

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 296 of 2016

- Mohiyuddin Sharif @ Monu, S/o Riyajuddin Sharif, Aged About 28 Years, R/o Bajrang Para Kohka, Bhilai, Civil & Revenue District Durg Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh, Through Station House Officer, Police Station, Supela, District Durg Chhattisgarh
2. Neelam Yadav D/o Late Naresh Yadav, Aged About 25 Years, R/o Basantpur, Ward No. 40, Near Dr. Baldev School, Beside Shama Stores, Rajnandgaon, District Rajnandgaon Chhattisgarh

---- Respondents

For Petitioner :	Shri C.K. Kesharwani, Advocate
For Respondent No.1/State :	Shri Anupam Dubey, Dy. Govt. Advocate
For Respondent No. 2 :	Shri Malay Bhaduri, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board By

07/07/2016

1. The present petition under Section 482 of the Cr.P.C. has been sought for quashing of the entire criminal proceeding registered by the Police Station – Supela, District Durg in Crime No. 1101/2015.
2. Counsel for the petitioner submits that a false and fabricated case has been lodged against the present petitioner by the respondent No.2 for an offence under Section 376 of the IPC. According to the counsel for the petitioner it is a case where the present applicant had given certain amount of money to the respondent No.2 for performance of certain work which the respondent No.2 could not do and upon asking for return of the said money, the respondent No. 2 has falsely lodged a complaint against the present petitioner implicating him under Section 376 of the IPC. He further submits that even otherwise the fact that it is a false and fabricated case is reflected

from the complaint made on 30/11/2015. The present petitioner is said to have ravished the respondent No. 2 for the first time in the year 2014 and report of which is being made for the first time on 30/11/2015. According to the petitioner this inordinate unexplained delay on the part of respondent No.2 in lodging the report shows that there is a great element of doubt on the complaint made by the prosecution. He further submits that the present petitioner has also given details to the police authorities in respect of the fact that the respondent No. 2 and certain other members have been constantly calling up the petitioner demanding money or else they would falsely implicate the petitioner and documents attached as also the calls made and present petition has also been provided to the police authorities. It was also contended that the present petitioner has also submitted a report to the Superintendent of Police, District Durg, who in turn is investigating upon the complaint against the respondent No.2, under these circumstances the counsel for the petitioner submits that for the present the criminal proceedings initiated against the present petitioner at the behest of the respondent No.2 may be kept in abeyance.

3. The State counsel expresses his inability to assist the Court on account of not having any instruction from the concerned authority and therefore he has not made any submission.
4. Counsel for the respondent No. 2 opposing the petition has filed reply/objection categorically denying the allegations made in the petition. The respondent No. 2 submits that present petitioner is said to have ravished the respondent No.2 which is cognizable offence and for which she has made a complaint to the police authorities who in turn has registered an FIR and are conducting an investigation on the charges leveled. Since the complaint of commission of the serious offence was received by the police authorities and who are seized of the matter and also are investigating the complaint at this juncture relief sought for by the petitioner should not be

granted as it is to premature a stage.

5. Having heard the contention put forth the petitioner as well as the respondent No. 2 what is necessary is to take note of the legal position so far as quashing of FIR in this regard. The judgment of the Supreme Court in the matter of ***Vinod Raghuvanshi Vs. Ajay Arora and others (2013) 10 SCC 581*** para 30 has held thus :-

“30. It is a settled legal proposition that while considering the case for quashing of the criminal proceedings the court should not “kill a stillborn child”, and appropriate prosecution should not be stifled unless there are compelling circumstances to do so. An investigation should not be shut out at the threshold if the allegations have some substance. When a prosecution at the initial stage is to be quashed, the test to be applied by the court is whether the uncontroverted allegations is made, prima facie establish the offence. At this stage neither can the court embark upon an inquiry, whether the allegations in the complaint are likely to be established by evidence nor should the court judge the probability, reliability or genuineness of the allegations made therein.”

6. Similarly the Supreme Court again in the case of ***N. Soundaram Vs. P.K. Pounraj and another, (2014) 10 SCC 616*** para 13 relying upon the landmark judgment of case of Bhajan Lal is held as under in para 13 :-

“13. It is well settled by this Court in a catena of cases that the power under Section 482 CrPC has to be exercised sparingly and cautiously to prevent the abuse of process of any court and to secure the ends of justice. [State of Haryana v. Bhajan Lal 1992 Supp. (1) SCC 335]. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should refrain from giving a prima facie decision unless there are compelling circumstances to do so. Taking the allegations and the complaint as they were, without addition or subtracting anything, if no offence was made out, only then the High Court would be justified in quashing the proceedings in the

exercise of its power under Section 482 CrPC.”

7. In the light of the aforesaid legal position laid down by the Supreme Court and in the present case and the documents annexed with the petition Annexure A/2 which is letter issued to the Public Information Officer, Police Station, Supela, District Durg (C.G.) is marked as Annexure A/2 squarely reflects that there is a complaint lodged by the respondent No. 2 on the basis of which, an FIR has been registered and the authorities concerned have intimated the petitioner that on the said complaint, the investigation is going on and since the matter is still at the investigation stage the police authorities have not granted the petitioner any further information. These documents filed by the petitioner itself clearly reflects that it is still at the investigation stage and therefore in the opinion of this Court at this juncture it would not proper to stall the investigation by the police authorities upon whom otherwise a statutory duty is casted on receiving the complaint particularly of the nature of offence under Section 376 of IPC to hold a detailed and serious investigation. Hence no good ground is made out for quashing the entire proceedings.

8. Accordingly, the instant Cr.M.P. is dismissed.

Sd/-

(P.Sam Koshy)
Judge