

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

BEFORE

HON'BLE SHRI JUSTICE PRANAY VERMA

ON THE 13th OF OCTOBER, 2023

MISC. CRIMINAL CASE No. 45785 of 2023

BETWEEN:-

**JOGIRAM S/O SHORARAM VISHNOI, AGED
ABOUT 48 YEARS, OCCUPATION:
AGRICULTURIST BANTIYO KI DHADI, VILLAGE
BANWARLAL, TEHSIL AND DISTT. JODHPUR
(RAJASTHAN)**

....PETITIONER

(BY SHRI PALASH CHOUDHARY- ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH STATION
HOUSE OFFICER THROUGH POLICE STATION
SUWASARA DISTRICT MANDSAUR (MADHYA
PRADESH)**

.....RESPONDENTS

(BY SHRI GAURAV SINGH CHOUHAND- DEPUTY GOVERNMENT ADVOCATE)

*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, 1973 (for short the Code) has been preferred by the petitioner/accused for quashing the FIR No.241/2021, dated 30.06.2021 registered at Police Station – Suwasara, District – Mandsaaur and the final

charge-sheet filed against the petitioner and the subsequent proceedings pursuant thereto which are in respect of offence punishable under Sections 8/15, 25, and 29 of the N.D.P.S. Act.

2. As per the prosecution, on 30.06.2021, on receipt of a secret information the co-accused Kherajram was apprehended while he was traveling from Gandhi Sagar to Garoth Shamgarh on Mandsaur highway and total 250 quintal of poppy straw was recovered from his possession which was being transported by him in a Truck bearing registration No.RJ-14-GC-9893 in 125 bags. Thereafter, his memorandum under Section 27 of the Evidence Act was recorded, in which he stated that the petitioner and other co-accused had approached him for the purpose of transportation of the contraband. On the basis of the said memorandum the petitioner has been implicated for the present offence and the charge-sheet has been filed against him before the Court concerned.

3. Learned counsel for the petitioner submits that the petitioner is innocent and has falsely been implicated in the case. He was neither present on the spot nor was any contraband recovered from his possession. The petitioner is not the owner of the vehicle. His implication is only on the basis of the disclosure statement of co-accused person recorded under Section 27 of the Indian Evidence Act in which he deposed that petitioner and other co-accused had approached him for the purpose of transportation of the contraband. However, no fact as such could be discovered on the basis of the aforesaid statement therefore there is no legally admissible evidence within the meaning of Section 27 of the Indian Evidence Act amounting to discovery of fact. Apart from this, there is no other evidence available on record to connect the petitioner

with the present crime. It is hence submitted that the FIR against the petitioner deserves to be quashed.

4. Per contra, learned counsel for the respondent/State has supported the impugned FIR and has prayed for rejection of the petition submitting that there is sufficient material available on record against the petitioner.

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

6. From perusal of the material available on record, it appears that no recovery has been made from the possession of the petitioner. Neither is he the owner of the vehicle in which the contraband was being transported nor was he present in the vehicle at the time of the alleged incident. He was not apprehended from the spot. He has been implicated only on the basis of disclosure statement of co-accused recorded under Section 27 of the Indian Evidence Act in which he deposed that the petitioner and other co-accused had approached him for the purpose of transportation of the contraband. The call details available on record are not in respect of the petitioner hence there is nothing to demonstrate that he has been in contact with the other co-accused. No recovery of any phone or SIM card has been made from the petitioner. None of the co-accused have stated that they were in contact with the petitioner on the mobile number as has been alleged by the prosecution.

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 Deelep 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 Deelep 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.”

8. On a perusal of the case diary as well as the charge-sheet filed in the matter, this Court is of the opinion that against the present petitioner, there is no tangible evidence collected by the prosecution except the memos prepared under Section 27 of the Indian Evidence Act at the instance of other co-accused person.

9. In view of the aforesaid, the petition deserves to be and is accordingly allowed. FIR registered at Crime No.241/2021 in Police Station Suvasara, District Mandsaur as well as the consequent proceedings pursuant thereto in respect of the petitioner are hereby quashed and the petitioner is discharged for offences punishable under Section 8/15, 25 and 29 of the NDPS Act.

10. The petition is accordingly allowed and disposed off.

(PRANAY VERMA)
JUDGE

jjyoti