

Reserved on : 03.02.2026
Pronounced on : 25.04.2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.515 OF 2023

BETWEEN:

MR. SUNIL @ SILENT SUNIL
S/O MR. KRISHNAPPA,
AGED ABOUT 41 YEARS,
RESIDENT OF FLAT NO. 701,
B-WING, TOWER-6,
GODREJ WOODMAN ESTATE APARTMENTS,
HEBBALA KEMPAPURA,
BENGALURU – 560 024.

... PETITIONER

(BY SRI MAYUR D.BHANU, ADVOCATE)

AND:

1 . STATE OF KARNATAKA
BY WILSON GARDEN POLICE STATION,
BENGALURU CITY,
THROUGH
THE STATE PUBLIC PROSECUTORS,

HIGH COURT BUILDING,
DR. AMBEDKAR VEEDHI,
BENGALURU – 560 001.

2 . MR. N. B. MAGADUM
SUB-INSPECTOR OF POLICE,
WILSON GARDEN POLICE STATION,
BENGALURU – 560 027.

... RESPONDENTS

(BY SRI B.N.JAGADEESHA, ADDL.SPP FOR R-1 AND R-2;
SRI K.RAM SINGH, ADVOCATE FOR IMPEADING APPLICANT
IN IA NO.2/2023)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO a) QUASH THE FIR AND INFORMATION IN CR.NO.300/2022 OF WILSON GARDEN POLICE STATION, BENGALURU FOR THE OFFENCES P/U/S 3, 25(1B)(a) OF ARMS ACT R/W SECTION 120(b) IPC PENDING ON THE FILE OF VI ADDL.C.M.M., BENGALURU METROPOLITAN AREA, AT BENGALURU TO THE EXTENT OF IMPLICATING THE PETITIONER AS ACCUSED NO.5 IS CONCERNED.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 03.02.2026, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner is before the Court calling in question registration of a crime in Crime No.300 of 2022 for offences punishable under Sections 3 and 25 (1B) (a) of the Arms Act, 1959.

2. Heard Sri Mayur D. Bhanu, learned counsel appearing for the petitioner and Sri B.N. Jagadeesha, learned Additional State Public Prosecutor for respondents 1 and 2 and Sri K. Ram Singh, learned counsel appearing for impleading applicant in I.A.No.2 of 2023.

3. Facts, in brief, germane are as follows: -

On 28-12-2022 a *suo motu* complaint comes to be registered by the Wilson Garden Police Station invoking the afore-quoted provisions against one Sameerulla Khan @ Sameeulla Khan. On registration of the crime against the said Sameeulla Khan investigation would commence and the said Sameeulla Khan takes

the name of the petitioner to have been involved in the offence. The statement of the said Sameeulla Khan projected that the petitioner wanted to plot or hatch a conspiracy to do away the life of one Naga due to old rivalry. In furtherance of the said conspiracy, the petitioner got pistol and bullets which have been seized from the possession of the accused No.1. These are attributed to the petitioner and he is drawn as accused No.5 later. The drawing of the petitioner as accused No.5 in Crime No.300 of 2022 has driven the petitioner to this Court in the subject petition.

4. The learned counsel Sri Mayur D. Bhanu, appearing for the petitioner would vehemently contend that accused No.1/Sameeulla Khan comes to be arrested in relation to a warrant issued in C.C.No.9584 of 2022. He was remanded to Police custody on 06-01-2023. The name of the petitioner was revealed by the said accused No.1 and in the remand application, the name of the petitioner then comes to be inserted, without there being any corroboration whatsoever, but solely based on the statement of accused No.1 under Section 161 of the Cr.P.C. He would submit that the petitioner is not involved in the alleged offence. He has

been drawn into the web of crime solely after the representation made by the petitioner to the Home Secretary seeking direction to the Police to stop harassing him and not to falsely implicate him in every case. Immediately thereafter, comes the subject instance of the petitioner being drawn into the web of proceedings. On merit of the matter, he would submit that a confessional statement of the co-accused cannot be the sole basis to draw him in the web of crime without there being any corroborative material.

5. The learned Additional State Public Prosecutor Sri B.N. Jagadeesha would vehemently refute the submission in contending that whether there is any material or not is yet to be investigated into. Accused No.1 during investigation or when the statement being recorded reveals the name of the petitioner. The petitioner is a rowdy sheeter. There are several cases against him being a rowdy sheeter. Therefore, he is necessary for an investigation in the least in the case at hand. The investigation is not conducted in the light of interim order granted in the year 2023 itself. Corroboration would get revealed only after the investigation. He would seek dismissal of the petition.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

7. The afore-narrated facts lie in narrow compass at this juncture. The petitioner was not one of the accused, when the *suo motu* complaint was drawn by Wilson Garden Police. Prior to drawing of *suo motu* complaint, the petitioner had gone on representing to the respondent with regard to police implications of the petitioner and deliberately calling him for a rowdy parade without any rhyme or reason. The issue that has now driven the petitioner to this Court is a *suo motu* crime registered against one Sameeulla Khan. The petitioner was not aware of the said person being drawn as accused No.1 then. The Police recorded the statement of Sameeulla Khan, accused No.1 in Crime No.300 of 2022. He would reveal the name of the petitioner, on the score that there was old rivalry between the parties. It is then the name of the petitioner is inserted in the remand application. The remand application reads as follows:

“ಮಾನ್ಯ 6ನೇ ಎ.ಸಿ.ಎಂ.ಎಂ ನ್ಯಾಯಾಲಯದ ನ್ಯಾಯಾಧೀಶರು, ಬೆಂಗಳೂರು ನಗರ
--

ನ್ಯಾಯಾಂಗ ಬಂಧನ ಪತ್ರ		
ಕರ್ನಾಟಕ ರಾಜ್ಯ ಪೊಲೀಸ್ ನಮೂನೆ ಸಂಖ್ಯೆ 138		[ಆದೇಶ ಸಂಖ್ಯೆ 1368(111)]
ಪೊಲೀಸ್ ಠಾಣೆ : ವಿಲ್ಸನ್ ಗಾರ್ಡನ್ ಅಪರಾಧ ಸಂಖ್ಯೆ : 300/2022 ಘ.ಸಂಭವಿಸಿದ ದಿನಾಂಕ :- 28-12-2022 ರಂದು	ಜಿಲ್ಲೆ : ಬೆಂಗಳೂರು ನಗರ ಕಾನೂನು ಪ್ರಕರಣ :ಕಲಂ:- 120[ಬಿ] ಐಪಿಸಿ ಮತ್ತು 3. 25[1ಬಿ][ಎ] ಆರ್ಮ್ಸ್ ಆಕ್ಟ್ 1959 ಘ.ಸಂಭವಿಸಿದ ಸ್ಥಳ : ಬೆಂಗಳೂರು ನಗರ.	
ಕಳುವಾದ ಸ್ವತ್ತು :	ಪ್ರ.ವ.ವರದಿ ದಿನಾಂಕ : 28/12/2022	
	ಪಿರ್ಯಾದುದಾರರ ಅಥವಾ ಸುಳಿವು ನೀಡಿದವರ ಹೆಸರು	ಗೊತ್ತಿರುವ ಆಪಾದಿತರಿಗಿಂತಲೂ ಹೆಸರುಗಳು ಮತ್ತು ವಿಳಾಸಗಳು
ಕ್ರಮ ಕೈಗೊಂಡ ದಿನಾಂಕ: 09-01-2023	ಎನ್.ಬಿ.ಮಗದುಮ್. ಪಿ.ಎಸ್.ಐ- 2.ವಿಲ್ಸನ್ ಗಾರ್ಡನ್ ಪೊಲೀಸ್ ಠಾಣೆ. ಬೆಂಗಳೂರು ನಗರ.	ಎ-1, ಸಮೀಪುಲ್ಲಾ ಖಾನ್ @ ಸಮೀರ್ ಖಾನ್ ಬಿನ್ ಲೇಟ್, ಸಮೀಪುಲ್ಲಾಖಾನ್ 45 ವರ್ಷ. ವಾಸ:-ನಂ.52. ಮೈಸೂರು ಸ್ಟೀಲ್ ಗೋಡನ್ ಎದುರು. ನ್ಯಾಯಾಂಗದ ಪಾಳ್ಯ, ಐ.ಬಿ.ಎಂ. ಹಿಂಬಾಗ, ಬನ್ನೇರಘಟ್ಟ ರಸ್ತೆ, ಬೆಂಗಳೂರು ನಗರ [ಎ-1 ಆರೋಪಿತನು ದಿ:-06-01-2023 ರಿಂದ ಪೊಲೀಸ್ ಬಂಧನದಲ್ಲಿರುತ್ತಾನೆ] ಎ-2. ಜಂಜೀರ್ @ ಖಾನ್ @ ಜೇಷನ್ ಬಿನ್ ಸೈಪುಲ್ಲಾ ಯಶವಂತಪುರ, ಬೆಂಗಳೂರು ನಗರ. ಎ-3. ಮುಬಾರಕ್ ಬಿನ್ ಸೈಪುಲ್ಲಾ. ಯಶವಂತಪುರ. ಬೆಂಗಳೂರು ನಗರ. ಎ-4. ರಾಜಪಾಲ್ ಸಿಂಗ್ ಬಿನ್ ಪ್ರಧಾನ್ ಸಿಂಗ್. ಭರ್ವಾನಿ ಜಿಲ್ಲೆ. ಮಧ್ಯಪ್ರದೇಶ ರಾಜ್ಯ. ಎ-5. ಸುನೀಲ @ ಸೈಲೆಂಟ್ ಸುನೀಲ ರಾಜಾಜಿನಗರ, ಗಾಯತ್ರಿನಗರ, ಬೆಂಗಳೂರು ನಗರ. (ಎ-2 ರಿಂದ ಎ-5 ಆರೋಪಿತರು ತಲೆಮರೆಸಿಕೊಂಡಿರುತ್ತಾರೆ)."

In the entire narration of the remand application there is no whisper of the role of the petitioner. But, his name is inserted at the time of placing the remand application before the learned Magistrate. It is admitted fact that the name of the petitioner comes to be inserted only on the confession of accused No.1 during recording of the statement under Section 161 of the Cr.P.C.

8. Whether a person can be dragged into the web of proceedings, *albeit* at a nascent stage, solely on the statement of another accused, need not detain this Court for long or delve deep into the matter.

8.1. The Apex Court in **SURINDER KUMAR KHANNA v. INTELLIGENCE OFFICER, DIRECTORATE OF REVENUE INTELLIGENCE**¹ has held as follows:

"....

10. In *Kashmira Singh v. State of M.P.* [*Kashmira Singh v. State of M.P.*, (1952) 1 SCC 275 : 1952 SCR 526 : AIR 1952 SC 159 : 1952 Cri LJ 839] , this Court relied upon the decision of the Privy Council in *BhuboniSahu v. R.* [*BhuboniSahu v. R.*, 1949 SCC OnLine PC 12 : (1948-49) 76 IA 147 at p. 155.] and laid down as under: (AIR p. 160, paras 8-10)

¹ (2018) 8 SCC 271

"8. Gurubachan's confession has played an important part in implicating the appellant, and the question at once arises, how far and in what way the confession of an accused person can be used against a co-accused? It is evident that it is not evidence in the ordinary sense of the term because, as the Privy Council say in *BhuboniSahu v. R.* [*BhuboniSahu v. R.*, 1949 SCC OnLine PC 12 : (1948-49) 76 IA 147 at p. 155.] : (SCC OnLine PC)

'...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.'

Their Lordships also point out that it is

'obviously evidence of a very weak type. ... It is a much weaker type of evidence than the evidence of an approver, which is not subject to any of those infirmities'.

They stated in addition that such a confession cannot be made the foundation of a conviction and can only be used in "support of other evidence". In view of these remarks, it would be pointless to cover the same ground, but we feel it is necessary to expound this further as misapprehension still exists. The question is, in what way can it be used in support of other evidence? Can it be used to fill in missing gaps? Can it be used to corroborate an accomplice or, as in the present case, a witness who, though not an accomplice, is placed in the same category regarding credibility because the Judge refuses to believe him except insofar as he is corroborated?

9. In our opinion, the matter was put succinctly by Sir Lawrence Jenkins in *Emperor v. Lalit Mohan Chuckerbutty* [*Emperor v. Lalit Mohan Chuckerbutty*, ILR (1911) 38 Cal 559 at p. 588.] where he said that such a confession can only be used to "lend assurance to other evidence against a co-accused" or, to put it in another way, as Reilly, J. did in *PeriaswamiMoopan, In re* [*PeriaswamiMoopan, In re*, 1930 SCC OnLine Mad 86 : ILR (1931) 54 Mad 75 at p. 77.] : (SCC OnLine Mad)

'...the provision goes no 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.'

