

WP-2505-2016, WP-2455-2016 & WP-5815-2016**13.12.2016.**

Shri Ahadulla Usmani, learned counsel for petitioners in WP-2505-2016 and WP-2455-2016.

None for the petitioner in WP-5815-2016.

Shri Vikram Johri, Panel Lawyer for the respondents-State of M.P. and its functionaries.

WP-2505-2016

Petitioner is a co-accused for an offence punishable under Sections 147, 148, 149, 120B, 302 and 307 read with Section 34 of the Indian Penal Code vide Crime No.3/16 registered at Police Station Belbagh District Jabalpur in respect of death of one Raju who allegedly succumbed to the injuries sustained in a quarrel which took place on 1.1.2016. Initially, a case was registered against Looli and Sanju Sonkar for an offence under Sections 294 and 307 read with Section 34 IPC. Later on, with the progress of investigation and with the death of injured Raju, the offence under Sections 302, 147, 148, 149, 120B read with Section 34 IPC were added and some more persons including the petitioner were arraigned as co-accused.

Main contention on behalf of petitioner is that being not named as the assailant in the FIR lodged by the victim, the petitioner has been made co-accused. Accordingly, petitioner seeks quashment of Crime No.3/16 registered against him at Police Station Belbagh District Jabalpur. Petitioner also seeks a mandamus to respondent No.6 to investigate the crime truly, honestly, unbiasedly considering the dying declaration/FIR of the deceased during the course of investigation. A relief is also sought to the extent that the Police Authorities be restrained from taking any coercive steps against the petitioner. A writ of mandamus is also sought for protection of life of the petitioner and whole family members from false implication.

To bring home the submissions that the petitioner is inculcated on the basis of the statement of co-accused, reliance is placed on the contention made in paragraph (iv) of the counter filed by the State on the affidavit by one Azeem Khan, City Superintendent of Police, Omti, Jabalpur stating therein that “it is true that the petitioner was not initially named in the FIR registered on 1.1.2016. That, thereafter, Looli and

Sanju Sonkar were arrested by the police on 3.1.2016 and their memorandum under Section 27 was recorded. That, in the memorandum of report of Looli and Sanjay, Himanshu Kori, Mohit Sankar they have clearly stated the involvement of the petitioner with regard to the crime committed and in the light of the memorandum of the co-accused person as stated above, petitioner was made accused in the crime and the offence under Sections 147, 148, 149, 120B, 302 and 307 read with Section 34 IPC. That, from the kind perusal of the case diary and the investigation, it is clear that the petitioner was actively involved in the commission of the crime and has conspired with the other co-accused persons to commit the offence”.

Further placing reliance on the provision of Section 27 of the Indian Evidence Act, 1872, it is contended that the petitioner being falsely implicated because of the political rivalry, the offence registered against the petitioner deserves to be quashed.

Respondents in response to the notice issued, have filed their counter, stating therein that though initially not named, however, on further investigation and the statement made by co-accused, the petitioner

and other persons were added as accused. It is contended that merely because the petitioner has been made accused during investigation of crime, *ipso facto*, will not lead to an inference that they are falsely implicated. It is urged that as the investigation progressed with the gathering of evidence indicating commission of offence, the role played by the person as accomplice leads to registration of offence against such person as co-accused. It is urged, that the entire evidence on record when collectively taken into consideration *prima facie* indicates involvement of the petitioner with the commission of offence.

Section 27 of the Evidence Act, reliance whereon has been placed to bring home the submission that being made accused on the basis of memorandum statement is the weakest type of evidence as would hold the petitioner guilty, is of no assistance at a pre-trial stage. Section 27 which stipulates -

“27. How much of information received from accused may be proved. - Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates

distinctly to the fact thereby discovered, may be proved.”

- is in the nature of an exception to the preceding provisions, particularly Sections 25 and 26 of the Evidence Act, as held in **Antar Singh vs State of Rajasthan AIR 2004 SC 2865**, wherein their Lordships were pleased to hold :

14. The expression "provided that" together with the phrase "whether it amounts to a confession or not" show that the section is in the nature of an exception to the preceding provisions particularly Section 25 and 26. It is not necessary in this case to consider if this Section qualifies, to any extent, Section 24, also. It will be seen that the first condition necessary for bringing this Section into operation is the discovery of a fact, albeit a relevant fact, in consequence of the information received from a person accused of an offence. The second is that the discovery of such fact must be deposed to. The third is that at the time of the receipt of the information the accused must be in police custody. The last but the most important condition is that only "so much of the information" as relates distinctly to the fact thereby discovered is

admissible. The rest of the information has to be excluded. The word "distinctly" means "directly", "indubitably", "strictly", "unmistakably". The word has been advisedly used to limit and define the scope of the provable information. The phrase "distinctly" relates "to the fact thereby discovered" and is the linchpin of the provision. This phrase refers to that part of the information supplied by the accused which is the direct and immediate cause of the discovery. The reason behind this partial lifting of the ban against confessions and statements made to the police, is that if a fact is actually discovered in consequence of information given by the accused, it affords some guarantee of truth of that part, and that part only, of the information which was the clear, immediate and proximate cause of the discovery. No such guarantee or assurance attaches to the rest of the statement which may be indirectly or remotely related to the fact discovered. (See *Mohammed Inayuttillah vs The State of Maharashtra* (AIR 1976 SC 483).”

In **Selvi vs State of Karnataka 2010 AIR SCW 3011**, it is held that Section 27 of the Evidence Act permits the derivative use of custodial statements in

ordinary course of events to the extent that they can be proved by subsequent discovery of facts and there is no automatic presumption that custodial statements have been extracted through compulsion.

The contention that because the petitioner has been made accused on the basis of the statement by co-accused, therefore, deserves to be discharged is too early to be given any credence.

As regard to police protection, there is no material on record to suggest that the petitioner's life has been put to threat as would warrant any mandamus.

Regarding direction for fair investigation, no material has been commended at that the prosecuting agency has committed any default in proceeding with the trial.

In view whereof, since no relief can be granted to the petitioner, petition fails and is dismissed. No costs.

WP-2455-2016

For the reasons stated in WP-2505-2016, this petition is also dismissed.

WP-5815-2016

In view of the fact that the action has been taken

by the Police and the offence has been registered against the alleged perpetrators of crime, no further adjudication is warranted in this case.

The petitions are **disposed of** finally in above terms.

(SANJAY YADAV)
JUDGE

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