IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF JULY, 2023

R

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.17961 OF 2021 (GM-RES)

BETWEEN:

MR. EMMANUEL MICHAEL

... PETITIONER

(BY SRI HASHMATH PASHA, SENIOR ADVOCATE A/W.,
SRI KARIAPPA N. A., ADVOCATE)

AND:

UNION OF INDIA
NARCOTIC CONTROL BUREAU
BENGALURU ZONAL UNIT
THROUGH ITS INTELLIGENCE OFFICER
BENGALURU – 562 149.
(REPRESENTED BY LEARNED
SPECIAL PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BANGALORE)

... RESPONDENT

(BY SRI NARASIMHAN S., CGC FOR RESPONDENT)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C., PRAYING TO QUASH THE ORDER DATED 20.05.2021 AS PER ANNEXURE-F PASSED ON THE FILE OF RESPONDENT NCB WHICH IS NOW PENDING IN SPL.C.C.NO.768/2021 ON THE FILE OF HONBLE XXXIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AND SPECIAL COURT FOR NDPS CASES BANGALORE CITY AS ILLEGAL AND ABUSE OF PROCESS OF LAW.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 13.07.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court calling in question order dated 20-05-2021 passed by the XXXIII Additional City Civil and Sessions Judge and Special Judge for NDPS Cases at Bangalore in Special C.C.No.768 of 2021 and as a consequence seeks a direction for eschewing the statement of the petitioner recorded between 21-05-2021 and 23-05-2021.

2. Facts, in brief, germane are as follows:

On receipt of certain information on 17-12-2020 at 3.00 p.m., the respondent/Narcotic Control Bureau of Government of India

seized 610 gms. of MDMA from the foreign Post Office, Chamarajpet, Bengaluru. After the said seizure, again on 18-12-2020 on suspicion arrested accused No.1, a lady near Sahakarnagar Post Office, Bengaluru. The suspicion leads to the petitioner and the petitioner is also taken into custody on the same day i.e., 18-12-2020. Both accused Nos. 1 and 2 were interrogated, their statements were recorded and on a remand application dated 19-12-2020 police custody was taken, up to 23-12-2020. After interrogation, the petitioner was by an order dated 23-12-2020 remanded to judicial custody.

3. On the investigation continuing, another accused would emerge, Accused No.3. He is arrested alleging that he is the consumer of the drugs that were supplied from the hands of the petitioner on more than 100 occasions. Accused No.3 is produced before the Court with a remand application to hand him over to judicial custody. Later, accused No.3, on the ground that he was a consumer of drugs was released on bail. On the same day i.e., 20-05-2021 the officers of the respondent filed another application before the concerned Court invoking Section 167 (2) of the Cr.P.C.

seeking policy custody of the petitioner for three days. The application comes to be allowed by the concerned Court granting police custody of the petitioner for three days and directed them to produce the petitioner back to Court on 24-05-2021. It is, therefore, the Police again got custody of the petitioner between 21-05-2021 and 23-05-2021. During this period the police recorded statements of the petitioner insofar as the link in the chain of events, to the acts of accused No.3. After the said recording of statement by another application on 24-05-2021 the petitioner was remanded back to judicial custody. During the trial the statements that the petitioner made between 21-05-2021 and 23-05-2021 were sought to be pitted against him. It is immediately thereafter on 27-09-2021 the petitioner has knocked at the doors of this Court in this petition calling in question the said custody that was taken between 21-05-2021 and 23-05-2021 and statements recorded thereon.

4. Heard Sri. Hashmath Pasha, learned senior counsel appearing for the petitioner and Sri Narasimhan. S, learned Central Government Counsel for the respondent.

5. The learned senior counsel would contend with vehemence that the Police custody of the petitioner could not have been granted after close to 6 months of his arrest and him being remanded to judicial custody. The Police can seek custody of an accused in the first fifteen days of his arrest and not thereafter, therefore the statements that are recorded on the second stint of Police custody are illegal, and the same should be eschewed, in their entirety is his emphatic submission. He would seek the prayer in the petition be granted.

