

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

CIRCUIT BENCH AT JALPAIGURI

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 37 of 2023

Amit Verma @ Gullu

vs.

The State of West Bengal

For the Petitioner : Mr. Biswarup Roy.

For the State : Mr. Aditi Shankar Chakraborty,
Mr. Arjun Chowdhury.

Hearing concluded on : 12.10.2023

Judgment on : 17.10.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the proceedings being Falakata Police Station Case No.608 of 2022, dated 10.11.2022, under Sections 420/120B of the Indian Penal Code, read with Section 3/4 of West Bengal Gambling and Prize Competitions Act, corresponding to GR No.2538 of 2022 presently pending before the Court of the learned Additional Chief Judicial Magistrate at Alipurduar and all consequential orders passed in connection therewith.

2. **On source information, a raid leading to this case was carried out. The petitioner herein was not arrested from the place of occurrence.**

The name of the petitioner transpired from the statement of a co-accused. The transaction details in the case diary relating to the principal accused, arrested from the spot, also does not implicate the present petitioner. Thus, the only prima facie material on record against the petitioner is the statement of co-accused. There is no other materials on record against the petitioner other than the statement of a co-accused, which is also not substantiated by any other evidence.

3. The Supreme Court in ***Criminal Appeal No.714 of 2019, Dipakbhai Jagdishchandra Patel vs. State of Gujarat & Anr.***, held:-

“51. We also notice the following statement in judgment rendered by Bench of seven learned Judges in Haricharan Kurmi v. State of Bihar¹⁷:

*“As a result of the provisions contained in S.30, Evidence Act, the confession of a co-accused has 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 17 AIR 1964 SC 1184 (quoted portion at page 1184) 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.***

Thus, the confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the Court is inclined to accept other evidence and

feels the necessity of seeking for an assurance in support of its conclusions deducible from the said evidence. In criminal cases where the other evidence adduced against an accused person is wholly unsatisfactory and the prosecution seeks to rely on the confession of a co-accused person, the presumption of innocence which is the basis of criminal jurisprudence assists the accused person and compels the Court to render the verdict that the charge is not proved against him, and so, he is entitled to the benefit of doubt.”

52. Proceeding on the basis that it is a confession by a co-accused and still proceeding further that there is a joint trial of the accused and that they are accused of the same offences (ignoring the fact that other accused are absconding and appellant appears to be proceeded against on his own) and having found that there is no recovery from the residence of the appellant of the counterfeit notes and that there is no other material on the basis of which even a strong suspicion could be aroused.....”

4. Accordingly, considering the materials on record, the nature of offence alleged and the view of the Supreme Court in ***Dipakbhai Jagdishchandra Patel vs. State of Gujarat & Anr.(Supra)***, CRR 37 of 2023 is allowed.
5. The proceedings being Falakata Police Station Case No.608 of 2022, dated 10.11.2022, under Sections 420/120B of the Indian Penal Code, read with Section 3/4 of West Bengal Gambling and Prize Competitions Act, corresponding to GR No.2538 of 2022 presently pending before the Court of the learned Additional Chief Judicial Magistrate at Alipurduar and all consequential orders passed in connection therewith, **is hereby quashed.**
6. All connected Applications, if any, stand disposed of.
7. Interim order, if any, stands vacated.

8. Copy of this judgment be sent to the learned Trial Court for necessary compliance.
9. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)