

Rajveer Singh Vs State of M.P.

Court: Madhya Pradesh High Court (Gwalior Bench)

Date of Decision: Nov. 21, 2014

Acts Referred: Central Excises and Salt Act, 1944 " Section 34(2)

Criminal Procedure Code, 1973 (CrPC) " Section 482

Evidence Act, 1872 " Section 25, 27

Citation: (2015) 1 MPHT 265

Hon'ble Judges: Sushil Kumar Gupta, J

Bench: Single Bench

Advocate: H.K. Shukla, Advocate for the Appellant; R.S. Sharma, Panel Lawyer, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Sushil Kumar Gupta, J.

The petitioner has filed this petition under Section 482 of the Code of Criminal Procedure, 1973 for quashing the

FIR as well as Criminal Case No.1898/2012 in respect of Crime No.39/12 registered at police Station, Rithorakalan, Distt. Morena, for the

offence punishable under Section 34(2) of the Excise Act.

2. The brief facts of the case are that ASI Kamlesh Kumar was on patrolling duty. He saw a Maruti Car bearing registration No.J5FF/2751

coming from the side of National Highway. On being given signal to stop the car, the driver of the vehicle did not stop the car and tried to run

away. The police chased the car. In front of Teekari the highway was closed. The car dashed from the soil and stopped, then driver of the vehicle

fled away and another person who was sitting in the car also tried to run away, but he was caught hold by the police. On asking, he disclosed his

name as Balveer @ Balle and the name of driver who ran away as Rishikesh @ Rishi. On being searched the car, 18 boxes of Masala country-

made liquor and 5 boxes of plain country-made liquor were found for which there was no valid licence or permit. Thereafter, offence under

Section 34(2) of the Excise Act was registered against Balveer @ Balle and Rishikesh @ Rishi. During investigation, driver Rishikesh in his

statement under Section 27 of the Evidence Act disclosed that he and co-accused Balveer were carrying the liquor in the car for selling it in their

village and the said liquor was purchased from the liquor shop of petitioner Rajveer Yadav and on this disclosure statement petitioner Rajveer

Singh was made an accused.

3. Learned counsel for the petitioner submitted that petitioner is not named in the FIR, even he was not present in the car at the time of seizure of

the said liquor. Learned counsel further submitted that petitioner has been made accused only on the basis of disclosure statement of the co-

accused under Section 27 of the Evidence Act. He further submitted that there is no evidence available on record against the petitioner except the

confessional statement of the co-accused so as to implicate him in this case. It is further submitted that the petitioner has nothing to do with the

seized liquor or with the vehicle from which the liquor was seized. The cognizance taken by the police against the petitioner is absolutely illegal. In

support of the arguments, learned counsel for the petitioner placed reliance on single Bench decision of this Court in Ashok Nanda Vs. State of

M.P. and Another, and submits that FIR as well as criminal Case No.1898/12 deserves to be quashed.

4. Per contra, learned Panel Lawyer for respondent No.1 opposed the petition as well as the arguments advanced by learned counsel for the

petitioner and prayed for dismissal of the petition.

5. I have heard learned counsel for the petitioner and also perused the FIR as well as the documents filed by the prosecution.

6. From the perusal of the FIR, it is evident that present petitioner was not named in the FIR, even he was not present on the spot at the time of

seizure of car as well as liquor. Present petitioner has been implicated as an accused only on the basis of disclosure statement of co-accused

Rishikesh @ Rishi under Section 27 of the Evidence Act that the liquor was purchased from the liquor shop of the petitioner. It is also clear that

the name of present petitioner is not mentioned in the statement of Dharmendra Singh and Head Constable Rajpal Singh who were present at the

time of alleged seizure.

7. Except the aforesaid disclosure statement, there is no other evidence available on record which may establish that illegal liquor was belonging to

the petitioner. It is also not the case of the prosecution that vehicle in which the illegal liquor was being transported was that of the petitioner. So far

as the evidence of memorandum given by the co-accused person under Section 27 of the Evidence Act is concerned, his confessional statement

to police which is also hit by Section 25 of the Evidence Act cannot be accepted as a legal evidence against the petitioner in absence of any other

incriminating piece of evidence.

8. This Court in Ashok Nanda (Supra) para 12 has observed as under :-

12. As far as the evidence of memoranda given by the co-accused persons under Section 27 of the Evidence Act is concerned, their

confessional statements to police cannot be accepted as legal evidence against petitioners in the absence of any other incriminating piece of

evidence. Except the above circumstances, absolutely no other evidence has been collected and produced by the prosecution prima facie to

indicate that petitioners hatched conspiracy with other accused persons to commit murder of complainant Rajendra Agal.

9. This Court in *Prakash Singh v. State of M.P.*, 1994 (II) MPWN 72 has held as under :-

The statement admissible under section 27 of the Evidence Act are the statements which could be used as evidence against the maker and not

against any other person. Under section 27 only portions of information given by an accused which are admissible are those which relate distinctly

to the facts discovered thereby. Consequently statements by an accused which do not relate to aforesaid facts but involve other accused are

inadmissible under Section 27 against the later.

10. This Court in *Raghu Thakur Vs. The State of M.P.*, has observed in para 6 as under :-

6. A plain reading of Section 27 of Indian Evidence Act indicates that the statement under Section 27 of Indian Evidence Act is an exception to

the ban imposed upon the Courts to utilize the confessional statement made under Sections 25 and 27 of Indian Evidence Act, so as to protect a

person making disclosure from being falsely implicated by the police in whose custody that person remains at the time of making disclosure. The

provision of Section 27 of Indian Evidence Act further indicates that the facts disclosed under Section 27 of Indian Evidence Act can be used only

against the person making disclosure and not against any other person.

11. So far as invoking the powers under Section 482 of Cr.P.C. for quashing the criminal proceeding is concerned, the Apex Court in the case of

Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others, in great detail considered the scope of powers under

Section 482 of the Code of Criminal Procedure for quashing the criminal proceeding relying on the earlier decision rendered by the Apex Court in

the Case of *R.P. Kapur Vs. The State of Punjab*, and *State of Haryana and others Vs. Ch. Bhajan Lal and others*, in which it was held:

9. In *R.P. Kapur v. State of Punjab* this Court summarized some categories of cases where inherent power can and should be exercised to quash

the proceedings.

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the

offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove

the charge.

12. In view of the aforesaid and considering the legal position and in view of the fact that no evidence is available against the petitioner except the

disclosure statement under Section 27 of the Evidence Act of co-accused Rishikesh @ Rishi, FIR as well as Criminal Case No.1898/2012 in

respect of Crime No.39/12 registered at police Station, Rithorakalan, Distt. Morena, for the offence punishable under Section 34(2) of the Excise

Act, so far as it relates to the petitioner, deserves to be quashed.

13. Consequently, the petition is allowed and the FIR as well as Criminal Case No.1898/2012 in respect of Crime No.39/12 registered at police

Station, Rithorakalan, Distt. Morena, for the offence punishable under Section 34(2) of the Excise Act, so far as it relates to the petitioner, is

hereby quashed.

Copy of the order be sent to the trial Court for information and compliance of the order.