6. On the other hand, the learned counsel for the respondent would submit that what has been done is only an interrogation with regard to the relationship between the petitioner and accused No.3, as accused No.3 has voluntarily admitted that he has consumed drugs supplied by the petitioner at least on 100 occasions. It is, therefore, to link with regard to the custody of funds, the statements are recorded and nothing beyond that. He would contend that whether the statement is available or not, there is

enough material against the petitioner to nail him. He would seek dismissal of the petition.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record. In furtherance whereof, the issues that fall for consideration are :–

(i) Whether the prosecution was entitled to a second stint of Police custody long after the petitioner being remanded to judicial custody?

(ii) Whether the evidence/statements recorded during the second stint of Police custody will have to be eschewed completely by this Court in exercise of its jurisdiction under Section 482 of the CrPC?

***ISSUE NO.1*:**

"Whether the prosecution was entitled to a second stint of Police custody long after the petitioner being remanded to judicial custody?"

The afore-narrated facts lie in a narrow compass. The issue concerns a point of law. The petitioner was arrested on 19-12-2020 and on a remand application of the same date was granted Police custody up to 23-12-2020 i.e., for five days. During the period between 19-12-2020 and 23-12-2020, the petitioner was enough interrogated which drew the respondent to file an application before the concerned Court seeking remand to judicial custody. The concerned Court, in terms of its order dated 23-12-2020, remands the petitioner to judicial custody and, therefore, he was housed in the jail.

8. Investigation continued and the respondent/NCB arrested accused No.3 one Vaibhav Gupta who is said to be the customer of drugs that were supplied by the petitioner and accused No.1. This arrest happens after five months of arrest of the petitioner. Statements of Vaibhav Gupta were recorded who had confessed that he had purchased Cocaine from the petitioner from 2016 to 2019 for over a period of three years on about 100 occasions. These statements of accused No.3 drove the respondent/NCB to file an application before the concerned Court seeking another stint of

Police custody of the petitioner for recording his statements. The application is allowed by the concerned Court by a perfunctory order, without looking into any of the provisions of law. The order reads as follows:

> *"The I.O. files application u/s 167(2) of Cr.P.C. The offence alleged against the accused is punishable u/s 8(c) r/w Sec. 27 and 27(a) of NDPS Act. Along with the application I.O. files the personal particulars of the accused, copy of the notice said to have been sent to the accused and copy of the voluntary statement given by the accused, arrest memo, medical test report stating that accused has Negative Covid-19 report and medical examination report and it is stated in the report that accused is medically fit.*
>
> *Office has placed before this Court the e-mail received and the memo of appearance of the counsel attached to the e-mail. Hence, V.C. is connected to the counsel for accused. In the V.C. one Sri Hashmath Pasha, Senior Advocate appeared and submits that he has sent application for bail and Criminal Miscellaneous petitions. So far this office has not received the said petitions.*
>
> ***Counsel further submits that the offence alleged against the accused is bailable in nature and he has not committed the offence. In the application u/s 167(2) of Cr.P.C. the I.O. has enclosed the financial transaction done by the accused for about Rs.1,14,57,000/-. Hence, at this stage Section 27(a) of NDPS Act attracts. However, the Spl.P.P. in this case is not able to appear through V.C., even though it is tried by the officials of this Court.***
>
> ***The learned counsel for accused also contends that for medicine purpose only the accused has consumed the contraband and the same is permitted u/s 64(a) of NDPS Act. I feel all these contentions could be taken while disposing of the applications for***

bail said to have been filed by the learned counsel for the accused. Hence, at this stage, there is no merit in the contention of the learned counsel for the accused. Hence, the accused is taken to custody as sought in the application u/s 167(2) of Cr.P.C. and remanded to J.C. till 2-06-2021.

I.O. also files application u/s 167 of Cr.P.C. seeking for Police custody of A2. On perusal of the order sheet it appears that on 23-12-2020 A2 was remanded to J.C. and till to-day he is in J.C.

Perused the application filed by the I.O. It is stated in the application that after the arrest of A3 it is revealed with regard to his contention with A2 in drug trafficking activities and examination of A2 is very much essential to confront with the suspicious transactions in his bank account which is possibly linked to drug trafficking activities. I feel, there is merit in the contention. Accordingly, the said application is allowed.

The I.O. is directed to take Police custody of A2 for a period of 3 days.

Office to direct the Jail Authorities to hand over the custody of A2 to the I.O. Kamalesh Kumar, Intelligence Officer, NCB. The I.O. shall produce A2 before this Court on or before 24-05-2021."

