IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

THURSDAY, THE ELEVENTH DAY OF DECEMBER TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE J SREENIVAS RAO

CRIMINAL PETITION NO: 15992 OF 2025

Between:

1. P. Srinivas,, S/o. P. Narsa goud, aged 53 years, Occ Business, R/o. 12-10-590/129/5, Warasiguda, Secunderabad.
2. Umesh Agarwal,, S/o. Naval Kishore, Aged 54 years, Occ business, R/o. Villa No. 53, Palm Breeze, Manikonda, R.R. District.
3. S. Dinesh,, S/o. Shiva Shankar, Aged 55 years, Occ Business, R/o. 21-7-640, Chelapura, Hyderabad.
4. A. Santhosh,, S/o. A. Pentaiah, Aged 46 years, Occ Business, R/o. 3-2-58, Manikonda, R.R. District.
5. G. Narsing Rao,, S/o. Balaiah, Aged 53 years, Occ Business, R/o. 2-3-237/1, Road No. 2, Nagole, R.R. District.

...PETITIONER/ACCUSED NOs.20,23,25,27 & 36

AND

The State of Telangana,, Rep. by its Public Prosecutor, High Court of Telangana.

...RESPONDENT/COMPLAINANT

Petition under Section 528 of BNSS praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to quash the proceedings against the petitioners herein in C.C. No. 696 of 2018 on the file of X Additional Chief Metropolitan Magistrate at Secunderabad for the offences under Sections 3 and 4 of A.P. Gaming Act, 1974 r/w The Telangana State Gaming (Amendment) Ordinance, 2017 and Section 34 (A) of A.P. Excise Act, 1968 and Section 4 r/w 21 of the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act

I.A. NO: 1 OF 2025

Petition under Section 528 of BNSS praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to stay of all further proceedings including the appearance of the petitioners herein in C.C. No. 696 of 2018 on the file of X Additional Chief Metropolitan Magistrate at Secunderabad Pending disposal of the present criminal petition.

This Petition coming on for hearing, upon perusing the Memorandum of Grounds of Criminal Petition and upon hearing the arguments of Sri P RAJAGOPAL REDDY, Advocate for the Petitioners and Mr. Jithender Rao Veeramalla, the Additional Public Prosecutor (TG) on behalf of the Respondent.

The Court made the following: ORDER

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

THE HONOURABLE SRI JUSTICE J.SREENIVAS RAO

CRIMINAL PETITION No.15992 of 2025

Date: 11.12.2025

Between:

P.Srinivas and 4 others.

...Petitioners

AND

The State of Telangana,
Represented by its Public Prosecutor,
High Court of Telangana.

...Respondent

ORDER

This criminal petition has been filed for seeking quash the proceedings in C.C.No.696 of 2018 on the file of the learned X Additional Chief Metropolitan Magistrate at Secunderabad wherein the petitioners were arrayed as accused Nos.20, 23, 25, 27 and 36, for the offences under Sections 3 and 4 of the Andhra Pradesh Gaming Act, 1974 read with Telangana State Gaming (Amendment) Ordinance, 2017 and Section 34(A) of A.P.Excise Act, 1968 and Section 4 read with Section 21 of the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation

of Trade and Commerce, Production, Supply and Distribution) Act, 2003.

2. Heard Mr.P.Rajagopal Reddy, learned counsel for the petitioners and Mr.V.Jithendar Rao, learned Assistant Public Prosecutor appearing for respondent No.1 State.

3. Learned counsel for the petitioner submitted that the issue in the present criminal petition is squarely covered by the orders passed by this Court in Crl.P.No.4983 of 2019 dated 11.10.2022 wherein the accused No.6 had approached this Court and filed the above Criminal petition.

4. Learned Additional Public Prosecutor has also reiterated the submission made by the learned counsel for the petitioner.

