

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1528 OF 2018

Balu s/o Babu Phoolmali,
Age 32 years, Occupation Business,
R/o Chanda – Kauth Road,
Ghodegaon Tq. Newasa,
Dist. Ahmednagar. ...Applicant

Versus

- 1) The State of Maharashtra
Through Police Inspector,
Tofkhana Police Station, Ahmednagar,
P[rofessor Chowk, Opp. To Akashwani,
Savedi, Ahmednagar – 400 103.
- 2) Police Inspector
Tofkhana Polcie Station, Ahmednagar.
Professor Chowk, Opp. To Akashwani,
Savedi, Ahmednagar – 400 103. ...Respondents

Mr. S. V. Natu, Advocate for applicant.
Mr. S. J. Salgare, Addl. Public Prosecutor, for respondents/
State.

WITH
CRIMINAL APPLICATION NO. 83 OF 2018

Mukhtar s/o Kadar Shaikh,
Age 42 years, Ocucpation Business,
R/o Ekta Nagar, Jorve Road,
Sangamner Tq. Sangamner
Dist. Ahmednagar. ...Applicant

Versus

- 1) The State of Maharashtra

Through Police Inspector,
Tofkhana Police Station, Ahmednagar,
P[rofessor Chowk, Opp. To Akashwani,
Savedi, Ahmednagar – 400 103.

- 2) Police Inspector
Tofkhana Polcie Station, Ahmednagar.
Professor Chowk, Opp. To Akashwani,
Savedi, Ahmednagar – 400 103. ...Respondents

Mr. S. V. Natu, Advocate for applicant.
Mr. S. J. Salgare, Addl. Public Prosecutor, for respondents/
State.

**WITH
CRIMINAL APPLICATION NO. 191 OF 2018**

Pralhad s/o Govind Kate,
Age 45 years, Occupation Business,
R/o Galnimb Tq. Newasa
Dist. Ahmednagar. ...Applicant

Versus

- 1) The State of Maharashtra
Through Police Inspector,
Tofkhana Police Station, Ahmednagar,
P[rofessor Chowk, Opp. To Akashwani,
Savedi, Ahmednagar – 400 103.
- 2) Police Inspector
Tofkhana Polcie Station, Ahmednagar.
Professor Chowk, Opp. To Akashwani,
Savedi, Ahmednagar – 400 103. ...Respondents

Mr. S. V. Natu, Advocate for applicant.
Mr. S. J. Salgare, Addl. Public Prosecutor, for respondents/
State.

**CORAM : T. V. NALAWADE &
SMT.VIBHA KANKANWADI. JJ.**

DATE : 24-08-2018.

ORAL JUDGMENT : (Per SMT.VIBHA KANKANWADI, J.)

1. Rule. Rule made returnable forthwith. Heard finally with consent of parties and taken up for final disposal at admission stage.
2. All these applications are filed by original accused persons.
3. Applicant in Criminal Application No. 1528 of 2018 is accused No.31, applicant in Criminal Application No. 83 of 2018 is accused No.30, and applicant in Criminal Application No. 191 of 2018 is accused No.28. All of them have filed the application invoking the inherent powers of this Court under Section 482 of Code of Criminal Procedure for quashing prosecution against them in Special Case No. 218 of 2017, under Section 20 and 22 of Narcotic Drugs and Psychotropic Substances Act, 1985.
4. The prosecution case is that, the police officers were on patrolling duty at about 06.29 a.m. on 17-06-2017 near Hotel Sani Palace at Ahmednagar – Aurangabad Road. They noticed and suspected two cars which were approaching Ahmednagar. They had given signal to the cars to stop, however the drivers did not stop and rashly moved towards Ahmednagar City. The police party chased

the cars and accused No.1 to 5 were caught near Asha Talkies in the City. Accused No.1 and 6 were driving Bolero jeep bearing No. MH-17/ AJ - 6943 owned by accused No.32 and Innova Car bearing No. MH-24/ V - 1699 owned by accused No.33 respectively. The police had taken search of the cars and found 150 cannabis packets weighing 337.50 kg. worth Rs.50,62,500/- from Innova Car, and 136 cannabis packets weighing 306 Kg. worth Rs.45,90,000/- in Bolero jeep. Cash of Rs.86,500/- was found with accused Seema Panchariya. Thereafter, the First Information Report was lodged by Head Constable Deepak Rohakale and on the basis of it offence vide Crime No. 121 of 2017 came to be registered. During the course of the investigation from the arrested persons it was disclosed that, they were taking Ganja packets for sell to various retailers. The statements of accused persons were taken. Name of Balu Phoolmali was taken by accused Mukhtar. Accused Mukhtar's name was taken by accused Guljar Shaikh and accused Pralhad Kate's name was taken by accused Viju Bhandari. The charge-sheet does not disclose any recovery from the applicants. The applicants have contended that, except the statements of the co-accused, there is no evidence against them, and therefore on this basis they have prayed for quashment of the proceedings.