(Emphasis added)

The Investigating Officer of the respondent/NCB was given Police custody of the petitioner and the Jail Authorities were directed to hand over the petitioner to the Investigating Officer. The issue now is *'whether a second stint of Police custody was available to the prosecution'.*

9. The submission of the learned counsel for the respondent/NCB is that the respondent is entitled to have 15 days of Police custody and it had only four days at the outset and remaining 11 days, it is entitled to have such Police custody at any time and, therefore, there is nothing illegal about the Police custody being granted by the concerned Court. This submission is noted only to be repelled as it suffers from a fundamental fallacy. It is no doubt true that the prosecution can avail custody of an accused for fifteen days in a crime registered, for offence punishable under any penal provision, except for offences punishable under the UAPA, where custody is 30 days. Barring UAPA, for every other offence, the Police custody, in all, is 15 days. ***When is the question?*** This question need not detain this Court for long or delve deep into the matter as it is no longer *res integra*. The Apex Court in the case of ***CENTRAL BUREAU OF INVESTIGATION v. ANUPAM J. KULKARNI***[1] has held as follows:

> ***"7.*** *The learned Additional Solicitor-General submitted that the observations made by Hardy, J. in Mehar Chand case [(1969) 5 DLT 179]* ***would indicate***

[1] *(1992) 3 SCC 141*

that during the investigation of the same case in which the accused is arrested and is already in custody if more offences committed in the same case come to light there should be no bar to turn over the accused to police custody even after the first period of fifteen days and during the period of ninety days or sixty days *in respect of the investigation of the cases mentioned in provisos (a)(i) and (ii) respectively. It may be noted firstly that the Mehar Chand case [(1969) 5 DLT 179] was decided in respect of a case arising under the old Code. If we examine the background in enacting the new Section 167(2) and the proviso (a) as well as Section 309 of the new Code* ***it becomes clear that the legislature recognised that such custody namely police, judicial or any other custody like detaining the arrested person in Nari Sadans etc. should be in the whole for fifteen days and the further custody under the proviso to Section 167 or under Section 309 should only be judicial.*** *In Chaganti Satyanarayana v. State of A.P. [(1986) 3 SCC 141 : 1986 SCC (Cri) 321] this Court examined the scope of Section 167(2) provisos (a)(i) and (ii) and held that the period of fifteen days, ninety days or sixty days prescribed therein are to be computed from the date of remand of the accused and not from the date of his arrest under Section 57 and* ***that remand to police custody cannot be beyond the period of fifteen days and the further remand must be to judicial custody. Though the point that precisely arose before this Court was whether the period of remand prescribed should be computed from the date of remand or from the date of arrest*** *under Section 57, there are certain observations throwing some light on the scope of the nature of custody after the expiry of the first remand of fifteen days and when the proviso comes into operation. It was observed thus: (SCC pp. 148-49, para 16)*

> *"As sub-section (2) of Section 167 as well as proviso (1) of sub-section (2) of Section 309 relate to the powers of remand of a magistrate, though under different situations, the two provisions call for a harmonious reading insofar as the periods of remand are concerned. It would, therefore, follow that the words '15 days in the whole' occurring in*

sub-section (2) of Section 167 would be tantamount to a period of '15 days at a time' but subject to the condition that if the accused is to be remanded to police custody the remand should be for such period as is commensurate with the requirements of a case with provision for further extensions for restricted periods, if need be, but in no case should the total period of remand to police custody exceed 15 days. Where an accused is placed in police custody for the maximum period of 15 days allowed under law either pursuant to a single order of remand or to more than one order, when the remand is restricted on each occasion to a lesser number of days, further detention of the accused, if warranted, has to be necessarily to judicial custody and not otherwise. The legislature having provided for an accused being placed under police custody under orders of remand for effective investigation of cases has at the same time taken care to see that the interests of the accused are not jeopardised by his being placed under police custody beyond a total period of 15 days, under any circumstances, irrespective of the gravity of the offence or the serious nature of the case."

(Emphasis supplied)

These observations make it clear that if an accused is detained in police custody the maximum period during which he can be kept in such custody is only fifteen days either pursuant to a single order or more than one when such orders are for lesser number of days but on the whole such custody cannot be beyond fifteen days and the further remand to facilitate the investigation can only be by detention of the accused in judicial custody.