5. Having considered the rival submissions made by the petitioner and as the matter is squarely covered by the order passed in the above Criminal Petition, this criminal petition is allowed in terms of the above said order, adopting the reasoning contained therein. The proceedings against the petitioner/accused in

C.C.No.696 of 2018 on the file of the learned X Additional Chief Metropolitan Magistrate at Secunderabad, are hereby quashed.

6. Accordingly, the Criminal Petition is allowed.

Pending miscellaneous applications, if any, shall stand closed.

Sd/- L. VIJAYA LAXMI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The X Addl. Chief Metropolitan Magistrate at Secunderabad.
2. The Station House Officer, Gandhinagar Police Station, Hyderabad.
3. One CC to SRI P RAJAGOPAL REDDY, Advocate [OPUC]
4. Two CCs to the ADDITIONAL PUBLIC PROSECUTOR, High Court of TS at Hyderabad [OUT]
5. Two CD Copies

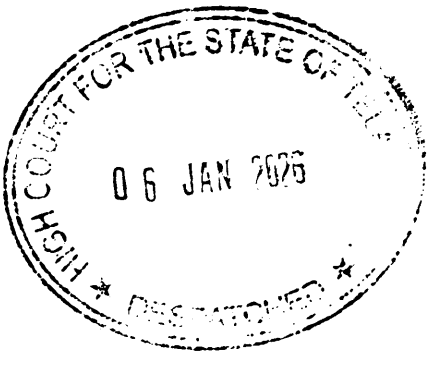
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HIGH COURT

DATED: 11/12/2025

ORDER

CRLP.No.15992 of 2025



ALLOWING THE CRIMINAL PETITION

8
ASV
6/1/26

THE HON'BLE DR. JUSTICE D.NAGARJUN

CRIMINAL PETITION No.4983 of 2019

ORDER:

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure by the petitioner-accused No.6 to quash C.C.No.696 of 2018 on the file of learned X Additional Chief Metropolitan Magistrate at Secunderabad, the cognizance of which was taken on file for the offence under Sections 3 and 4 of the Andhra Pradesh Gaming Act, 1974 read with Telangana State Gaming (Amendment) Ordinance, 2017 and Section 34 (A) of A.P.Excise Act, 1968 and Section 4 read with Section 21 of the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003.

2. The facts in brief as can be seen from the record available before the Court are as under:

a) On 20.10.2017 at 0300 hours LW18 received credible information through Commissioner's Taskforce, Hyderabad city that some unknown persons are organizing Gambling i.e., three cards game at Room No.7010 in Marriott Hotel, Lower Tankbund, Hyderabad by allowing punters and betting money in the room in order to earn easy money and the said

information was appraised to the superior officers and obtained authorization memo to conduct search. Accordingly LW21 secured the presence of two mediators i.e., LWs 13 & 14 and drafted search proceedings U/sec.165 Cr.P.C. at Gandhinagar Police Station at 0330 hrs on 20.10.2017 and he along with the mediators, staff together with Taskforce officers and men i.e., LWs 1 to 9 rushed to the spot. After identifying the room i.e., Room No. 7010 in Marriott Hotel after taking precautionary measures with the guidance of hotel management, they knocked the door of Room No. 7010 situated on 7th floor, upon which one person opened the door, then they entered into the room and found about 36 members in three INTERCOME rooms i.e., Room No. 7010, 7015 & 7025 indulging in playing three cards game by betting money which is a game of chance. On enquiry the person, who opened the door revealed his identity as Accused No.1. LW21 gave his identity, purpose of visit and served a copy of search proceedings on him under proper acknowledgement. On further enquiry accused No.1 stated that, he is doing real estate business and in order to earn easy money he along with his associates A2: Babulal Agarwal, A3: Rakesh Juneza, A4: Rajinder Nagpal Singh, A5: Sanjay Kumar have

planned to organize Gambling in posh hotels by allowing punters by betting money.

