed reliance on the case passed by Coordinate Bench of this Court in **Ramniwas V The State of Madhya Pradesh [MCRC No.51243/2023]**; **Shafi Kha V The State of Madhya Pradesh [MCRC No.52563/2023]** and **Kamal Singh Sondhiya V The State of Madhya Pradesh [MCRC No.19934/2023]**.

4. Per contra, learned counsel for the respondent/State has vehemently opposed the prayer of the petitioner and prayed for dismissal of this petition.

5. I have heard learned counsel for the parties and perused the case diary.

6. In the case of **Ramniwas (Supra)**, the Coordinate Bench of this Court has held as under:-

"7. Recently, this Court in the case of Dilip Kumar Vs. State of M.P., M.Cr.C. No.2748/2022 decided on 12.04.2022 has held in paragraph No.15 to 18 as under:-

“15. A close scrutiny of the charge sheet reveals that apart from the aforesaid memo and the bank statement of Dangi brothers, there is no other material available on record to suggest that the present petitioner Deeep had also facilitated the sale of fake fertilizer which was prepared by Suresh Dangi and other accused persons. There is also no evidence available on record to suggest that the present petitioner Deeep obtained from Suresh Dangi any amount over and above the requisite amount of the sale of gypsum granules to him, which can be said to be connected with the sale of fake fertilizer.

16. Regarding admissibility of the confessional statement given by a co-accused and of the petitioner, a reference may be had to the decision rendered by the Supreme Court, authored by Vivian Bose, J. in the case of Kashmira Singh v. State of Madhya Pradesh (supra), the relevant paras 8, 9, 10 and 11 of the same read, as under:

“8. Gurubachan"s confession has played an important part in implicating the appellant, and the question at once arises, how far and in what way the confession of an accused person can be used against a co-accused? It is evident that it is not evidence in the ordinary sense of the term because, as the Privy Council say in Bhuboni Sahu v. King. "It does not indeed come within the definition of „evidence" contained in Section 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.”

Their Lordships also point out that it is

“obviously evidence of a very weak type ... It is a much weaker type of evidence than the evidence of an approver, which is not subject to any of those infirmities.” They stated in addition that such a confession cannot be made the foundation of a conviction and can only be used in “support of other evidence”. In view of these remarks it would be pointless to cover the same ground, but we feel it is necessary to expound this further as misapprehension still exists. The question is, in what way can it be used in support of other evidence? Can it be used to fill in missing gaps? Can it be used to corroborate an accomplice or, as

in the present case, a witness who, though not an accomplice, is placed in the same category regarding credibility because the Judge refuses to believe him except insofar as he is corroborated?

9. *In our opinion, the matter was put succinctly by Sir Lawrence Jenkins in Emperor v. Lalit Mohan Chucker-butty where he said that such a confession can only be used to “lend assurance to other evidence against a co-accused” or, to put it in another way, as Reilly J. did in In re Periyaswami Moopan “the provision goes no 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 Section 30 may be thrown into the scale as an additional reason for believing that evidence”.*

10. *Translating these observations into concrete terms they come to this. The proper way to approach a case of this kind is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the Judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the Judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept.*

11. *Then, as regards its use in the corroboration of accomplices and approvers. A co-accused who confesses is naturally an accomplice and the danger of using the testimony of one accomplice to corroborate another has repeatedly been pointed out. The danger is in no way lessened when the “evidence” is not on oath and cannot be tested by cross-examination. Prudence will dictate the same rule of caution in the case of a witness who though not an accomplice is regarded by the Judge as having no greater probative value. But all these are only rules of prudence. So far as the law is concerned, a conviction can be based on the uncorroborated testimony of an accomplice provided the*

Judge has the rule of caution, which experience dictates, in mind and gives reasons why he thinks it would be safe in a given case to disregard it. Two of us had occasion to examine this recently in Rameshwar v. State of Rajasthan. It follows that the testimony of an accomplice can in law be used to corroborate another though it ought not to be so used save in exceptional circumstances and for reasons disclosed. As the Privy Council observe in Bhuboni Sahu v. King:

“The tendency to include the innocent with the guilty is peculiarly prevalent in India, as judges have noted on innumerable occasions, and it is very difficult for the court to guard against the danger ... The only real safeguard against the risk of condemning the innocent with the guilty lies in insisting on independent evidence which in some measure implicates such accused.” (emphasis supplied)

17. Testing the facts of the case at hand on the anvil of the aforesaid dictum of the Supreme Court, this Court finds that the only material evidence against the present petitioner is the memo prepared under Section 27 of the Evidence Act by the co-accused and certain bank transactions of the co-accused in which he has sent certain amount to the present petitioner through NEFT. In such facts and circumstances of the case, if the petitioner who is in the business of manufacturing Gypsum Granules and Allied products, and if in the legitimate business transaction the aforesaid granules were purchased by the other accused persons and in turn they use it in the manufacture of fake fertilizer, such act, in the considered opinion of this Court, would not amount to an offence for the present petitioner and he cannot be held guilty for the aforesaid act of the co-accused persons in the absence of any other material available on record to connect the petitioner with the offence, as has already been observed above.

18. Resultantly, the petition stands allowed and the charge sheet, so far as it relates to the present petitioner is concerned, as also the further proceedings initiated in the trial Court against him stands quashed.”

7. In the case of **Shafi Kha (Supra)**, the Coordinate Bench of this Court

has held as under:-

"6. Heard. Having considered the rival submissions and on perusal of the case-diary, it is found that the material available against the present petitioner is in the form of disclosure memo prepared under Section 27 of the Evidence Act only, and there is no other material available on record which may suggest that the petitioner is also involved in the present case. It is a trite law that a mere memo recorded under Section 27 of the Evidence Act is not a piece of evidence and it is admissible only to the extent of such recovery or discovery made through the said memo and nothing more."

8. In the case of **Kamal Singh Sondhiya (Supra)**, the Coordinate Bench of this Court has held as under:-

"7. The issue as regards evidentiary value of memo of Section 27 of India Evidence Act has already been considered in detail and decided by this Court by order dated 18/02/2020 passed in Cr.R. No.511/2019 (Jaswant Singh vs. State of M.P.) and other connected revisions, in which it has been held as under :-

"24. Thus, it is explicit that the information given or disclosure made by the accused, which does not lead to any recovery is not admissible in evidence against other co-accused persons and on the basis of such inadmissible evidence the prosecution is nothing but abuse of process of law, which should not be and cannot be allowed to perpetuate." सत्यमेव जयते

9. Having considered the rival submissions, it is apparent that implication of the petitioner is made merely on the basis of memorandum statement of co-accused Vasudev u/S 27 of the Evidence Act. There is no material evidence available on record which shows that the petitioner has been the part of offence. Further, Section 27 of the Evidence Act is crystal clear on this note that the evidence under the aforementioned provision is admissible only to the extent of recovery or discovery made through the said memorandum and nothing more, hence, implication merely on the basis of memorandum statement u/S 27 of the Evidence Act, without any evidence, is not lawful.

10. In the available facts and circumstances of the case and in the interest of justice, applying the principle of evidence u/S 27 of the Evidence Act, there is no admissible evidence against the petitioner, hence, this petition deserves to be and is hereby **allowed**. The FIR registered vide Crime No.281/2023 at Police Station Alot, District Ratlam and the charge-sheet against the petitioner Bherulal is hereby quashed. The bail bonds of the petitioner stands discharged.

11. Accordingly, the present petition stands allowed and disposed of.
Certified copy, as per Rules.

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(PRAKASH CHANDRA GUPTA)
JUDGE