... … …

***11.** A question may then arise whether a person arrested in respect of an offence alleged to have been committed by him during an occurrence can be detained again in police custody in respect of another offence committed by him in the same case and which fact comes to light after the expiry of the period of first fifteen days of*

his arrest. ***The learned Additional Solicitor-General submitted that as a result of the investigation carried on and the evidence collected by the police the arrested accused may be found to be involved in more serious offences than the one for which he was originally arrested and that in such a case there is no reason as to why the accused who is in magisterial custody should not be turned over to police custody at a subsequent stage of investigation when the information discloses his complicity in more serious offences. We are unable to agree.*** *In one occurrence it may so happen that the accused might have committed several offences and the police may arrest him in connection with one or two offences on the basis of the available information and obtain police custody. If during the investigation his complicity in more serious offences during the same occurrence is disclosed that does not authorise the police to ask for police custody for a further period after the expiry of the first fifteen days. If that is permitted then the police can go on adding some offence or the other of a serious nature at various stages and seek further detention in police custody repeatedly, this would defeat the very object underlying Section 167.* ***However, we must clarify that this limitation shall not apply to a different occurrence in which complicity of the arrested accused is disclosed. That would be a different transaction and if an accused is in judicial custody in connection with one case and to enable the police to complete their investigation of the other case they can require his detention in police custody for the purpose of associating him with the investigation of the other case. In such a situation he must be formally arrested in connection with other case and then obtain the order of the Magistrate for detention in police custody. The learned Additional Solicitor-General however strongly relied on some of the observations made by Hardy, J. in Mehar Chand case [(1969) 5 DLT 179] extracted above in support of his contention namely that an arrested accused who is in judicial custody can be turned over to police custody even after the expiry of first fifteen days at a subsequent stage of the investigation in the same case if the information discloses his complicity***

in more serious offences. We are unable to agree that the mere fact that some more offences alleged to have been committed by the arrested accused in the same case are discovered in the same case would by itself render it to be a different case. *All these offences including the so-called serious offences discovered at a later stage arise out of the same transaction in connection with which the accused was arrested. Therefore there is a marked difference between the two situations. The occurrences constituting two different transactions give rise to two different cases and the exercise of power under Sections 167(1) and (2) should be in consonance with the object underlying the said provision in respect of each of those occurrences which constitute two different cases. Investigation in one specific case cannot be the same as in the other. Arrest and detention in custody in the context of Sections 167(1) and (2) of the Code has to be truly viewed with regard to the investigation of that specific case in which the accused person has been taken into custody. In S. Harsimran Singh v. State of Punjab [1984 Cri LJ 253 : ILR (1984) 2 P&H 139] a Division Bench of the Punjab and Haryana High Court considered the question whether the limit of police custody exceeding fifteen days as prescribed by Section 167(2) is applicable only to a single case or is attracted to a series of different cases requiring investigation against the same accused and held thus: (p. 257, para 10-A)*

> *"We see no inflexible bar against a person in custody with regard to the investigation of a particular offence being either re-arrested for the purpose of the investigation of an altogether different offence. To put it in other words, there is no insurmountable hurdle in the conversion of judicial custody into police custody by an order of the Magistrate under Section 167(2) of the Code for investigating another offence. Therefore, a re-arrest or second arrest in a different case is not necessarily beyond the ken of law."*

This view of the Division Bench of the Punjab and Haryana High Court appears to be practicable and also conforms to Section 167. We may, however, like to make it explicit that

> *such re-arrest or second arrest and seeking police custody after the expiry of the period of first fifteen days should be with regard to the investigation of a different case other than the specific one in respect of which the accused is already in custody.* ***A literal construction of Section 167(2) to the effect that a fresh remand for police custody of a person already in judicial custody during investigation of a specific case cannot under any circumstances be issued, would seriously hamper the very investigation of the other case the importance of which needs no special emphasis. The procedural law is meant to further the ends of justice and not to frustrate the same. It is an accepted rule that an interpretation which furthers the ends of justice should be preferred. It is true that the police custody is not the be-all and end-all of the whole investigation but yet it is one of its primary requisites particularly in the investigation of serious and heinous crimes. The legislature also noticed this and permitted limited police custody. The period of first fifteen days should naturally apply in respect of the investigation of that specific case for which the accused is held in custody. But such custody cannot further held to be a bar for invoking a fresh remand to such custody like police custody in respect of an altogether different case involving the same accused."***
>
> *(Emphasis supplied)*