b) As per their plan, on 17.10.2017 he along with his associates Rakesh Juneza and Rajinder Nagpal Singh have booked three room i.e., Room Nos: 7010, 7015 & 7025 in Marriott Hotel, Lower Tankbund on their names by submitting their ID proofs, and on 19.10.2017 during the night time they along with their associates and assistants have allowed their known 28 punters into the above mentioned hotel rooms for playing three cards game without the consent and knowledge of hotel management and collecting an amount of Rs. 3,000/- per each game from the winning punters. For this purpose, in order to entertain the punters A1 along with his associate organizers and assistant organizers A2 to A11 have arranged the costly liquor, food, Hookah smoking to them, for which they are collecting an amount of Rs. 2,000/- from each punter. They have also arranged two swiping machines to the punters in order to facilitate them to pay the betting money through swiping machines, apart from that they have also arranged playing cards and casino coins (which are to be used in place of money) and they did not allow the hotel staff i.e., waiters and housekeeping personnel into the rooms and they used to supply

food etc., to the punters. On enquiry with the organizer/punters, who are playing three cards, they disclosed their name as - (1) Babulal Agarwal s/o. Jagdish Prasad, (2) Syed Sajeeth Ali, s/o. Syed Nawab, (3) Mohd. Jaffar s/o. Mohd. Jabbar, (4) Mohd. Amer s/o.Mohd. Jamsheed, (5) Mohd. Khaja s/o. Mohd. Jamal, (6) Rohit Joshi s/o. Ganesh Dutt Joshi, (7) K. Nagesh s/o. K. Laingaiah, (8) Rajesh Dilip Shah s/o. Dilip K Shah, (9) J. Narender s/o. J. Veeresham, aged 37 yrs, (10) S. Bharath s/o. S. Sajan, (11) B. Dushyanth Reddy s/o. B. Mohan Reddy, (12) K.Satish Kumar, s/o. K. Narsimhulu, (13) A. Santosh s/o. A. Chakradhar Rao, (14) V. Buchi Reddy s/o. Late V. Sanjeeva Reddy, (15) P. Srinivas s/o. P. Narsa Goud, (16) Mohd. Ghouse Pasha s/o. Late Mohd. Babu Miya, (17) M. Ramesh s/o. M. Nardev, (18) Umesh Agarwal s/o. Late Naval Kishore, (19) S. Sheshu s/o. S. Hari Babu, (20) S. Dinesh s/o. S. Shiva Shankar, (21) Ranveer Singh Saluja s/o. Late Pritham Singh, (22) A. Santosh s/o. A. Pentaiah, aged 38 yrs, (23) K. Marka Reddy s/o. Late K. Pichi Reddy, (24) K. Manmohan Reddy s/o. K. Ranga Pratap, (25) C. Gopal s/o. C. Raju, (26) S. Bashu s/o. S. Kasim, (27) T. Ramesh Goud s/o. Late T. Narahari Goud, (28) G. Shankar s/o. G. Anjaneyulu, (29) S. Krishna Reddy s/o. Late S. Veera Reddy, (30) P. Sudhakar

s/o. Late P. Venkaiah, (31) G. Narsing Rao s/o. Late G. Balaiah, (32) Mohit Juneja s/o. Tarvinder Juneja, (33) Amit Niranjan Doshi s/o. Niranjan Doshi, (34) Vimal Jain s/o. Late M.L. Jain, (35) Y. Sunil Kumar s/o. Y. Narsing Rao.

c) Thereafter, LW21 recorded the confession-cum-seizure panchanama of A1 & A2, who are the organizers of Gambling and seized an amount of Rs. 4,50,000/-, Two Samsung cell phones, Swiping Machine, One Calculator, (07) Money Credit Receipts, 900 Plastic Casino Coins, Casino Coins Tray, 19 Royal Palace Play Cards, 05 Bottles of Chivas Regal Blended Scotch Whisky (750 ml) each bottle, 02 Bottles of Johney Black Lable Whisky (1.75 litres), 02 bottles of Kingfisher Ultra Beer 330 ml each bittle, Hookah Stand with two Nozzles & breathing pipe, Rajnigandha Pan Masala from the possession of A1: Chikoti Praveen Kumar (organizer) and Rs. 4,00,000/- & MI Redmi cell phone, one Swiping Machine, 08 Money Credit Receipts of PS-4, 849 plastic Casino Coins, Casino Coins Tray, 06 packets of Texas playing cards, 05 Chivas Regal Blended Scotch Whiskey (750 ml each), 01 Bottle of used Johney Walker Whisky (200 ml), ½ Liter bottle Morpheus Brandy from the possession of A2: Babulal Agarwal (organizer) under cover of panchanama in presence of mediators LWs 10 and 11. After that the LW21 have

