

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.03.2025

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THE HON'BLE MR.JUSTICE P.DHANABAL

Crl.O.P.(MD)No.22599 of 2024

and

Crl.M.P(MD)Nos.14100 and 14101 of 2024

B. Karthick

.. Petitioner

Vs.

1. The Inspector of Police
Thondi Police Station
Ramanathapuram District

2. Senthil Kumar

.. Respondents

PRAYER : Criminal Original Petition filed under Section 528 of BNSS, to call for the records pertaining to the impugned charge sheet in C.C.No. 159 of 2024 on the file of the Additional District Judge, Special Court for E.C. Act cases, Pudukottai District in Crime No. 272 of 2023 under Sections 8(c), 20(b)(ii)(c), 25, 27A and 29(1) of NDPS Act, 1985 and 120(B) of IPC on the file of the first respondent and quash the same as illegal



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For Petitioner : Mr.G.Karuppasamy Pandian
For Respondents : Mr.M.Sakthi Kumar
No.1 Government Advocate(Crl.Side)
No.2 : No appearance

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.159 of 2024 on the file of the Additional District Judge, Special Court for E.C. Act cases, Pudukottai District

2. The case of the prosecution is that the petitioner along with other accused were found indulged in selling of kanja and there by the other accused caught red handed and based on the confession of the co-accused this petitioner was arrayed as an accused for harbouring the accused and he has been charged for the offence under Sections 8(c), 20(b)(ii)(c), 25, 27A and 29(1) of NDPS Act, 1985 and 120(B) of IPC

3. The learned counsel appearing for the petitioner would submit that the petitioner herein is arrayed as A7 in this case and as per the prosecution A1 to A7 illegally transported kanja. On 26.11.2023 at about 09.15a.m., the respondent police found a four wheeler bearing Reg. No.



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TN 38 BZ 3420 belonging to A2 with 105kgs of kanja and the same was tried to transport to Srilanka through Ship and thereafter A1 , A2 and A3 ran away and escaped through an auto to Mangalkudi vilakku road where A5 was waiting in a car to pick up them. A1 to A3 and A5 escaped from the scene of occurrence. Thereafter A3 informed the said incident to A7/ the petitioner herein and the petitioner after knowing that he involved in the kanja case harboured A3 and sent him to Tirupur and arranged job in the Solar Planet at Tirupur. Thereafter the case was registered. Infact the petitioner has no knowledge about the incident and except the confession statement of A3 there is no evidence to show that A3 involved in the harbouring the accused and A3 was not under the custody of the petitioner. Even as per the prosecution he only arranged job to A3 at Tirupur, therefore there is no materials to constitute the offence under Section 27(A) of NDPS Act but the respondent police without proper investigation included the petitioner as one of the accused but the trial Court without any materials had taken cognizance for the offence under Sections 8(c), 20(b)(ii)(c), 25, 27A and 29(1) of NDPS Act, 1985 and 120(B) of IPC, therefore the pending proceedings are liable to be quashed.



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4. The learned Government Advocate(Crl.side) would submit that A1 to A6 involved in illegal transportation of kanja from Tamil Nadu to Srilanka. A3 is none other than the brother-in-law of the petitioner herein in and the petitioner after knowing that A3 involved in the transportation of kanja harboured A3 and arranged job at Solar Planet, Tirupur therefore he committed offence under Sections 8(c), 20(b)(ii)(c),25, 27A and 29(1) of NDPS Act, 1985 and 120(B) of IPC. Based on the confession statement of A3 the petitioner/A7 has been arrayed as one of the accused in this case and therefore the petitioner has to face the trial and hence the petition is liable to be dismissed.

5. Heard both sides and perused the materials available on record.

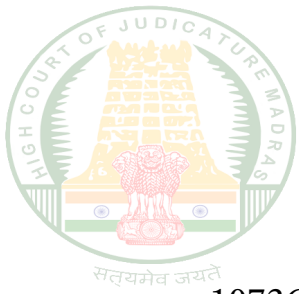
6. In this case the petitioner herein has been arrayed as A7 for the offence under Sections 8(c), 20(b)(ii)(c),25, 27A and 29(1) of NDPS Act, 1985 and 120(B) of IPC along with other accused. The main accusation against the petitioner is that he harboured A3 after knowing that A3 involved in kanja case. The prosecution relied upon the confession statement of A3 and impleaded the petitioner as one of the accused. It is



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well settled law that only based on the confession statement of co-accused and without any materials to implicate the accused no charges can be framed. In this case, this petitioner has been implicated as one of the accused only based on the confession statement of A3 and no other evidence is collected during investigation. In this case except the confession statement of A3, no other evidence collected by the investigation agency. Even according to the confession of A3, the petitioner/A7 arranged job for A3 at Tirupur and the same will not amount to harbouring the accused, there is no piece of evidence that the petitioner had knowledge about the involvement of the A3 in the kanja case Only because for arranging job to A3 at Tirupur the petitioner cannot be roped in this case as an accused under Section 27(A) of NDPS Act. The investigation officer not even examined any person where the A3 was working at Tirupur to implicate the petitioner as one of the accused. Except the confession statement of A3 no other witnesses were examined by the prosecution, therefore without any materials the petitioner cannot face the ordeal of trial.

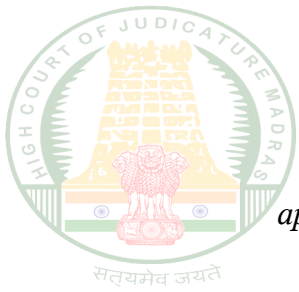
7. At this juncture, the learned counsel appearing for the petitioner relied on the following judgements:



a) Karan Talwar .vs. The State of Tamil Nadu in SLP(Crl.) No.