5. Heard learned advocate Mr. S. V. Natu for the applicants and learned Addl. Public Prosecutor Mr. S. J. Salgare for State in all the

matters. Perused the record.

6. It has been submitted on behalf of the applicants that, statement of the co-accused is not a substantive evidence. It can be used only for corroboration. Cognizance could not have been taken only on the basis of such evidence. He therefore, relied on the decisions in,

(i) *Monish Bhalla Vs. Satya Bahl*, reported in 2005 Cri.L.J. 1827 (Bombay) (Judgment by Mrs. V. K. Tahilramani, J.), wherein it is observed that,

"10.There is no evidence that any narcotic drug or charas was seized form the possession of accused No.2 in this case nor there is any documentary evidence to establish his role in the present crime. It means except the confessional statement made by accused No.1 inculping accused No.2, there is no evidence with the prosecution against him. As per the settled law the confession of co-accused can be looked into only to provide corroboration to the other evidence against the accused. But when there is no other evidence, question of seeking corroboration from the confession of such a co-accused will not arise. It is well settled that the Court cannot hold the accused guilty only on the basis of the confession made by co-accused. Thus, it is well settled that under Section 30 of the Evidence Act, the confession made by one accused is not substantive evidence against the co-accused. It has only a corroborative value."

(ii) In *Kashmira Singh Vs. The State of M.P.*, reported in *AIR 1952 SC 159*, it has been observed that,

"10. ...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."

(iii) In *Haricharan Kurmi Versus State of Bihar*, reported in *AIR 1964 SC 1184*, it is held that,

"Confession of co-accused implicating the accused can be taken into consideration but it is extremely weak and there could be no conviction without the fullest and strongest corroboration on material particulars."

(iv) In *Santosh Baccharam Patil Vs. The State of Maharashtra and Another*, reported in *2002 ALL MR (Cri) 997*, the Division Bench at the Principal Seat of this Court held as under :

"Though there is nothing in Section 30 which prevents

the Court from convicting the accused after taking the confession of co-accused into consideration, but the role attributed in the confession of co-accused uncorroborated by any other evidence is not alone sufficient to sustain conviction. Therefore, the Court should first marshal the evidence against the co-accused excluding the confession altogether for consideration and see whether if it is believed, the conviction can be safely 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 if implicit reliance cannot be placed on the evidence, the Judge may call in aid the confession in order to lend assurance to the other evidence."

(v) In Balaprasanna's case, while interpreting provisions of Section 27 of the Evidence Act, the statement of the accused is admissible only if the statement related distinctly to the fact thereby discovered.

(vi) In *Suresh Kalani Vs. State of Maharashtra*, reported in AIR 1998 SC 3258, wherein it is observed that,

"The statement of accused is not enough even to frame charge against the accused."

7. He also submitted that, in Criminal Application No. 5975 of 2017 filed by accused Guljar Alibhai Shaikh, this Court has quashed the charge-sheet against him on 21-12-2017.

8. The learned Additional Public Prosecutor has opposed the application stating that, there is evidence against the applicants.

9. Perusal of the charge-sheet would show that, except the statements of the co-accused there is nothing on record. The said statement of the co-accused has been made under Section 27 of the Indian Evidence Act. It can be said to be relevant only in respect of discovery of a fact but it cannot be taken as confession or in any way fastening the liability of the accused – applicants. This Court in the case of *Guljar Alibhai Shaikh* which was in respect of the same charge-sheet has held that, the statement of a co-accused is weak piece of evidence when it is recorded under Section 67 of NDPS Act. Such statement is inadmissible. It is not the case of the prosecution that on the basis of something discovered by the co-accused anything was found with the present applicants. Under such circumstance there is absolutely no material which can lead to the conviction of the applicants, and therefore, this is a fit case where the powers of this Court under Section 482 of the Code of Criminal Procedure is required to be invoked in view of the parameters laid down in *State of Haryana and others V. Ch. Bhajan Lal and others*, reported in *AIR 1992 Supreme Court 604*, wherein it is observed that,

"In following categories of cases, the High Court may in exercise of powers under Art.226 or under S. 482 of Cr.P.C. may interfere in proceedings relating to cognizable offences to prevent abuse of the process of any Court or otherwise to secure the ends of Justice.

However, powers should be exercised sparingly and that too in the rarest of rare cases.

1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can even reach a just conclusion that there is sufficient ground for proceeding against the accused.

6) *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and / or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

7) *Where a criminal proceeding is manifestly attended with mala fide and / or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."*

10. Therefore, applying the above said principle we find this is a fit case where First Information Report against the applicants, deserves to be quashed and set aside by allowing the writ petition. Hence, following order.

ORDER

- 1) Writ Petitions are allowed.
- 2) Relief is granted in terms of prayer Clause 'B'.
- 3) Rule made absolute in above terms.

(SMT. VIBHA KANKANWADI)
JUDGE

(T. V. NALAWADE)
JUDGE