The Apex Court, in the afore-quoted case, holds that an accused when detained in Police custody can be kept for a maximum period in such custody for 15 days either pursuant to a single order or more than one. When such orders are for lesser number of days, but on the whole such custody cannot be beyond 15 days and further remand to facilitate investigation can only be

by detention of the accused in judicial custody. The Apex Court was clear that once 15 days custody is over, further interrogation of any accused can only be in judicial custody where the order of Police custody earlier was by a single order or more than one.

10. The aforequoted judgment is further followed by the Apex Court in ***GAUTAM NAVLAKHA v. NATIONAL INVESTIGATION AGENCY***[2] wherein the Apex Court was answering a question with regard to the effect of judicial custody and Police custody. The Apex Court holds as follows:

> *"JUDICIAL CUSTODY AND POLICE CUSTODY*
>
> ***103.*** *Now, we must squarely deal with the question as to whether house arrest as ordered by the High Court amounts to custody within the meaning of Section 167 of the Cr.P.C. Undoubtedly custody in the said provision is understood as ordinarily meaning police custody and judicial custody.* ***The period of custody begins not from the time of arrest but from time the accused is first remanded ((1986) 3 SCC 141). Police custody can, in a case falling under the Cr.P.C. (not under the UAPA), be given only during the first 15 days ((1992) 3 SCC 141). During the first 15 days no doubt the Court may order judicial custody or police custody. No doubt the last proviso to Section 167(2) provides that detention of a woman under eighteen years of age, the detention shall be authorised to be in the***

[2] *2021 SCC OnLine SC 382*

custody of a remand home or recognised social institution.

… … …

136. *The special Judge ordered remand for 7 days. Thereafter, a period of 7 days further remand to police custody was granted by the order dated 21.04.2020. Still further, it appears on 25.04.2020, the Appellant was remanded in judicial custody in which he continued.* ***The question would arise that all else being answered in favour of the Appellant whether his case is inconsistent with the police remand initially granted for 7 days on 15.04.2020 and further extended on 21.04.2020 which was, no doubt, cut short on 25.04.2020. The point to be noted is police custody can be given only for 15 days and that too, the first 15 days, ordinarily. In the case of persons accused of offences, under UAPA, the maximum period of police custody is 30 days. If the case of the appellant is to be accepted then it must be consistent with the subsequent proceedings, namely, police custody vide orders dated 15.04.2020 and 21.04.2020. In other words, Section 167 of the Cr.P.C. as modified by Section 43(D)(2) of UAPA, contemplates that remand to police custody on production of the accused can be given only during the first 30 days from the date of production and it advances the case of the respondent that remand on production of the accused before the Special Judge took place only with the production of the accused on 15.04.2020. If the remand in the case of the appellant took place in the year 2018 then it would be completely inconsistent with the remand to police custody well beyond the first 30 days of the remand in the year 2018."***

(Emphasis supplied)

The Apex Court interpreting Section 167 of the Cr.P.C. categorically holds that undoubtedly custody under Section 167 is

understood as ordinarily meaning 'Police custody' as well as 'Judicial custody'. The period of custody begins not from the time of arrest but from the time when the accused is first remanded. The Police custody can, under the said provision, if it is not under UAPA, be only during the first 15 days. During the first 15 days, the Court may order judicial custody or Police custody. Following the judgment in the case of ***ANUPAM J.KULKARNI*** (*supra*) the Apex Court clearly holds that Police custody that has been granted after completion of 15 days of Police custody was illegal which would mean the second stint of Police custody was illegal. It has to be in the first 15 days of arrest of the accused. These judgments settle the issue with regard to when the Police custody has to be granted.