10. Translating these observations into concrete terms they come to this. The proper way to approach a case of this kind is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the Judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the Judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept."

11. The law laid down in *Kashmira Singh* [*Kashmira Singh v. State of M.P.*, (1952) 1 SCC 275 : 1952 SCR 526 : AIR 1952 SC 159 : 1952 Cri LJ 839] was approved by a Constitution Bench of this Court in *HaricharanKurmi v. State of Bihar* [*HaricharanKurmi v. State of Bihar*, (1964) 6 SCR 623 at pp. 631-633 : AIR 1964 SC 1184 : (1964) 2 Cri LJ 344] wherein it was observed: (*Haricharan case* [*HaricharanKurmi v. State of Bihar*, (1964) 6 SCR 623 at pp. 631-633 : AIR 1964 SC 1184 : (1964) 2 Cri LJ 344] , AIR p. 1188, para 12)

"12. 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*

Chuckerbutty [*Emperor v. Lalit Mohan Chuckerbutty*, ILR (1911) 38 Cal 559 at p. 588.] a confession can only be used to "lend assurance to other evidence against a co-accused". In *Periaswami Moopan, In re* [*Periaswami Moopan, In re*, 1930 SCC OnLine Mad 86 : ILR (1931) 54 Mad 75 at p. 77.] Reilly, J., observed that the provision of Section 30 goes not further than this: (SCC OnLine Mad)

'...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. R.* [*Bhuboni Sahu v. R.*, 1949 SCC OnLine PC 12 : (1948-49) 76 IA 147 at p. 155.] the Privy Council has expressed the same view. Sir John Beaumont who spoke for the Board, observed that: (SCC OnLine PC)

'... 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 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 in 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 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 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 M.P.* [*Kashmira Singh v. State of M.P.*, (1952) 1 SCC 275 : 1952 SCR 526 : AIR 1952 SC 159 : 1952 Cri LJ 839] where the decision of the Privy Council in *Bhuboni Sahu case* [*Bhuboni Sahu v. R.*, 1949 SCC OnLine PC 12 : (1948-49) 76 IA 147 at p. 155.] 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. [For example: *State v. Nalini*, (1999) 5 SCC 253, paras 424 and 704 : 1999 SCC (Cri) 691]

13. In the present case it is accepted that apart from the aforesaid statements of co-accused there is no material suggesting involvement of the appellant in the crime in question. We are thus left with only one piece of material that is the confessional statements of the co-accused as stated above. On the touchstone of law laid down by this Court, such a confessional statement of a co-accused cannot by itself be taken as a substantive piece of evidence against another co-accused and can at best be used or utilised in order to lend assurance to the Court."

8.2. The Apex Court in **DIPAKBHAI JAGDISHCHANDRA**

PATEL v. STATE OF GUJARAT² has held as follows:

"....

46. In *CBI v. V.C. Shukla* [*CBI v. V.C. Shukla*, (1998) 3 SCC 410 : 1998 SCC (Cri) 761 : AIR 1998 SC 1406] , a Bench of three learned Judges, after approving *Pakala Narayana Swami* [*Pakala Narayana Swami v. King Emperor*, 1939 SCC OnLine PC 1 : (1938-39) 66 IA 66 : AIR 1939 PC 47] , had occasion to consider the distinction between confession and

² (2019) 16 SCC 547

admission. This Court went on to hold as follows: (*V.C. Shukla case* [*CBI v. V.C. Shukla*, (1998) 3 SCC 410 : 1998 SCC (Cri) 761 : AIR 1998 SC 1406] , SCC pp. 437-38, para 45)

"45. It is thus seen that only voluntary and direct acknowledgement of guilt is a confession but when a confession falls short of actual admission of guilt it may nevertheless be used as evidence against the person who made it or his authorised agent as an "admission" under Section 21. The law in this regard has been clearly — and in our considered view correctly — explained in *Monir's Law of Evidence* (New Edn. at pp. 205 and 206), on which Mr Jethmalani relied to bring home his contention that even if the entries are treated as "admission" of the Jains still they cannot be used against Shri Advani. The relevant passage reads as under:

'The distinction between admissions and confessions is of considerable importance for two reasons. Firstly, a statement made by an accused person, if it is an admission, is admissible in evidence under Section 21 of the Evidence Act, unless the statement amounts to a confession and was made to a person in authority in consequence of some improper inducement, threat or promise, or was made to a police officer, or was made at a time when the accused was in custody of a police officer. If a statement was made by the accused in the circumstances just mentioned its admissibility will depend upon the determination of the question whether it does not amount to a confession. *If it amounts to a confession, it will be inadmissible, but if it does not amount to a confession, it will be admissible under Section 21 of the Act as an admission, provided that it suggests an inference as to a fact which is in issue in, or relevant to, the case and was not made to a police officer in the course of an investigation under Chapter XIV of the Code of Criminal Procedure. Secondly, a statement made by an accused person is admissible against others who are being jointly tried with him only if the statement amounts to a confession. Where the statement falls short of a confession, it is admissible only against its maker as an admission and not against those who are being jointly tried with him. Therefore, from the point of view of Section 30 of the Evidence Act also the distinction between an admission and a confession is of fundamental importance'.*"

(emphasis in original and supplied)

47. Section 21 of the Evidence Act provides as follows:

"21. Proof of admissions against persons making them, and by or on their behalf.—

Admissions are relevant and may be proved as against the person who makes them, or his representative in interest; but they cannot be proved by or on behalf of the person who makes them or by his representative in interest, except in the following cases—

- (1) An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under Section 32.
- (2) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.
- (3) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission."

48. Thus, what amounts to an admission can be used against the maker of the admission or his representative in interest. As to what constitutes an admission is to be found in Section 17 of the Evidence Act, which defines "admission" as follows:

"17. Admission defined.—An admission is a statement, oral or documentary or contained in electronic form, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned."

49. In *Bharat Singh v. Bhagirathi* [*Bharat Singh v. Bhagirathi*, AIR 1966 SC 405], the true nature of the evidentiary value of admission, and whether without confronting the maker of the admission, it could be used, has been referred to and this is what this Court had to say: (AIR p. 410, para 19)

"19. Admissions have to be clear if they are to be used against the person making them. Admissions are substantive evidence by themselves, in view of Sections 17 and 21 of the Indian Evidence Act, though they are not conclusive proof of the matters admitted. We are of opinion that the admissions duly proved are admissible evidence irrespective of whether the party making them appeared in the witness box or not and whether that party when appearing as witness was confronted with those statements in case it made a statement contrary to those admissions. The purpose of contradicting the witness under Section 145 of the Evidence Act is very much different from the purpose of proving the admission. Admission is substantive evidence of the fact admitted while a previous statement used to contradict a witness does not become substantive evidence and merely serves the purpose of throwing doubt on the veracity of the witness. What weight is to be attached to an admission made by a party is a matter different from its use as admissible evidence."