10736 of 2022, wherein the Hon'ble Supreme Court has held as follows:

*“As is evident from the said Section, the alleged offence is consumption of narcotic drug or psychotropic substance other than those specified in or under clause (a) of Section 27, NDPS Act, and therefore, the question is whether any material is available to charge the appellant thereunder. The contention of the appellant is that he has been arraigned as accused No.13 based on the confession statement of co-accused viz., accused No.1. Certainly, in the absence of any other material on record to connect the appellant with the crime, the confession statement of the co-accused by itself cannot be the reason for his implication in the crime. This view has been fortified by the law laid down in **Suresh Budharmal Kalani v. State of Maharashtra**, wherein it was stated that a co-accused's confession containing incriminating matter against a person would not by itself suffice to frame charge against him. The materials on record would reveal that the investigating agency had not subjected him to medical examination and instead, going by complaint Witness No.23, he smelt the accused. The less said the better and we do not think it necessary to comment upon adoption of such a course. We need only to say that even if he tendered such evidence, it would not help the prosecution in anyway. There is absolutely no case that any recovery of contraband was recovered from the appellant. As regards the confession statement of the appellant in view of Section 25 of the Indian Evidence Act, 1872 there can be no doubt with respect to the fact that it is inadmissible in evidence. In this context it is worthy to refer to the decision of this Court in **Ram Singh v. Central Bureau of Narcotics**. In the said decision, this Court held that Section 25 of the Indian Evidence Act would make confessional statement of accused before police inadmissible in evidence and it could not be brought on record by prosecution to obtain conviction. Shortly stated, except the confessional statement of co-accused No.1 there is absolutely no material available on record against the*



appellant.

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b) Surinder Kumar Khanna .vs. Intelligence Officer, Directorate of Revenue Intelligence reported in (2018) 8 SCC 271, wherein it is held as follows:

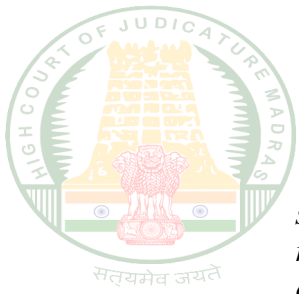
12. The law *laid down in Kashmira Singh* (supra) was approved by a Constitution Bench of this Court in *Hari Charan Kurmi and Jogia Hajam v. State of Bihar* ¹ wherein it was observed:

“As we have already indicated, this question has been considered on several occasions by judicial decisions and it has been consistently held that a confession cannot be treated as evidence which is substantive evidence against a co-accused person. In dealing with a criminal case where the prosecution relies upon the confession of one accused person against another accused person, the proper approach to adopt is to consider the other evidence against such an accused person, and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the charge framed against the said accused person, the court turns to the confession with a view to assure itself that the conclusion which it is inclined to draw from the other evidence is right. As was observed by Sir Lawrence Jenkins in *Emperor v. Lalit Mohan Chuckerburty* a confession can only be used to “lend assurance to other evidence against a co-accused”. In *Periyaswami Moopan Reilly. J.*, observed that the provision of *Section 30* goes not further than this

: “where there is evidence against the co-accused sufficient, if believed, to support his conviction, then the kind of confession described in *Section 30* may be thrown into the scale as an additional reason for believing that evidence”.

In *Bhuboni Sahu v. King the Privy Council* has expressed the same view. Sir John Beaumont who spoke for the Board, observed that

“a confession of a co-accused is obviously evidence of a very weak type. It does not indeed come within the definition of “evidence” contained in *Section 3* of the Evidence Act. It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross-examination. It is a much weaker type of evidence than the evidence of an approver, which is not subject to any of those infirmities. *Section 30*, however, provides that the court may take the confession into consideration and thereby, no doubt, makes it evidence on which the court may act; but the



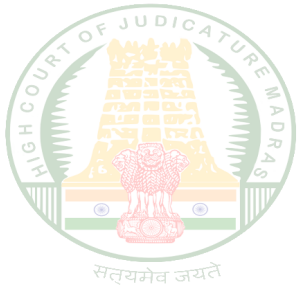
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section does not say that the confession is to amount to proof. Clearly there must be other evidence. The confession is only one element in the consideration of all the facts proved the case; it can be put into the scale and weighed with the other evidence”.

It would be noticed that as a result of the provisions contained in [Section 30](#), the confession has no doubt 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 [Section 30](#), the fact remains that it is not evidence as defined by [Section 30](#) 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 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. That, briefly stated, is the effect of the provisions contained in [Section 30](#). The same view has been expressed by this Court in [Kashmira Singh v. State of Madhya Pradesh](#) where the decision of the Privy Council in [Bhuboni Sahu](#) case has been cited with approval.”

12. The law so laid down has always been followed by this Court except in cases where there is a specific provision in law making such confession of a co-accused admissible against another accused.

8. On careful perusal of the above said judgements it is clear that in the absence of any other materials on records to connect the accused with the crime, the confession statement of the co-accused by itself cannot be the reason for his implication in the crime. In the case on hand also except the confession statement of co-accused that too before the police which is inadmissible in evidence and no other materials to implicate the petitioner in this crime.



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9. In view of the above said discussions without any materials as against the petitioner he cannot face the ordeal of trial.

10. In view of the same, the Criminal Original Petition stands allowed and the proceedings in C.C.No.159 of 2024 on the file of the Additional District Judge, Special Court for E.C. Act cases, Pudukottai District is hereby quashed in respect of the petitioner alone. Consequently connected miscellaneous petitions stand closed.

27.03.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Additional District Judge,
Special Court for E.C. Act cases, Pudukottai District
2. The Inspector of Police
Thondi Police Station
Ramanathapuram District
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.O.P.(MD)No.22599 of 2024

P.DHANABAL,J.

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