seized the cash of Rs.12,63,650/-, 36 cell phones and 84 playing cards from the possession of Sub-Organizers & punters i.e., A6 to A39. Apart from the above amount and material, the LW21 also seized centre amount of Rs. 2,24,000/- from FIVE CENTRE TABLES & remaining 176 Playing cards under cover of panchanama in presence of mediators LWs 13 & 14.

d) After completing the seizure formalities (as per confession) the LW21 along with the team brought all the above mentioned accused persons A1, A2, A7 to A40 who are the gaming organizers, Assistant Organizers & Punters together with seized cash of Rs. 23,37,650/- and material to Gandhinagar police station at 1130 hours and produced before the SHO for taking necessary legal action against them under sections 3 & 4 of A.P. Gaming Act, 1974 r/w. the Telangana State Gaming (Amendment) Ordinance, 2017 & Sec. 34(A) of A.P. Excise Act, 1968 & Sec. 4 r/w. 21 of the Cigarettes & other Tobacco Products (Prohibition of Advertisement & Regulation of Trade & Commerce, Production, Supply & Distribution) Act, 2003.

e) Based on the said complaint, LW20 registered a case in Crime No. 282/2017, U/sections 3 & 4 of A.P. Gaming Act, 1974 r/w. The Telangana State Gaming (Amendment)

Ordinance, 2017 & Sec. 34(A) of A.P. Excise Act, 1968 & Sec. 4 r/w. 21 of the Cigarettes & other Tobacco Products (Prohibition of Advertisement & Regulation of Trade & Commerce, Production, Supply & Distribution) Act, 2003 and forwarded the case file to the LW21 for further investigation. During the course of investigation, LW21 examined and recorded the statements of witnesses, affected the arrest of accused persons by issuing their arrest cards after informing them about the grounds of arrest. During interrogation the accused persons Accused Nos.1, 2, 7 to 11 admitted their guilt of committing the offence that they along with the Accused Nos.3 to 6 were organizing the common gaming house in the Marriott Hotel by taking rooms on their names without the consent and knowledge of the hotel management and earning easy money, while the accused Nos.12 to 40 admitted their guilt that they were indulged in illegal activities of playing three cards, a game of chance in order to easy money illegally. The accused Nos.1, 2, 7 to 40 were remanded to judicial custody on 20.10.2017.

f) During further course of investigation, on requisition the LW21 took the accused persons A1: Chikoti Praveen Kumar & A2: Babulal Agarwal into police custody for two days i.e., 24.10.2017 at 10.30 am to 26.10.2017 at 10.30 am. During

police custody the LW21 interrogated the A1 & A2 thoroughly and recorded their further confession statements in presence of two mediators LWs 15 & 16 in the police station. While the efforts were on foot on credible information the LW21 deputed the staff in the area of Namalagundu, who in turn rushed there and apprehended the Accused No.5 on 29.10.2017 at 1100 hours nearby his house at Namalagundu, brought him to police station 1130 hours and produced before the LW21. LW21 took the A5 into custody and interrogated him thoroughly, wherein he confessed and corroborated with the confession statements of his associate organizers A1 & A2 in all aspects, as such the LW21 secured the presence of two mediators LW17 & 18 and recorded his confession-cum-seizure panchanama and seized his SAMSUNG cell phone under cover of panchanama. The LW21 affected the arrest of accused No.5 by issuing his arrest card after informing him about the grounds of arrest and he was remanded to judicial custody on 29.10.2017. On 29.10.2017 in the late evening hours the LW21 served notice under section 41(A) Cr.P.C. to accused No.6 under proper acknowledgement with instructions to appear before him within three days from the date of receipt of notice to depose his version on the allegations without fail, but he failed to respond.