(emphasis supplied)

50. From the statement of the law contained in *V.C. Shukla* [*CBI v. V.C. Shukla*, (1998) 3 SCC 410 : 1998 SCC (Cri) 761 : AIR 1998 SC 1406] , it becomes clear as to what constitutes confession and how if it does not constitute confession, it may still be an admission. **Being an admission, it may be admissible under the Evidence Act provided that it meets the requirements of admission as defined in Section 17 of the Evidence Act. However, even if it is an admission, if it is made in the course of investigation under the CrPC to a police officer, then, it will not be admissible under Section 162 CrPC as it clearly prohibits the use of statement made to a police officer under Section 161 CrPC except for the purpose which is mentioned therein. Statement given under Section 161, even if relevant, as it contains an admission, would not be admissible, though an admission falling short of a confession which may be made otherwise, may become substantive evidence."**

8.3. In **KARAN TALWAR v. STATE OF TAMIL NADU**³ the Apex Court has held as follows:

"

10. 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*³, 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*⁴. 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,**

³ 2024 SCC OnLine SC 3803

except the confessional statement of co-accused No. 1 there is absolutely no material available on record against the appellant.

11. When this be the position, the question is whether the two Courts were justified in holding that there is *prima facie* case against the appellant to proceed against him. In this contextual situation, it is relevant to refer to the decision of this Court in *Dipakbhai Jagadishchandra Patel v. State of Gujarat*⁵ Paragraphs 23 and 24 of the said decision are relevant for the purpose of this case and they read thus:—

"23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the court is expected to do is, it does not act as a mere post office. The court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the court dons the mantle of the trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that the accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the *prima facie* view that the accused has committed the offence.

24. Undoubtedly, this Court has in *Suresh Budharmal Kalani* [Suresh Budharmal Kalani v. State of Maharashtra, (1998) 7 SCC 337], taken the view that confession by a co-accused containing incriminating matter against a person would not by itself suffice to frame charge against it. We may incidentally note that the Court has relied upon the judgment of this Court in *Kashmira Singh v. State of M.P.* [Kashmira Singh v. State of M.P., (1952) 1 SCC 275]. We notice that the observations, which have been relied upon, were made in the context of

an appeal which arose from the conviction of the appellant therein after a trial. The same view has been followed undoubtedly in other cases where the question arose in the context of a conviction and an appeal therefrom. However, in Suresh Budharmal Kalani [Suresh Budharmal Kalani v. State of Maharashtra, (1998) 7 SCC 337], the Court has proceeded to take the view that only on the basis of the statement of the co-accused, no case is made out, even for framing a charge."

(underline supplied)

12. As noted hereinbefore, the sole material available against the appellant is the confession statement of the co-accused viz., accused No. 1, which undoubtedly cannot translate into admissible evidence at the stage of trial and against the appellant. When that be the position, how can it be said that a *prima facie* case is made out to make the appellant to stand the trial. There can be no doubt with respect to the position that standing the trial is an ordeal and, therefore, in a case where there is no material at all which could be translated into evidence at the trial stage it would be a miscarriage of justice to make the person concerned to stand the trial."

8.4. In **BERNARD LYNDOH PHAWA v. STATE OF MEGHALAYA**⁴ the Apex Court has held as follows:

"....

28. Yet again, as we found, the confession of A1 is purely exculpatory and accuse A2 of having strangled his friend, leading to his death. The exculpatory statements made by A1 to absolve himself from the liability and accuse A2 of having caused the death, cannot at all be relied on against A2. Insofar as A2 is concerned, he does not speak of the murder having been committed and merely admits that the deceased took his last breath in A2's lap, which is not a confession as such. True, if the incidence of death as spoken in both confessions is eschewed and the other aspects of the three having been

⁴ **2026 SCC OnLine SC 116**

together on the crucial evening, even if accepted, can only be used for corroborating the circumstantial evidence otherwise established, which we find to be totally absent in the above case. Neither has the last seen theory been proved nor has the recoveries or the seizures established as having any connection with the crime proper.

29. It has been held in a host of decisions as noticed in *Manoharan* that a confession can form a legal basis of a conviction if the Court is satisfied that it was true and was voluntarily made. However, it was also held that a Court shall not base a conviction on such a confession without corroboration [Pyarelal Bhargava v. State of Rajasthan]. Quoting the Privy Council, it was held in *Kanda Pandyachi @ Kandaswamy v. State of Tamil Nadu* that '*a confession has to be a direct acknowledgment of guilt of the offence in question and such as would be sufficient by itself for conviction. If it falls short of such a plenary acknowledgment of guilt it would not be a confession even though the same is of some incriminating fact which taken with other evidence tends to prove his guilt.*' (sic para 11). In the instant case there is no such acknowledgment of the crime proper nor is there any shred of evidence to establish the various circumstances put forth by the prosecution.

30. The confession allegedly made by the appellants is of no use in bringing home a conviction, especially when there was no corroboration available, of the statements made, from other valid evidence. There was thus no single circumstance available, incriminating the accused in the death of their friend, the son of PW5.

31. Having discussed the evidence, we fail to see any circumstance having been found from the evidence led, in the prosecution before the Trial Court to arrive at a hypothesis of guilt. The High Court proceeded on the premise that the Trial Court lost its way on the minor details and failed to see the larger picture, which was obviously and eventually admitted in the confession statements. The admissions were only that made in the confessional statements, of the death having occurred in

the presence of the accused, on the day the deceased was found missing, which we have found to be not worthy of acceptance.”

8.5. In **K.S. ROHITH @ ONTE v. STATE OF KARNATAKA**⁵

this Court has held as follows:-

“....

