
(1900) 01 MP CK 0030
In the Madhya Pradesh High Court
Case No : 1136 of 2015

Sugra Begum and others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 01-01-1900

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 169](#) - Release of accused when evidence deficient
[Indian Penal Code, 1860](#), [Section 420](#),
[Section 468](#), [Section 468](#)

Citation : (1900) 01 MP CK 0030

Hon'ble Judges : P.K. Jaiswal, Virender Singh

Bench : Division Bench

Advocate : Amit Dube, Vivek Sharan

Judgement

1. Being aggrieved by the order of framing of charges under Section 419, 420, 467, 468, 471 of IPC and Section 3/4 Madhya Pradesh Recognized Examination Act, 1937 (X of 1937) dated 18/08/2015 in S.T. No.496/2015 passed by the learned ASJ, Indore, the petitioner has preferred the present petition.

2. Relevant facts in brief are that Dean of Mahatma Gandhi Medical College, Indore constituted a Committee for scrutiny of documents and to compare photographs of MBBS students. The Committee found that the photographs of 4 students namely Prashant Mourya, Omprakash Chouhan, Abhinav Katare and Maehendra Singh Chouhan (died later), who were admitted in the MBBS course in the year 2008 were not matching. Dean, Mahatma Gandhi Medical College, Indore made a complaint to the police on 22/06/2013. The police after inquiry registered FIR at crime No.1346/2013 on 21/12/2013. During the investigation on interrogation by the police, one of the above named student, Abhinav Katare, disclosed on 31/08/2014 that he had paid Rs.1,50,000/- to the petitioner for getting admission in Medical College through Pre-Medical Test (PMT), 2008. A memorandum under Section 27 of the Evidence Act, 1872 was prepared. On this information, the police arrested the petitioner on 01/09/2014 and took him on

remand for 5 days but did not find any evidence to connect him with the crime and filed a closure report under Section 169 of Cr.P.C. before the ACJM, Indore. Later, during further investigation taken up u/s 173(8), the same student Abhinav again disclosed that he had paid Rs.2,50,000/- to the petitioner to manipulate the process of PMT-2008 to enable him to get admission in the Medical College. According to this statement, Abhinav obtained the money from his late maternal grandfather and used the same to arrange a solver by the petitioner with whose help Abhinav managed to clear PMT-2008. The police relying on such disclosure did not press the earlier closure report and the same was dismissed by the Court as not pressed vide order dated 10/06/2015. The police filed the charge-sheet before the ASJ, Indore, which was registered and the charges were framed as stated above.

3. The sole contention of the petitioner is that there was no evidence at all to connect him with the crime except the disclosure made by the co-accused/ Abhinav and was recorded under Section 27 of the Evidence Act. The disclosure was made before the police. Neither it was admissible nor was sufficient to implicate him in the present case or for framing of charges against him, therefore, quashing of the order of learned ASJ, Indore is prayed for.

4. Learned public prosecutor appearing for the respondents has opposed the prayer but fairly admitted the facts stated above. Learned counsel failed to point out any evidence collected during investigation by the police, which connects the petitioner to the crime. Neither the money as disclosed by the co-accused/ Abhinav has been recovered from his possession nor the name of solver could be revealed.

5. Before observing legal position, it would be appropriate to look into the final report submitted by the police, which reads as under:

"VERNACULAR MATTER OMITTED"

6. The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilized for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.

7. There is no dispute that the allegation against the petitioner are solely based on the disclosure statements of the co-accused. The law in this respect is well settled that of the evidence of the accomplice should not be relied upon or should not be made basis for taking action against the other co-accused. Long back in

the year 1949, while dealing with the issue, the Privy Council expressed its view in *Bhuboni Sahu vs. The King* AIR (36) 1949 Privy Council 257 stating that the evidence of one accomplice not to be used to corroborate evidence of another accomplice. The Courts should be slow to depart from this rule of prudence. whilst it is not illegal to act upon the uncorroborated evidence of an accomplice; it is a rule of prudence so universally followed as to amount almost to a rule of law that it is unsafe to act upon the evidence of an accomplice unless it is corroborated in material respects so as to implicate the accused; and further the evidence of one accomplice cannot be used to corroborate the evidence of another accomplice. Courts should be slowed to depart from the rule of prudence, based on long experience, which requires some independent evidence implicating the particular accused.

The danger of acting upon accomplice evidence is not merely that the accomplice is on his own admission a man of bad character who took part in the offence and afterwards to save himself betrayed his former associate, and who has placed himself in a position in which he can hardly fail to have a strong bias in favour of the prosecution; the real danger is that he is telling a story, which in its general outline is true, and it is easy for him to work into the story matter which is untrue. The only real safeguard against the risk of condemning the innocent with the guilty lies in insisting upon independent evidence which in some measures implicates each accused. It is held that confession of the accomplice can not be made the foundation of conviction.

8. In this respect we can also refer *Kashmira Singh Vs. State of MP* 1952 Cr.L.J. 839, *Haricharan Kurmi Vs. State of Bihar* AIR 1964 SC 1184, *Mohd. Farooq Abdul Gafur and Anr Vs. State of Maharashtra* AIR 2010 SC (Supp) 884, *Md. Jamiluddin Nasir Vs. State of West Bengal* AIR 2014 SC 2587, *Roshan Lal vs. Union of India* AIR 1965 Himachal Pradesh 1 (V 52-C 1), *Nabi Mohomed Chand Hussein vs. State of Maharashtra* 1980 CRI.L.J. 860, *Biraja Panda alias Butia vs. State of Orissa* 1996 CRI. L.J. 904, *Kamal Kishore vs. State through Delhi Administration* 1997 CRI.L.J. 2106 and *Amit Kapoor vs. Ramesh Chander* decided on 13/09/2012 in Criminal Appeal No.1407/2012 where it has been made clear that the confession of a co-accused cannot be treated as substantive evidence to convict other than the person who made it. It is, however, well established and reiterated in several decisions of the Courts that based on the consideration of other evidence on record and if such evidence sufficiently supports the case of the Prosecution and if it requires further support, reliance can be placed upon the confession of a co-accused.

9. Applying the above principles to the case in hand, we find that so far as the petitioner is concerned, except the disclosure statement as alleged, there is no other evidence on record to connect him to the offence in question. When there is no other evidence on record establishing his involvement, he cannot be convicted on the basis of the statement of the co-accused Abhinav, which in our opinion, is also not credible as no recovery is made on the basis of that

statement. Once the statement is obliterated and kept out of consideration, nothing remains on record to presume guilt of the petitioner. There is thus, no credible evidence to persuade us to uphold the charge framed against the petitioner. Resultantly, the petition is allowed. Charges framed against the petitioner under Section 419, 420, 467, 468, 471 of IPC and Section 3/4 Madhya Pradesh Recognized Examination Act, 1937 (X of 1937) dated 18/08/2015 in S.T. No.496/2015 by the learned ASJ, Indore are hereby quashed. Bail bond furnished by the petitioner stands discharged.