g) During further course of investigation, LW21 forwarded the material objects i.e., samples of Liquor bottles to the Forensic Science Laboratory, Red Hills, Hyderabad for chemical analysis and report. Upon which the LW19 who examined the material objects have furnished report that *on the basis of results obtained through analysis items 1 and 2 are liquor – item 3 is aerated liquor.*

h) Since accused Nos.3 and 4 were absconding LW21 filed charge sheet against the accused persons A1, A2, A5 to A40 before the Hon'ble court by showing the A3 & A4 as absconding with a prayer to commence trial against them and supplementary charge sheet will be filed against the Accused Nos. 3 and 4 as and when they arrested.

i) The charge sheet filed by the investigating agency was numbered as C.C.No.696 of 2018 on the file of learned X Additional Chief Metropolitan Magistrate at Secunderabad. Aggrieved by the same, the present petition is filed by petitioner-accused No.6 seeking quashment of C.C.No.696 of 2018 on the following grounds:

i) The petitioner's name has not been stated either in the FIR, remand report or even in the confessional statements of A-

1 and A-2,which were recorded immediately after their arrest. Subsequently, the police sought custody of the accused and the Hon'ble Court granted police custody of A-1 and A-2. During the said period, on 25.10.2017, at about 10:30 hours, the second confessional statement of A-1 was recorded at Gandhinagar Police Station. In the said confessional statement, A-1 stated that the petitioner, who is the managing editor of Police Monthly Magazine got introduced to A-1 and represented that he is having influence in higher circles as well as in the police department. Accused No.1 further confessed that the petitioner also promised to manage the officials, if any problems arise. It has also been alleged in the said confessional statement that the petitioner also joined as one of the organizer and the petitioner was also being paid a certain share out of the profits. It is interesting to note that in the aforementioned second confessional statement dated 20.05.2017, it has been stated that A-1 did not disclose this fact about the petitioner in his earlier statement due to fear of the petitioner.

ii) There is absolutely no legal evidence against the petitioner and it is only an afterthought of the police to include the name of the petitioner. The alleged incident took place on 20-10-2017 around 3.00 a.m. and the FIR, 161 of Cr.P.C. statements do not

refer to the participation of the petitioner. Five days later, on 25-10-2017, that too during the police custody of A-1, the name of the petitioner was included. Moreover, the petitioner has been implicated in the present case in total contravention of the well established rule of law that the confession of a co-accused in not admissible in law.

iii) The first informant/complainant in the present case is R. Srinivas, Inspector of Police, Gandhinagar Police Station, Hyderabad as per the FIR in Crime No.282/2017 of Gandhinagar Police Station, Hyderabad and the person who investigated the case and filed the charge-sheet is also R. Srinivas, the Inspector of Police, Gandhinagar Police Station, Hyderabad (Lw-21). Therefore, the proceedings are liable to be quashed as the complainant and I.O. cannot be one and the same. The Hon'ble Apex Court in *Mohanlal Vs. The State of Punjab* held that fair investigation is the very foundation of fair trial, necessarily postulates that the informant and the investigator must not be the same person. Justice must not only be done, but must appear to be done also. Any possibility of bias or a predetermined conclusion has to be excluded. This requirement is all the more imperative in laws carrying a reverse burden of proof.

iv) The petitioner is no way concerned with the business of A-1 and A-2 and that he has never been involved in any case. He has unnecessarily been roped in as A-6 in the present case.

v) None of the offences that are alleged would not fall within the definitions of Sec. 3 & 4 of A.P. Gaming Act, 1974 r/w. Telangana State Gaming (Amendment) Ordinance, 2017 & Sec. 34(A) of A.P. Excise Act, 1968 & Sec. 4 r/w. 21 of the Cigarettes & other Tobacco Products (Prohibition of Advertisement & Regulation of Trade & Commerce, Production, Supply & Distribution) Act, 2003 has no application in so far as the petitioner is concerned.

vi) The petitioner is the managing editor of Police Monthly Magazine and he was very much available. But however, in the charge-sheet, the police have showed him as absconding.