7. The Apex Court in the case of *Dipakbhai Jagdishchandra Patel v. State Of Gujarat*¹ has held as follows:

“46. In *CBI v. V.C. Shukla* [*CBI v. V.C. Shukla*, (1998) 3 SCC 410 : 1998 SCC (Cri) 761 : AIR 1998 SC 1406], a Bench of three learned Judges, after approving *Pakala Narayana Swami* [*Pakala Narayana Swami v. King Emperor*, 1939 SCC OnLine PC 1 (1938-39) 66 IA 66 : AIR 1939 PC 47], had occasion to consider the distinction between confession and admission. This Court went on to hold as follows: (*V.C. Shukla* case [*CBI v. V.C. Shukla*, (1998) 3 SCC 410 : 1998 SCC (Cri) 761 : AIR 1998 SC 1406], SCC pp. 437-38, para 45)

“45. It is thus seen that only voluntary and direct acknowledgement of guilt is a confession but when a confession falls short of actual admission of guilt it may nevertheless be used as evidence against the person who made it or his authorised agent as an “admission” under Section 21. The law in this regard has been clearly — and in our considered view correctly — explained in *Monir's Law of Evidence* (New Edn. at pp. 205 and 206), on which Mr Jethmalani relied to bring home his contention that even if the entries are treated as “admission” of the Jains still they cannot be used against Shri Advani. The relevant passage reads as under:

‘The distinction between admissions and confessions is of considerable importance for two reasons. Firstly, a statement made by an accused person, if it is an admission, is admissible in evidence under Section 21 of the Evidence Act, unless the statement amounts to a confession and was made to a person in authority in consequence of some improper inducement, threat or promise, or was made to a police officer, or was made

⁵ 2024 SCC OnLine Kar. 31865

at a time when the accused was in custody of a police officer. If a statement was made by the accused in the circumstances just mentioned its admissibility will depend upon the determination of the question whether it does not amount to a confession. If it amounts to a confession, it will be inadmissible, but if it does not amount to a confession, it will be admissible under Section 21 of the Act as an admission, provided that it suggests an inference as to a fact which is in issue in, or relevant to, the case and was not made to a police officer in the course of an investigation under Chapter XIV of the Code of Criminal Procedure. Secondly, a statement made by an accused person is admissible against others who are being jointly tried with him only if the statement amounts to a confession. Where the statement falls short of a confession, it is admissible only against its maker as an admission and not against those who are being jointly tried with him. Therefore, from the point of view of Section 30 of the Evidence Act also the distinction between an admission and a confession is of fundamental importance’.”

(emphasis in original and supplied)

47. Section 21 of the Evidence Act provides as follows:

“21. Proof of admissions against persons making them, and by or on their behalf.— Admissions are relevant and may be proved as against the person who makes them, or his representative in interest; but they cannot be proved by or on behalf of the person who makes them or by his representative in interest, except in the following cases—

- (1) An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under Section 32.
- (2) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.
- (3) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.”

48. Thus, what amounts to an admission can be used against the maker of the admission or his representative in interest. As to what constitutes an admission is to be found in Section 17 of the Evidence Act, which defines “admission” as follows:

"17. Admission defined.— An admission is a statement, oral or documentary or contained in electronic form, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned."

49. *In* Bharat Singh v. Bhagirathi [Bharat Singh v. Bhagirathi, AIR 1966 SC 405], the true nature of the evidentiary value of admission, and whether without confronting the maker of the admission, it could be used, has been referred to and this is what this Court had to say: (AIR p. 410, para 19)

"19. Admissions have to be clear if they are to be used against the person making them. Admissions are substantive evidence by themselves, in view of Sections 17 and 21 of the Indian Evidence Act, though they are not conclusive proof of the matters admitted. We are of opinion that the admissions duly proved are admissible evidence irrespective of whether the party making them appeared in the witness box or not and whether that party when appearing as witness was confronted with those statements in case it made a statement contrary to those admissions. The purpose of contradicting the witness under Section 145 of the Evidence Act is very much different from the purpose of proving the admission. Admission is substantive evidence of the fact admitted while a previous statement used to contradict a witness does not become substantive evidence and merely serves the purpose of throwing doubt on the veracity of the witness. What weight is to be attached to an admission made by a party is a matter different from its use as admissible evidence."

(emphasis supplied)

50. *From the statement of the law contained in V.C. Shukla [CBI v. V.C. Shukla, (1998) 3 SCC 410 : 1998 SCC (Cri) 761 : AIR 1998 SC 1406], it becomes clear as to what constitutes confession and how if it does not constitute confession, it may still be an admission. Being an admission, it may be admissible under the Evidence Act provided that it meets the requirements of admission as defined in Section 17 of the Evidence Act. However, even if it is an admission, if it is made in the course of investigation under the CrPC to a police officer, then, it will not be admissible under Section 162 CrPC as it clearly prohibits the use of statement made to a police officer under Section 161 CrPC except for the purpose which is mentioned therein. Statement given under*

Section 161, even if relevant, as it contains an admission, would not be admissible, though an admission falling short of a confession which may be made otherwise, may become substantive evidence."

On the same lines the Apex Court earlier in *Surinder Kumar Khanna v. Intelligence Officer, Directorate Of Revenue Intelligence*² has held as follows:

"10. In Kashmira Singh v. State of M.P. [Kashmira Singh v. State of M.P., (1952) 1 SCC 275 : 1952 SCR 526 : AIR 1952 SC 159 : 1952 Cri LJ 839], this Court relied upon the decision of the Privy Council in Bhuboni Sahu v. R. [Bhuboni Sahu v. R., 1949 SCC OnLine PC 12 : (1948-49) 76 IA 147 at p. 155.] and laid down as under: (AIR p. 160, paras 8-10)

"8. Gurubachan's confession has played an important part in implicating the appellant, and the question at once arises, how far and in what way the confession of an accused person can be used against a co-accused? It is evident that it is not evidence in the ordinary sense of the term because, as the Privy Council say in Bhuboni Sahu v. R. [Bhuboni Sahu v. R., 1949 SCC OnLine PC 12 : (1948-49) 76 IA 147 at p. 155.] : (SCC OnLine PC)

'...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.'

Their Lordships also point out that it is

'obviously evidence of a very weak type. ... It is a much weaker type of evidence than the evidence of an approver, which is not subject to any of those infirmities'.

They stated in addition that such a confession cannot be made the foundation of a conviction and can only be used in "support of other evidence". In view of these remarks, it would be pointless to cover the same ground, but we feel it is necessary to expound this further as misapprehension still exists. The question is, in what way can it be used in support of other evidence? Can it be used to fill in missing gaps? Can it be used to corroborate an accomplice or, as in the present case, a witness who, though not an accomplice, is placed in the same

category regarding credibility because the Judge refuses to believe him except insofar as he is corroborated?

