

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of decision: 19.11.2009

+ **CRL. A. No.30 of 2000**

KAMLESH ...APPELLANT

Through: Nemo.

Versus

STATE ...RESPONDENT

Through: Mr. Sunil Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE AJIT BHARIHOKE

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to Reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

SANJAY KISHAN KAUL, J. (Oral)

1. The appellant was convicted under section 302/34 of Indian Penal Code (for short IPC) vide judgment dated 14.12.1999 and vide order on sentence dated 16.12.1999 sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs 500/- and in default of payment of fine to further undergo RI for a period of three months.
2. The appellant has challenged the said judgment and order on sentence by filing the present appeal.

3. The appellant applied for interim suspension of sentence on the ground of her daughter's marriage. Vide Order dated 09.07.2002, the appellant was granted interim bail for a period of two months for the said purpose on the appellant furnishing a personal bond in the sum of Rs.10,000/- with one surety of the like amount. The appellant, however, jumped the bail.
4. On coming to know of this, the learned Additional Sessions Judge issued warrants of arrest of the appellant which were received back unexecuted. He thereafter reported that the warrants of arrest of the appellant were received back with the report that the appellant was not residing in the village of which she had given the address in her bail cum surety bond. It was also mentioned in the report that the appellant did not own any movable or immovable property in the said village and she had furnished false address. On consideration of said report, fresh non-bailable warrants were directed to be issued against the appellant from time to time. Even directions were issued for initiating the proceedings under Section 446(2) Cr.P.C. against the sureties and that matter was referred to the Trial Court. Since the absconding of the appellant, several warrants of arrest have been issued and lastly the warrants of arrest was issued vide proceedings dated 14.9.2009 returnable on 19.11.2009. As per the report of Shri V.P. Dahiya, SHO, P.S. Badarpur dated 18.11.2009 despite all sincere efforts, appellant

Kamlesh could not even be located at Saurabh Vihar, Badarpur, New Delhi address and there was no clue about the present whereabouts. From the aforesaid circumstances, it is obvious that the appellant after obtaining interim bail has failed to surrender since 02.09.2002 and that she obtained a release by furnishing bail cum surety bond with a false address and that she is deliberately desisting from appearing in the Court.

5. Learned counsel for the State on instructions from ASI Dayanand has also informed the Court that the proceedings under Section 446 Cr.P.C. against the surety of the appellant have culminated into the penalty of Rs.10,000/- on the surety as the surety also could not give any clue about the whereabouts of the appellant. Thus, it is obvious that the appellant is deliberately absconding from the process of law.
6. This Court has been faced with a number of appeals where the accused has either jumped the parole or where the sentence was suspended on account of the appeal not being taken up for hearing has become untraceable and neither the appellant nor the counsel appears to argue the appeal. A question arose how such matters have to be dealt with and the said aspect forms a part of the pronouncement by a Co-ordinate Bench of this Court in Mukesh Vs. State 2008 (3) JCC 1986. The Division Bench after discussing the different legal pronouncements of the Apex Court observed as under:

“24. Section 482 of the CrPC is of singular and seminal significance. The statutory provision which immediately comes to mind is Section 151 of the CPC because to a great extent the language employed therein appears to be identical to Section 482 of the CrPC. There are, however, several distinguishing features between these two Sections as is manifest from a reading thereof. We are juxtaposing the two Sections for the facility of reference:-

Section 482 of CrPC
Section 151 of CPC

Saving of inherent power of High Court.— Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

Saving of inherent powers of Court.— Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

25. It is at once obvious that whereas Section 482 of the CrPC is available only to the High Courts, Section 151 can be resorted to at any stage of civil judicial proceedings in any of the hierarchical tiers. Secondly, the use of the word ‘otherwise’ in Section 482 has the avowed effect of boundlessly broadening the boundaries of inherent powers of the High Court in exercise of its criminal jurisdiction. Thirdly, it can be employed to ensure obedience of any order passed by the Court because of the phrase “to give effect to any order under this Code”. State of Karnataka –vs- L. Muniswamy, (1977) 2 SCC 699 enunciates that in exercise of its inherent powers in criminal matters “the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of