3. Heard Sri T.Pradyumna Kumar Reddy, learned senior counsel representing Sri T.S.Anirudth, learned counsel on record for the Petitioner-accused No.6 and Sri S.Ganesh, learned Assistant Public Prosecutor and perused the record.

4. Now the point for determination is:

"Whether the proceedings against the petitioner-accused No.6 in C.C.No.696 of 2018 on the file of learned X Additional Chief Metropolitan Magistrate at Secunderabad, can be quashed under Section 482 of the Code of Criminal Procedure?

5. According to the prosecution, on 20.10.2017 LW21 i.e., investigating officer after taking permission from the higher officials has visited the scene of offence along with mediators and other staff members and the hotel rooms were converted as common gaming house and playing three cards games by betting huge amounts and that organizers have collected Rs.3,000/- for allowing the punters to use the said premises for gaming and also collecting Rs.2,000/- for arranging liquor, food, Hookah smoking to the punters. At the time of raiding the scene of offence, the investigating officer LW21 found Accused Nos.1, 2, 7 to 39.

6. The contention of learned counsel for the petitioner-accused No.6 is that he is no way concerned with the alleged offence and he has been falsely implicated and even if the contents of charge sheet are accepted to be true, factually basing on the facts and also on the law, case cannot be fastened

against the petitioner-accused No.6 for any of the offences alleged against the petitioner-accused No.6.

7. Admittedly, when the Police have searched the scene of offence i.e., hotel rooms, the petitioner-accused No.6 is not present in any of the rooms and he was not playing cards. Immediately after arrest, the Police have recorded the confessional statements of accused Nos.1 and 2 on 20.10.2017 in the presence of B.Sudarshan and N.Vijay Kumar i.e., mediators. In the said confessional statement, accused Nos.1 and 2 though have stated as to how they have committed the offence and how they have collected monies from the punters, did not disclose the involvement of petitioner-accused No.6. if at all the petitioner-accused No.6 is really involved in the offence along with other accused, there is no reason as to why the name of the petitioner-accused No.6 was not mentioned in the confessional statement. According to the Police, accused Nos.1 and 2 have voluntarily confessed the offence and it is not the case of the prosecution that during the course of confessional statement of accused Nos.1 and 2, they did not disclose anybody name as involved along with them in the offence. According to the confessional statement of accused Nos.1 and 2, they disclosed the names of Babulal Agarwal,

Rajinder Nagpal Singh, Sanjay Kumar, Rakesh Juneja as the persons who are also involved in the offence, though they were physically not present in the hotel rooms at the time of search of the Police. Therefore, basing on this material, the petitioner-accused No.6 is no way concerned or connected to the offence.

8. However, for the reasons best known to the Police, they have recorded subsequent confessional statement, which is not usual in criminal case. The Police have not explained as to why and under what circumstances the second confessional statement of accused Nos.1 and 2 were to be recorded. In the said confessional statement conveniently the name of the petitioner-accused No.6 was brought on record and not only that but accused Nos.1 and 2 were made to speak in the confessional statement that since they are afraid of the petitioner-accused No.6 when they confessed at the first instance of recording their confession statement. Here, the question to be considered is if really accused Nos.1 and 2 got fear of petitioner-accused No.6, then they should not have disclosed the name of the petitioner-accused No.6 even in the second confessional statement. No explanation is offered as to what transpired between first and second confessional statements.

9. Therefore, brining the name of the petitioner – accused No.6 in the second confessional statement is clearly an act of involving or implicating the petitioner without any basis.