9. *In our opinion, the matter was put succinctly by Sir Lawrence Jenkins in Emperor v. Lalit Mohan Chuckerbutty [Emperor v. Lalit Mohan Chuckerbutty, ILR (1911) 38 Cal 559 at p. 588.] where he said that such a confession can only be used to "lend assurance to other evidence against a co-accused" or, to put it in another way, as Reilly, J. did in Periaswami Moopan, In re [Periaswami Moopan, In re, 1930 SCC OnLine Mad 86 : ILR (1931) 54 Mad 75 at p. 77.]: (SCC OnLine Mad)*

'...the provision goes no 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.'

10. *Translating these observations into concrete terms they come to this. The proper way to approach a case of this kind is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the Judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the Judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept."*

11. The law laid down in *Kashmira Singh* [*Kashmira Singh v. State of M.P.*, (1952) 1 SCC 275 : 1952 SCR 526 : AIR 1952 SC 159 : 1952 Cri LJ 839] was approved by a Constitution Bench of this Court in *Haricharan Kurmi v. State of Bihar* [*Haricharan Kurmi v. State of Bihar*, (1964) 6 SCR 623 at pp. 631-633 : AIR 1964 SC 1184 : (1964) 2 Cri LJ 344] wherein it was observed: (*Haricharan* case [*Haricharan Kurmi v. State of Bihar*, (1964) 6 SCR 623 at pp. 631-633 : AIR 1964 SC 1184 : (1964) 2 Cri LJ 344], AIR p. 1188, para 12)

"12. 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 Chuckerbutty* [*Emperor v. Lalit Mohan Chuckerbutty*, ILR (1911) 38 Cal 559 at p. 588.] a confession can only be used to "lend assurance to other evidence against a co-accused". In *Periaswami Moopan*, In re [*Periaswami Moopan*, In re, 1930 SCC OnLine Mad 86 : ILR (1931) 54 Mad 75 at p. 77.] Reilly, J., observed that the provision of Section 30 goes not further than this: (SCC OnLine Mad)

'...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. R.* [*Bhuboni Sahu v. R.*, 1949 SCC OnLine PC 12 : (1948-49) 76 IA 147 at p. 155.] the Privy Council has expressed the same view. Sir John Beaumont who spoke for the Board, observed that: (SCC OnLine PC)

'... 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 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 in 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 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 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 M.P.* [*Kashmira Singh v. State of M.P.*, (1952) 1 SCC 275 : 1952 SCR 526 : AIR 1952 SC 159 : 1952 Cri LJ 839] where the decision of the Privy Council in *Bhuboni Sahu case* [*Bhuboni Sahu v. R.*, 1949 SCC OnLine PC 12 : (1948-49) 76 IA 147 at p. 155.] 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. [For example: State v. Nalini, (1999) 5 SCC 253, paras 424 and 704 : 1999 SCC (Cri) 691]*

13. *In the present case it is accepted that apart from the aforesaid statements of co-accused there is no material suggesting involvement of the appellant in the crime in question. We are thus left with only one piece of material that is the confessional statements of the co-accused as stated above. On the touchstone of law laid down by this Court, such a confessional statement of a co-accused cannot by itself be taken as a substantive piece of evidence against another co-accused and can at best be used or utilised in order to lend assurance to the Court."*

A coordinate Bench of this Court considering all the other judgments on the issue rendered by the Apex Court has held in the case of *Srinivasa @ Kulloa Seena v. State Of Karnataka*³ as follows:

"13. On 10.6.2018, the accused No. 4 was arrested at 3.05 a.m. On the basis of his voluntary statement, accused Nos. 2, 3, 6 and 7 and the petitioner as accused No. 1 are arrayed. The spot mahazar was conducted on 10.6.2018 between 7.00 a.m. to 8.15 a.m. Even on the date of spot mahazar, the name of the petitioner was not mentioned by the eye witness - CW1. On 10.6.2018, the inquest panchanama was conducted at KIMS hospital between 1.00 p.m. to 3.00 p.m., and at the time of inquest, CW3-father, CW4-sister and CW5 mother, suspected the name of petitioner on the basis of hearsay statement.

14. The voluntary statements of the accused Nos. 2, 3, 6 and 7 were recorded on 13.6.2018, and the accused No. 2 in the voluntary statement is alleged to have stated that, at the instance of accused No. 1 and other accused, they have hatched the criminal conspiracy to kill Jayanth son of CW3. Except the statement of CWs. 3 to 5, who suspected the involvement of the petitioner on hearsay information, and the voluntary statement of accused No. 2, the police have not placed any corroborative material to substantiate that, at the instance of accused No. 1, the criminal conspiracy was hatched to do away the life of the deceased Jayanth. The police during the course of investigation, have recorded the statement of many as 47 witnesses, and none of the witnesses have spoken about the involvement of accused No. 1 in the commission of the aforesaid crime.

15. The High Court of Delhi in the case of V K Verma (*supra*) at para-66 has held as follows:

"66. From the aforesaid analysis, it is clear that at the stage of framing of charge, the Ld. Judge is merely required to overview the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused, or in other words, whether a *prima facie* case is made out against the accused. It is also settled that at the time of framing of charges there is requirement of satisfaction only regarding the probability of the accused having committed the offence and not of the proof of his culpability beyond reasonable doubt, yet while framing the charge some material must still be available so as to appeal to the judicial conscience on which a *prima facie* case is established against the accused."

16. The Hon'ble Supreme Court in the case of State of Rajasthan v. Fatehakaran Mehdu (2017) 3 SCC 198 (*supra*) at para-26 has held as follows:

"26. The scope of interference and exercise of jurisdiction under Section 397 Cr. P.C. has been time and again explained by this Court. Further, the scope of interference under Section 397 Cr. P.C. at a stage, when charge had been framed, is also well settled. At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong

suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage final test of guilt is to be applied. Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with the scheme of the Code of Criminal Procedure."