11. The Apex Court in its later judgment in the case of ***CENTRAL BUREAU OF INVESTIGATION v. VIKAS MISHRA***[3] doubts the decision in ***ANUPAM J.KULKARNI*** and observes that it has to be given a re-look, but does not distinguish it. The Apex Court has observed as follows:

---

[3] *(2023) 6 SCC 49*

> ***"14.*** *In light of the aforesaid facts and circumstances and the observations made by the learned Special Judge while cancelling the interim bail, the decision of this Court in Anupam J. Kulkarni [CBI v. Anupam J. Kulkarni, (1992) 3 SCC 141: 1992 SCC (Cri) 554] is required to be considered.*
>
> ***15. It is true that in Anupam J. Kulkarni [CBI v. Anupam J. Kulkarni, (1992) 3 SCC 141: 1992 SCC (Cri) 554], this Court observed that there cannot be any police custody beyond 15 days from the date of arrest. In our opinion, the view taken by this Court in Anupam J. Kulkarni [CBI v. Anupam J. Kulkarni, (1992) 3 SCC 141: 1992 SCC (Cri) 554] requires reconsideration.*** *When we put a very pertinent question to Shri Neeraj Kishan Kaul, learned Senior Counsel appearing on behalf of the respondent-accused that in a given case it may happen that the learned trial/Special Court refuses to grant the police custody erroneously which as such was prayed within 15 days and/or immediately on the date of arrest and thereafter the order passed by the trial/Special Court is challenged by the investigating agency before the higher court, namely, the Sessions Court or the High Court and the higher court reverses the decision of the learned Magistrate refusing to grant the police custody and by that time the period of 15 days is over, what would be the position? The learned Senior Counsel is not in a position to answer the Court query."*

Therefore, it is now a settled principle of law that second stint of Police custody for interrogation, in the same case, long after the accused being in judicial custody is unavailable. Police custody, on a remand application, can be made and granted for the first 15 days of arrest of the accused. Once the accused is remanded to judicial custody seeking Police custody repeatedly on the ground that total 15 days custody is not yet over is a right that is unavailable to the

prosecution.

12. In the light of the judgment rendered by the Apex Court, as quoted *supra*, I have no hesitation to hold that the second stint of Police custody, in the same case, of the petitioner between 21-05-2021 and 23-05-2021 is illegal, and the statements recorded during the said period would become statements recorded during the course of illegal custody.

ISSUE NO.2:

"Whether the evidence/statements recorded during the second stint of Police custody will have to be eschewed completely by this Court in exercise of its jurisdiction under Section 482 of the CrPC?"

13. The issue now is, as to what happens to such statements recorded during illegal custody, so to say ***"what happens to the fruit of a poisonous tree"***. The tree is now declared to be poisonous as the second stint of Police custody is declared to be illegal. The issue again need not detain this Court for long. The

Apex Court in the case of ***STATE v. N.M.T. JOY IMMACULATE***[4] has considered this very issue and delineated as follows:

> ***"14.*** *The High Court after holding that the order granting police custody is ex facie illegal has further held that the so-called confession and alleged recovery has no evidentiary value.* ***It has also been held that the investigation conducted by P-1 and P-4 police with reference to the accused is not bona fide and false records have been created to implicate the accused. The question then arises whether the High Court was right in making the aforesaid observations, even if it is assumed that the order dated 6-11-2001 granting police custody was illegal (though we have held above that the aforesaid order being a purely interlocutory order, no revision lay against the same and the High Court committed manifest error of law in entertaining the revision and setting aside the said order). The admissibility or otherwise of a piece of evidence has to be judged having regard to the provisions of the Evidence Act. The Evidence Act or the Code of Criminal Procedure or for that matter any other law in India does not exclude relevant evidence on the ground that it was obtained under an illegal search and seizure.*** *Challenge to a search and seizure made under the Criminal Procedure Code on the ground of violation of fundamental rights under Article 20(3) of the Constitution was examined in M.P. Sharma v. Satish Chandra [AIR 1954 SC 300 : 1954 Cri LJ 865] by a Bench of eight Judges of this Court. The challenge was repelled and it was held as under: (AIR pp. 306-07, para 18)*
>
> > *"A power of search and seizure is in any system of jurisprudence an overriding power of the State for the protection of social security and that power is necessarily regulated by law. When the Constitution-makers have thought fit not to subject such regulation to constitutional limitations by*

[4] *(2004) 5 SCC 729*

> *recognition of a fundamental right to privacy, analogous to the American Fourth Amendment, we have no justification to import it, into a totally different fundamental right, by some process of strained construction. Nor is it legitimate to assume that the constitutional protection under Article 20(3) would be defeated by the statutory provisions for searches."*