10. On going through the entire charge sheet, the only connection of petitioner-accused No.6 with the alleged offence is second confessional statement of accused Nos.1 and 2. The Police have not placed any material either oral or documentary connecting the petitioner-accused No.6 to the offence alleged against him. The Police should have recorded the confessional statement of accused Nos.1 and 2 before the learned Magistrate, which can be admitted. The alleged confession statement of accused Nos.1 and 2 is not before the learned Magistrate but before the Police officer. Section 25 of the Indian Evidence Act reads as under;

> *"25. Confession to police officer not to be proved.—No confession made to a police officer1, shall be proved as against a person accused of any offence.—No confession made to a police officer1, shall be proved as against a person accused of any offence."*

11. On considering the above provision of Indian Evidence Act, it is clear that any confession made before the Police officer

is hit by Section 25 of the Evidence Act and thereby not admissible. Further, even for a moment, if the confessional statement of accused Nos.1 and 2 can be admitted, still accused Nos.1 and 2 cannot confess in respect of other accused. It is settled legal preposition that confession made before the Police by co – accused is not admissible before the Court. The Police have also not recorded the confessional statement of petitioner-accused No.6. therefore, except the second confessional statement of co-accused, there is no incriminating material against the petitioner-accuse No.6 to connect him to the alleged offence.

12. In **Parveen @ Sonu v. State of Haryana**[1], the Hon'ble Supreme Court held as follows:

> *"14. On close scrutiny of evidence on record, we are of the considered view that prosecution has failed to prove its case, that the appellant herein, has conspired with other accused for the offences for which he was charged. Except the alleged confessional statements of the co- accused and in absence of any other corroborative evidence, it is not safe to maintain the conviction and sentence imposed upon the Appellant. The findings recorded by the Trial Court in convicting the appellant mainly on the ground that he was one of the conspirators for the crime in question, is erroneous and*

[1] 2021 SCC Online SC 1184

illegal. The High Court has not considered the evidence on record in proper perspective and erroneously confirmed the conviction and sentence imposed on the appellant."

13. In Prathap Reddy v. The Inspector of Police, Central Crime Branch, Egmore, Chennai[2], the High Court of Madras held as follows:

> *"In this case the Hon'ble Supreme Court of India has held that the conviction on the basis of confession of the co-accused is not permissible, as held in paragraph No.14, which is extracted hereunder*
>
> > *"14.In the absence of any substantive evidence it would be inappropriate to base the conviction of the appellant purely on the statements of co-accused. The appellant is therefore entitled to be acquitted of the charges leveled against him. We, therefore, accept this appeal, set aside the orders of conviction and sentence For example: State vs. Nalini, (1999) 5 SCC 253, paras 424 and 704 and acquit the appellant. The appellant shall be released forthwith unless his custody is required in connection with any other offence."*

14. In **Firoz Hajibhai Sodha v. State of Gujarat**[3] the High Court of Gujarat held as follows:

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[2] Indiankanoon.org/doc/169961462/

"10. From the aforesaid decisions, it would be clear that a statement of co-accused can be considered or treated as a clue or a piece of information to initiate and conduct inquiry/investigation or to direct the investigation/inquiry in a particular direction so as to find out as to whether there is any independent, satisfactory and reliable material which may support or justify or provide reason for continuing inquiry/investigation for initiating further investigation. At the stage when the investigation has commenced or the process is going on any occasion or any question of treating or considering such a statement as evidence does not arise and therefore it would not be proper and just to terminate, i.e. to direct the investigating officer to close the investigation. It is also required to be noted that the admissibility or otherwise of the confessional statement can be examined at the stage of trial and not at the stage of investigation. Thus, Section 25 of the Evidence Act would come into play not at the stage of inquiry/investigation but at the stage of trial."

15. Considering the above authorities and on applying on the facts of this case, it is clear that confessional statement of accused Nos.1 and 2 cannot be admitted before the Court against the petitioner-accused No.6.