17. *The Hon'ble Supreme Court in the case of Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4 while considering the scope of provisions contained in Section 227 of Cr. P.C. at para-10 has held as follows:*

"10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

- (1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.*
- (2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.*
- (3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.*
- (4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."*

"18. The coordinate Bench of this Court in CrI.RPNo. 1008/2008 (22.10.2008), in identical circumstances, at paras-11 to 13 has held as follows:

11. Except the above statements no other material is there on record to come to the conclusion that there are grounds to presume that this petitioner committed the offence of conspiracy along with all or any of the accused Nos. 1 to 8 in plotting the scheme for murdering the deceased. Besides this, in support of his contentions Sri. H.P. Leeladhar, learned counsel for the petitioner has relied upon the following decisions

1. (2008) 2 Crimes 263 (SC) Yogesh @ Sachin Jagdish Joshi v. State of Maharashtra.
 2. (1996) 3 Crimes 85 (SC) Satish Mehra v. Delhi Administration.
 3. (1998) 1 Crimes 219 (SC) Central Bureau of Investigation v. V.C. Shukla.
 4. 1997 Cri LJ 2559 L.K. Advani v. Central Bureau of Investigation
12. In first of the above said decisions i.e. in (2008) 2 Crimes 263 (SC) it is observed at paragraph 18 as under:—

para 18: "The basic ingredients of the offences of criminal conspiracy are: (i) an agreement between two or more persons; (ii) the agreement must relate to doing or causing to be done either (a) an illegal act; or (b) an act which is not illegal in itself but is done by illegal means. It is therefore, plain that meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means is sine qua non of criminal conspiracy. Yet as observed by this Court in Shivanarayan Laxminarayan Joshi v. State of Maharashtra, a conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence of the common intention of the conspirators. Therefore, the meeting of minds of the conspirators can be inferred from the circumstances proved by the prosecution, if such inference is possible".

If the statements of the said witnesses, are examined in the light of these observations of the Hon'ble Supreme Court, it could be seen that they do not disclose the facts from which the commission of the offence of conspiracy could be inferred against the present petitioner (A9)

13. In the second of the said decisions i.e. (1996) 3 Crimes 85 (Satish Mehra v. Delhi Administration) the Hon'ble Supreme Court has observed at para Nos. 12 and 13 as under-

para 12: "The object providing such an opportunity as is envisaged in section 227 of the Code is enable the Court to decide whether it is necessary to proceed to conduct the trial. If the case ends there it gains a lot of time of the Court and saves much human efforts and cost. If the materials produced by the accused even at that early stage would clinch the issue, why should the Court shut it out saying that such documents need be produced only after wasting a lot more time in the name of trial proceedings. Hence, we are of the view that Sessions Judge would be within his powers to consider even materials which the accused may produce at the stage contemplated in Section 227 of the Code.

para 13: But when Judge, is fairly certain that there is no prospect of the case ending in conviction the valuable time of the Court should not be wasted for holding a trial only for the purpose of formally completing the procedure to pronounce the conclusion on a future date. We are mindful that most of the Sessions Courts in India are under heavy pressure of work-load. If the Sessions Judge is almost certain that the trial would only be an exercise in futility or a sheer waste of time it is advisable to truncate or ship the proceedings at the stage of Section 227 of the Code itself".

In the light of these observation, it could be seen in the instant case that the statements of the said witnesses even taken at their face value, do not make out grounds to presume that this petitioner committed the offences of conspiracy.

19. The coordinate Bench of this Court in Crl.PNo. 10860/2022 (2.1.2023) at para - 14 has held as follows:

14. On perusal of the judgment of the Hon'ble Supreme Court in the above said cases to the facts and circumstances of the case, where, except a voluntary statement of the co-accused saying that this petitioner- accused came to Bangalore along with accused No. 1 in the year 2017, there is no material collected by the Investigating Officer to connect the accused with the crime and even accused Nos. 3 to 9 came to Bengaluru at the instance of accused No. 1 for recovery of arrears of commission and there is no allegation against this petitioner that this petitioner sent those accused persons and also accused No. 3 contacted accused No. 1 after the incident, but not this petitioner and no CDR produced to show that this petitioner contacted accused Nos. 3 to 9 in respect of either prior to the commission of offence or after the commission of offence. Therefore, it clearly reveals that the petitioner being the son of accused No. 1 has been falsely implicated by the CW-2 did not lodge any complaint and he has narrated the incident only after the commission of incident by hearing the dame from CW. 1, Therefore, considering the facts as held by the Hon'ble Supreme Court in the case of State of Haryana *v.* Bhajan Lal and other cases stated supra, absolutely, there is no material on record to connect the accused with the crime either to frame charges under Section 120B or 109 or 302 read with Section 149 of IPC. Therefore, I am of the view, conducting proceedings against this petitioner-accused No. 2 is nothing but abuse of process of law and the same is liable to be quashed

20. It is settled law that the confession statement recorded under Section 25 of the Indian Evidence Act is inadmissible in law. Section 114 Illustration (b) of the Indian Evidence Act specifies that, the statement of an accomplice is unworthy or credit, unless he is corroborated in material particulars. In the instant case, except the voluntary statement of accused No. 2, who is alleged to have stated that, the other accused conspired to do away the life of the deceased, Jayanth, at the instance of accused No. 1, there is no corroborative material placed along with the charge sheet to establish that, the accused No. 1 instigated the other accused to do away the life of the deceased, Jayanth. In the absence of any corroborative material, except the statement of co-accused, the continuation of criminal proceedings will be an abuse of process of law. In the absence of any prima facie case to proceed against the accused No. 1, the learned Sessions Judge has committed an error in exercising the power

conferred under Section 227 of Cr. P.C. and the same is not sustainable in law. Accordingly, I pass the following:

ORDER

- i) Criminal petition is allowed.
- ii) The impugned order dated 13.5.2022 passed in SC No. 24/2019 by the learned 68th Addl. City Civil and Sessions Judge at Bengaluru (CCH-68) on the application filed by the accused No. 1 under Sections 227 and 228 of Cr. P.C. is hereby set aside and consequently the application is allowed and the accused No. 1 is discharged of the offences alleged against him."

Though several judgments bear reference in the order passed by the coordinate Bench, the judgment in the case of **Dipakbhai Jagdishchandra Patel** (*supra*) does not find a place. In the light of admitted fact that the petitioner was in Police custody on the date and time when the crime comes to be registered and since he is dragged in only on the strength of the voluntary statement of the co-accused, the charge against the petitioner would tumble down. The submission of the learned High Court Government Pleader would have become acceptable that this Court should not entertain the petition at this juncture, but the glaring facts clinching enough they are, would enure to the benefit of the petitioner as he should not be permitted to undergo the rigmarole of trial when there being no material against him except the voluntary statement of the co-accused."

(Emphasis supplied at each instance)

The afore-quoted judgments of the Apex Court and that of this Bench or the coordinate Benches of this Court would clearly reveal that at whatever stage the proceeding is, unless there is corroborative material, *prima facie* no person could be drawn into the proceedings as accused, on the sole statement of the co-accused.

9. In the case at hand, the petitioner is drawn allegedly on the ground that he had given pistol to accused No.1 to kill one Naga with whom he had old rivalry. How the petitioner is drawn into the web of proceedings is as follows:

"....