the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction". A Three-Judge Bench clarified in Krishnan -vs- Krishnaveni, (1997) 4 SCC 241 that although a second Revision before the High Court after dismissal of the first one by the Court of Sessions is barred by Section 397(3), the inherent powers of the High Court under Section 482 are nevertheless available albeit with restraint so as to avoid needless multiplicity of the proceedings. Their Lordships opined that – "when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities The inherent power of the High Court is not one conferred by the Code but one which the High Court already has in it and it is preserved by the Court". Raj Kapoor -vs- State (Delhi Administration), AIR 1980 SC 258 considered the question whether the inherent power of the High Court under Section 482 stands repelled when the revisional power under Section 397 overlaps. The view was that – "Section 482 contradicts this contention because nothing in the Code, not even Section 397 can affect the amplitude of the inherent power preserved in so many terms by the language of S.482. Even so, a general principle pervades this branch of law; when a specific provision is made easy resort to inherent power is not right except under compelling circumstances. Not that there is absence of jurisdiction but that inherent power should not invade areas set apart for specific power under the same Code". In State of Punjab -vs- Kasturi Lal, 2004 CrL. L.J. 3866 after cautioning against reckless use of Section 482 their Lordships have observed that "Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone Courts exists. Authority of the Courts exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent such abuse. It would be an abuse of process of the Court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers Court would be

justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of Court or quashing of these proceedings would otherwise serve the ends of justice". Advanced Law Lexicon by P. Ramanatha Aiyar defines Justice as "The exercise of authority or power in maintenance of right; vindication of right by assignment of reward or punishment; the administration of law or the form and processes attending it; the principle of just dealing".

26. The enunciation of the inherent powers of the High Court in exercise of its criminal jurisdiction articulated on several occasions by the Apex Court has emboldened us to press Section 482 into operation. We reiterate that there is an alarming and sinister increase in instances where convicts have filed appeals apparently with a view to circumvent and escape undergoing the sentences awarded against them. The routine is to file an appeal, apply and be enlarged on bail and thereafter to become untraceable. It is the bounden and pious duty cast upon the Judge not merely to ensure that an innocent person is not punished but equally not to be a mute spectator or an instrument by which a convict escapes serving out his sentence. (See *Stirland v. Director of Public Prosecutions*, 1944 AC 315 quoted with approval by Arijit Pasayat, J. in *State of Punjab v. Karnail Singh*, (2003) 11 SCC 271). If the Court is derelict in doing its duty, the social framework will be rent asunder and anarchy will rule everywhere. It is, therefore, imperative to put an end to such practice by dismissing appeals, not in default or for non-prosecution, but because the proceedings in the Appeal manifest an abuse of the process of the Court and also an endangerment of the ends of justice. The inherent powers of the High Court, as pointedly preserved in Section 482 of the CrPC, are always to be used with care and caution. Dismissal of an appeal by the High Court should be in exercise of its inherent powers and should be exercised with the greatest circumspection and restraint. There would be no justification to dismiss the Appeals, as in *Bani Singh*, merely because the appellant or his advocate fails to appear or prosecute the appeals on a date of hearing. Dismissal would be justified where the Court has employed steps available to it to secure the presence of the convict. It would be justified where non-bailable warrants have not had the desired effect of ensuring the presence of the appellant/convict, or by completion of steps for declaring the convict as a proclaimed offender.

Compliance with these provisions would leave no doubt in the mind of the Court that the convict has no intention of pursuing his appeal; that the filing of the appeal was only a charade and a stratagem to frustrate the outcome of a just trial. Tolerance is called for where the convict has expiated his crime. The right to personal freedom, protected by Article 21 of the Constitution of India, cannot be rendered nugatory by a pretentious or punctilious performance of the motions of an appeal. In most cases the interests of a convict may not be adequately safeguarded by the appointment of advocates in legal aid schemes or by amicus curiae. The appellant would be satisfied only if his appeal is argued by an advocate of his choice. On the other hand, a party, which chooses not to participate in the hearing of his appeal, can scarcely complain of violations of his Fundamental Right to remonstrate against the curtailment of his personal freedom. A convict cannot abuse the process and defeat criminal justice."

(emphasis supplied)

7. The appeal was dismissed after making the aforesaid observations. We are faced with a similar situation and follow the same course of action and exercise the inherent powers of the High Court which are preserved by Section 482 of the Cr.P.C. and dismiss the appeal as it is manifestly an abuse of the process of the Court. Far from securing the ends of justice their pendency or disposal on merits will indubitably defeat the ends of justice. The appellant jumped the bail and has been absconding for a number of years. We, however, hasten to add that though we have adopted the aforesaid course of action, we have also taken care to go through the trial court record and the judgement and *ex facie* we do not find any infirmity in the reasoning given by the learned trial court.

8. The appeal is accordingly dismissed with no order as to costs. Bail Bonds are cancelled and surety already stands forfeited. The appellant is directed to be taken into custody to serve his remaining sentence.

SANJAY KISHAN KAUL, J.

NOVEMBER 19, 2009
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AJIT BHARIHOKE, J.