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[3] Criminal Misc.Application No.5836 of 2021 dated 08.02.2022

16. The other contention raised by the learned counsel for the petitioner is that the investigating officer LW21 being the *de-facto* complainant cannot investigate and file charge sheet. In **Mohan Lal v. State of Punjab**[4], the Hon'ble Supreme Court held as follows:

> *"It is therefore held that a fair investigation, which is but the very foundation of fair trial, necessarily postulates that the informant and the investigator must not be the same person. Justice must not only be done, but must appear to be done also. Any possibility of bias or a predetermined conclusion has to be excluded. This requirement is all the more imperative in laws carrying a reverse burden of proof."*

17. In **Bahgawan Singh v. The State of Rajasthan**[5], the Hon'ble Supreme Court held as follows:

> *"In fact, Head Constable Ram Sing., being an officer below the rank of Deputy Superintendent of Police, was not authorised to investigate the case but we do not attach any importance to that fact, as that may not affect the validity of the conviction. The infirmity which we are pointing out is not an infirmity arising from investigation by an officer not authorised to do so, but an infirmity arising from investigation by a Head Constable who was himself the person to whom the bribe was alleged to have been offered and who*

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[4] 2018 Law Suit (SC) 768
[5] AIR 1976 Supreme Court 985

lodged the first information Report as informant or complainant. This is an infirmity which is bound to reflect on the credibility of the prosecution case."

18. In **Xavier v. State of Kerala**[6], the High Court of Kerala held as follows:

"Now, the only point that arises for consideration before me is whether PW1, being the complainant can be an investigating officer throughout and whether he can file the final report. In a case of this nature, when the complainant himself is a Police Official, the investigation should have been conducted by his top ranking officer and the final report also ought to have been filed by the higher officials. A Complainant being police officer cannot be an investigating officer. For, in such case, the accused and the prosecution will be deprived of their valuable rights of contradicting and corroborating the previous information recorded U/S. 154 and 155 Cr.P.C. and previous statements of witnesses, being a police officer, complaint recorded, under S.161 Cr.P.C., enjoined in Ss.145 and 157 of the Indian Evidence Act and proviso of S.162, Cr.P.C. In the instant case, before me, PW1 is an Assistant Sub Inspector of Police and I understand from the Public Prosecutor as well as from the Counsel for the petitioner that the particular Police Station has got a Sub Inspector of Police. Therefore, in this case, the investigation ought to have been conducted by the Sub Inspector of Police or

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[6] 1998 CRI.L.J. 3182

any other Police officer above the rank of PW1. In the instant case, thus, an incurable infirmity and flaw have been committed by the prosecution, quite against the proposition of law. Therefore, on that score itself, the petitioner is entitled to get an order of acquittal. In view of my above conclusion on the footing of position of law, this is a fit case, which has to be allowed by acquitting the petitioner."

19. In view of the principle laid down in the above said authority, it is evident that the *de-facto* complainant being a Police Officer cannot be the complainant, investigate and file charge sheet. Similarly, in the case on hand also the *de-facto* complainant is none other than the Inspector of Police, Gandhi Nagar Police Station, who has raided the scene of offence i.e., hotel rooms and subsequently conducted investigation, seized the material objects under confession cum seizure panchanama and finally filed final charge sheet. So, the above said authorities are squarely applicable to the facts of the case on hand. Thus, on this ground alone, continuation of proceedings against the petitioner-accused No.6 amounts to abuse of process of law.

20. Accordingly, the Criminal Petition is allowed and the proceedings against the petitioner-accused No.6 in C.C.No.696

of 2018 on the file of learned X Additional Chief Metropolitan Magistrate at Secunderabad are hereby quashed. The trial Court shall proceed with the case against other accused in C.C.No.696 of 2018 on merits uninfluenced by the observations and comments made by this Court in this order.

As a sequel, the miscellaneous Petitions, pending if any, shall stand closed.

DR. D.NAGARJUN, J

Date: 11.10.2022
AS