ದಿನಾಂಕ:-06-01-2023 ರಂದು ಎ-1 ಆರೋಪಿತನನ್ನು ಘನ ನ್ಯಾಯಾಲಯದ ಆದೇಶದ ಮೇರೆಗೆ ಪೊಲೀಸ್ ಬಂಧನಕ್ಕೆ ಪಡೆದ ನಂತರ ಠಾಣೆಗೆ ವಾಪಸ್ ಕರೆತಂದು ಪ್ರಕರಣಕ್ಕೆ ಸಂಬಂಧಪಟ್ಟಂತೆ ಕೂಲಂಕುಶವಾಗಿ ವಿಚಾರ ಮಾಡಿ ಹೇಳಿಕೆ ಪಡೆಯಲಾಯಿತು. ಆತ ತನ್ನ ಮುಂದುವರಿದ ಸ್ವ-ಹೇಳಿಕೆಯಲ್ಲಿ ತನಗೆ ರಾಜಾಜಿನಗರದ [ಗಾಯತ್ರಿನಗರ]ವಾಸಿ ಸುನೀಲ @ ಸೈಲೆಂಟ್ ಸುನೀಲ ಎಂಬ ರೌಡಿ ಆಸಾಮಿಯು ಪರಿಚಯವಿದ್ದು ಅತ್ಯುಚಿತ ಸ್ನೇಹಿತನಾಗಿರುತ್ತಾನೆ. ಈತನಿಗೆ ವಿಲ್ಸನ್ ಗಾರ್ಡನ್ಸ್ ವಾಸಿ ನಾಗ ಎಂಬುವವನು ಎದುರಾಳಿಯಾಗಿದ್ದು ಈತನು ಹಳೇ ದೈವದ ಹಿನ್ನೆಲೆಯಲ್ಲಿ ಸೈಲೆಂಟ್ ಸುನೀಲ್‌ನನ್ನು ಮರ್ಡರ್ ಮಾಡಬೇಕೆಂದು ಪ್ಲಾನ್ ಮಾಡಿದ್ದನು. ಈ ವಿಚಾರ ತಿಳಿದ ಸೈಲೆಂಟ್ ಸುನೀಲ್‌ನು ನಾಗನನ್ನು ಈಗೇಯ ಬಿಟ್ಟರೆ ತನಗೆ ಪ್ರಾಣಪಾಯ ಮಾಡುತ್ತಾನೆಂದು ಭಾವಿಸಿ. ಈಗ್ಗೆ ಸುಮಾರು 5-6 ತಿಂಗಳ ಹಿಂದೆ ಒಂದು ದಿನ ಸೈಲೆಂಟ್ ಸುನೀಲ್‌ನು ತನ್ನನ್ನು ಹಲಸೂರ್‌ಗೇಟ್‌ನ ಕಾರ್ಪೊರೇಷನ್ ಸರ್ಕಲ್ ಬಳಿ ಮೀಟ್ ಮಾಡಿದ್ದನು. ಈ ಸಂದರ್ಭದಲ್ಲಿ ನಾವಿಬ್ಬರು ಸೇರಿ ವಿಲ್ಸನ್‌ಗಾರ್ಡನ್ ನಾಗನನ್ನು ಮರ್ಡರ್ ಮಾಡುವ ಬಗ್ಗೆ ಮಾತುಕತೆ ಮಾಡಿ ಸಂಚು ಮಾಡಿದ್ದಾಗಿ ತಿಳಿಸಿರುತ್ತಾನೆ.

ಎ-1 ಆರೋಪಿತ ಸಮೀರುಲ್ಲಾಖಾನ್‌ನ ಮಾಹಿತಿ ಮೇರೆಗೆ ಕಾರ್ಪೊರೇಷನ್ ಸರ್ಕಲ್ ಬಳಿ 'ಹೋಗಿ ಪಂಚರ ಸಮಕ್ಷಮ ಎ-1 ಆರೋಪಿತ ಮತ್ತು ಎ-5 ಸುನೀಲ @ ಸೈಲೆಂಟ್ ಎಂಬುವವರು ವಿಲ್ಸನ್ ಗಾರ್ಡನ್ ನಾಗ ಎಂಬಾತನನ್ನು ಕೊಲೆ ಮಾಡಲು ಸಂಚು ಮಾಡಿದ ಜಾಗವನ್ನು ಪರಿಶೀಲನೆ ಮಾಡಿ ಸ್ಥಳ ಪಂಚನಾಮೆ ಜರುಗಿಸಲಾಯಿತು.

ಈ ಪ್ರಕರಣದಲ್ಲಿ ಎ-1 ಮತ್ತು ಎ-5 ಆರೋಪಿತರು ಹಳೇ ದೈವದ ಹಿನ್ನೆಲೆಯಲ್ಲಿ ವಿಲ್ಸನ್ ಗಾರ್ಡನ್ ನಾಗ ಎಂಬಾತನನ್ನು ಕೊಲೆ ಮಾಡುವ ಬಗ್ಗೆ ಸಂಚು ಮಾಡಿರುವುದರಿಂದ ಈ ಪ್ರಕರಣದಲ್ಲಿ ಕಲಂ 120[ಬಿ] ಐಪಿಸಿಯನ್ ಹೆಚ್ಚುವರಿಯಾಗಿ ಅಳವಡಿಸಿಕೊಂಡು ತನಿಖೆ ಕೈಗೊಂಡಿರುತ್ತದೆ."

(Emphasis added)

Accused No.1 makes a statement that the petitioner and one Naga had old rivalry and, therefore, he is likely to conspire to do away

the life of Naga. This is what is considered in the judgments quoted *supra*, to hold that a person cannot be drawn as accused merely because of a statement recorded under Section 161 of the Cr.P.C. of a co-accused. In the light of the above discussion, the petition deserves to succeed, as the respondents have not placed any material beyond what accused No.1 had rendered statement under Section 161 of the Cr.P.C.

10. For the aforesaid reasons, the following:

ORDER

- (i) Criminal Petition is **allowed**.
- (ii) Proceedings in Crime No.300 of 2022 pending before the VI Additional Chief Metropolitan Magistrate, Bengaluru stands quashed *qua* the petitioner.
- (iii) It is made clear that the observations made in the course of the order are only for the purpose of consideration of the case of petitioner under Section 482 of Cr.P.C. and the same shall not bind or influence the proceedings against any other accused.

Consequently, pending applications if any, also stand disposed.

**Sd/-
(M.NAGAPRASANNA)
JUDGE**

Bkp
CT: MJ