15. *The law of evidence in our country is modelled on the rules of evidence which prevailed in English law. In Kuruma v. R. [1955 AC 197: (1955) 1 All ER 236: (1955) 2 WLR 223 (PC)] an accused was found in unlawful possession of some ammunition in a search conducted by two police officers who were not authorised under the law to carry out the search. The question was whether the evidence with regard to the unlawful possession of ammunition could be excluded on the ground that the evidence had been obtained on an unlawful search. The Privy Council stated the principle as under: (All ER p. 239 B)*

> *The test to be applied, both in civil and in criminal cases, in considering whether evidence is admissible is whether it is relevant to the matters in issue. If it is, it is admissible and the court is not concerned with how it was obtained.*

15.1. *This question has been examined threadbare by a Constitution Bench in Pooran Mal v. Director of Inspection (Investigation) [(1974) 1 SCC 345: 1974 SCC (Tax) 114] and the principle enunciated therein is as under: (SCC pp. 363-64 & 366, paras 23 & 24)*

> *If the Evidence Act, 1872 permits relevancy as the only test of admissibility of evidence, and, secondly, that Act or any other similar law in force does not exclude relevant evidence on the ground that it was obtained under an illegal search or seizure, it will be wrong to invoke the supposed spirit of our Constitution for excluding such evidence. Nor is it open to us to strain the language of the Constitution, because some American Judges of the American Supreme Court have spelt out certain*

> *constitutional protections from the provisions of the American Constitution. So, neither by invoking the spirit of our Constitution nor by a strained construction of any of the fundamental rights can we spell out the exclusion of evidence obtained on an illegal search."*
>
> *So far as India is concerned its law of evidence is modelled on the rules of evidence which prevailed in English law, and courts in India and in England have consistently refused to exclude relevant evidence merely on the ground that it is obtained by illegal search or seizure. Where the test of admissibility of evidence lies in relevancy, unless there is an express or necessarily implied prohibition in the Constitution or other law evidence obtained as a result of illegal search or seizure is not liable to be shut out.*
>
> ***15.2. This being the law, Direction (b) given by the High Court that the confession and alleged recovery has no evidentiary value is clearly illegal and has to be set aside. The effect of the confession and also the recovery of the incriminating article at the pointing out of the accused has to be examined strictly in accordance with the provisions of the Evidence Act."***
>
> *(Emphasis supplied)*

The Apex court holds that the Court exercising jurisdiction under Section 482 of the Cr.P.C. or revision cannot eschew evidence even if it is evidence secured during illegal arrest or illegal custody of the accused. The Court was answering whether a revisional Court jurisdiction under Section 397 of the Cr.P.C. could eschew the evidence that was recorded during the allegedly illegal arrest. The

Apex Court holds that revisional Court or even the Court under Section 482 would not eschew any evidence, as it would be for the accused before the concerned Court to urge all these points and the concerned Court to take note of the fact of the statements recorded during the illegal custody. Therefore, this Court under Section 482 of the Cr.P.C. would not venture into declaring that the statement recorded during second stint of Police custody be eschewed in its entirety which is akin to statements of an illegal act. No doubt it is illegal, but exercising jurisdiction to hold it as illegal and completely eschewing it, is not the power that is available at the hands of this Court. As observed hereinabove, ***the fruit of a poisonous tree should be tasted and tested only before the concerned Court***. Therefore, the issue is neither answered in favour of the petitioner, nor in favour of the respondent, but the issue is to be taken note of and answered by the concerned Court. Therefore, leaving open all contentions *qua* the statements recorded between 21-05-2021 and 23-05-2021, this petition deserves to be allowed to the said extent.

14. For the aforesaid reasons, I pass the following:

O R D E R

(i) The Writ Petition is allowed in part.

(ii) The Police custody of the petitioner between 21-05-2021 and 23-05-2021 – second stint is declared illegal.

(iii) The concerned Court is at liberty to consider the veracity of the statements recorded during the aforesaid period and regulate the procedure in accordance with law.

(iv) All contentions of both the petitioner and the respondent *qua* the statements recorded during 21-05-2021 and 23-05-2021 are kept open.

(v) The concerned Court while regulating its procedure *qua* statements shall bear in mind the observations made in the course of this order and also the fact that the second stint of Police custody is declared illegal.

Sd/-
JUDGE

bkp
CT:SS