

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 515 of 2015

Dinesh Chincholkar S/o Shri Padmakar Aawaji Chincholkar, aged about 60 years (The Then Tahsildar Kunkuri, Dist-Jashpur), Presently Posted as Tahsildar Janjgir, Civil and Revenue District- Janjgir-Champa, Chhattisgarh

---- Petitioner

Versus

State Of Chhattisgarh, Through-The Station House Officer, Police Station Kunkuri, Civil And Revenue District- Jashpur, Chhattisgarh

---- Respondent

For Petitioner – Shri Paras Mani Shrivastava, Advocate.
For Respondent/State- Miss. Farah Minhaj, PL.

Hon'ble Shri Justice Goutam Bhaduri

Order

17/07/2015

1. Heard.
2. This is a petition under section 482 of Cr.P.C. to quash the FIR dated 2/08/2014 which is registered against the petitioner in Police Station Kunkuri. It is submitted by learned counsel for the petitioner that petitioner was working as Tehsildar at the relevant time when an application was filed by one Pradeep Kujur on the basis of order of the Commissioner wherein it was directed by the Commissioner to grant part of land bearing khasra No.625/5 on lease. He submits that on the basis of the order of the Commissioner lease was granted,

however subsequently it was found to be grass land and cases have been registered, therefore it is submitted that entire proceedings have been done and revenue case was also commenced on the basis of the order of the Commissioner which eventually ended up to grant of lease. Therefore there is no *mens rea* and no offence has been committed as it was done in official capacity of the Tehsildar following the order of Commissioner.

3. Learned State counsel opposes the same and would submit that perusal of the order sheet dated 27/06/2013 filed along with petition would show that lease of khasra No.625/5 admeasuring 1.640 was granted to one Pradeep Kujur, however subsequently order sheet would show that order of the Commissioner is still awaited, therefore on what basis such lease was granted is completely lacking. It is further submitted that order of Commissioner was also fabricated. Therefore virtually no order like nature was existing.

4. I have heard learned counsel for the parties at length.

5. Petitioner has placed on record order sheet wherein opening of the order sheet dated 19/09/2012 shows that on the basis of the order passed by the Commissioner proceedings were commenced. Reading of the order further would show that even if orders were passed by the Commissioner lease was already granted before orders were received that of the Commissioner. Petitioner has

sought for quashing FIR, therefore prima facie reading of the document which is enclosed along with the petition do not show that the petitioner has been falsely implicated in this case. On the contrary, date of receipt of the order of the Commissioner and that of the grant of lease varies since lease was granted even prior to the receipt of the order of the Commissioner.

6. Therefore, immunity of State action is not available to the petitioner as even if such action has been adopted by the petitioner to grant lease of government land is not permissible under law. Therefore, the State immunity of the action is not available.

7. The principle as laid down in **M/s. Zandu Pharmaceutical Works Ltd. And others v. Md. Sharaful Haque and others** (AIR 2005 SC 9), the Apex Court has held thus :-

“8. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern

the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "*quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest*" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. 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 exist. Authority of the court 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 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. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look in to the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.”

8. Further more the Hon'ble Supreme Court in case of **Padal Venkata Rama Reddy @ Ramu v. Kovvuri Satyanarayana Reddy & Ors. (2011) AIR SCW 4504** as also in case of **State of A.P. v. Gourishetty Mahesh & Ors. (2010 AIR SCW 4386)** explained the scope to exercise the power under Section 482 of the Cr.P.C. It is observed that the Court in a proceeding instituted on a complaint, has inherent powers to quash the proceeding only in a case in which complaint does not disclose any offence or is frivolous, vexatious or oppressive. The High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on reasonable appreciation of it accusation would not be sustained.

That is the function of the trial Court.

9. Consequently, in view of the facts of the case, on examination of documents prima facie this Court is not inclined to exercise its power under Section 482 of the Cr.P.C. Therefore, the petition is dismissed.

Sd/-
(Goutam Bhaduri)
JUDGE

Gouri