

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1218 of 2016**

- Raju @ Rajnarayan Sahu S/o Late Shri Sundarlal Sahu Aged About 50 Years R/o Nehru Chowk, Baloda Bazar, Police Station & District Baloda Bazar Bhatapara, Chhattisgarh.

---- Petitioner**Versus**

- State Of Chhattisgarh Through Police Station City Kotwali, Baloda Bazar, District Baloda Bazar Bhatapara, Chhattisgarh.

---- Respondent

For Petitioner
For State

Mr. Prakash Tiwari, Advocate
Mr. Vinod Tekam, Panel Lawyer

SB: Hon'ble Shri Justice P.Sam Koshy**Order On Board****14.12.2016**

1. The present Petition under Section 482 of the Cr.P.C. has been filed assailing the registration of F.I.R in Crime No. 158/2016 at Police Station, City Kotwali Baloda Bazar, district Bhatapara (C.G.)
2. The case in brief is that on 03.05.2016 while the Police patrol team was on the round, a boy named Mangesh Kumar was found illegally running a gambling (operating Satta Patti). He was then immediately taken into custody and thereafter he was sent to child welfare committee. Before the child welfare committee on 04.05.2016 itself the statement of the child in conflict with law was recorded. During the course of the recording of statement he has made statement that he was operating the said business for the present Petitioner. Thus

based upon the said statement of the child in conflict with law a case was registered against the present Petitioner.

3. Learned Counsel for the Petitioner submits that except for the statement of the accused child there is no other piece of evidence which has been gathered by the prosecution during the course of the investigation and even if the entire case of the prosecution is believed as it is in toto even then the offence which has been registered against the present Petitioner that of under Section 83(2) of the Juvenile Justice (Care and Protection of Children) Act 2015 and the same would not be made out and the FIR therefore and the subsequent proceeding drawn thereby deserves to be quashed.
4. Learned Counsel for the Petitioner submits that it is the case where even there was no conversation recorded in respect of the appellant having with the child recorded or seized during the course of the investigation. Counsel for the Petitioner further submits that the only incriminating piece of evidence which has been recovered is a mobile phone alleged to have been used by the present Petitioner. But on verification it was found that the said mobile phone was not owned by the present Petitioner but it was in the name of one Krishna Das Manikpuri which further falsifies the case of the prosecution. He further submits that even if the entire materials which have been collected by the prosecution till now is accepted in its face value, even then the offence alleged against the Petitioner is not made out as there is no direct evidence to implicate the Petitioner in the said offence. Only on the version of the statement of one of the accused persons i.e. the Juvenile arrested, the present

Petitioner can not be subjected to face trial unnecessarily when there is no iota of evidence or material to implicate the Petitioner for the said charge.

5. According to the Counsel for the Petitioner even if the entire case of the prosecution is accepted without addition or subtraction in the contents of the charge-sheet even then there is remote possibility of the present Petitioner being convicted on basis of the available materials. The Petitioner unnecessary will have to face the trauma of trial and also face humiliation being disgraced in the society for being prosecuted for an offence. Learned Counsel for the Petitioner also relied upon the decision of the Supreme Court in case of **Satish Mehra v. State (NCT of Delhi) and Another** reported in (2012) 13 SCC 614 wherein in paragraph 15 the Hon'ble Supreme Court has held that ...

“15. The power to interdict a proceeding either at the threshold or at an intermediate stage of the trial is inherent in a High Court on the broad principle that in case the allegations made in the FIR or the criminal complaint, as may be, prima facie do not disclose a triable offence there can be reason as to why the accused should be made to suffer the agony of a legal proceeding that more often than not gets protracted”

6. Said judgment has been passed keeping in view a land mark decision of the Supreme Court in case of **State of Haryana And Others v. Bhajan Lal and Others** reported in 1992 Suppl.(1) SCC 335.
7. The State Counsel however opposing the Petition submits that it is a case where the prayer clause of the Petition itself clearly reflects that

it is only the FIR which has been sought for quashment. According to the State after completion of the investigation the prosecution has already filed charge sheet and the matter now is fixed for argument before the framing of charge.

8. Learned State Counsel submits that it is a case where the next date of hearing is 28.12.2016 when the matter is fixed for argument before framing of charge. Thus at this stage it may not be proper to interfere invoking the extra ordinary jurisdiction which has been conferred upon the Court under Section 482 Cr.P.C. by conducting a roving inquiry or a mini trial so as to reach to a conclusion whether there is sufficient material available against the Petitioner or not. Lastly it was contended by the State Counsel that the police authorities during the course of investigation have also at the instance of the present Petitioner received the mobile phone which he was alleged to have been using for conversation with the child in conflict with law Mangesh Kurre and thus prayed for rejection of the present Cr.M.P.
9. Having considered the rival contention put forth on either side and on perusal of the record, true it is that the Supreme Court in catena of its decision have held that the powers of the high Court under Section 482 of the Cr.P.C. though wide but shall be used only in case if the Petitioners are able to establish prima facie there being no case or no material available for implicating the Petitioners in the case, the High Court has powers for quashing the F.I.R. and the subsequent proceedings drawn thereafter.

10. However, if we look into the provision it also has been held by the Supreme Court more than once that the powers conferred under Section 482 of the Cr.P.C. should not be used as a matter of routine but has to be sparingly used and only in case where there is no remedy available to the Petitioner it should normally be exercised. The judgment of the Satish Mehra (Supra) which has been relied upon by the Counsel for the Petitioner itself states that the powers under Section 482 of the Cr.P.C. is extra ordinary in nature and has to be exercised sparingly and only if the attending facts and circumstances satisfy the narrow test. However, as far as the facts of the present case is concerned, initially the case was registered only on basis of the statement of the child in conflict with law on 04.05.2016 recorded in the presence of the child welfare committee. During the course of the investigation police authorities is said to have recovered a mobile phone that too at the instance of the present Petitioner. Another factor which cannot be brushed aside is the fact that as per the State Counsel the said mobile phone and SIM was thrown by the present Petitioner and the extent of recovery made shall be an admissible piece of evidence and rest of the facts are all matter of evidence.

11. Last but not the least this Court is of the opinion that indisputably the next date of hearing is 28.12.2016 which is barely just about 10 days from now and on the said date the matter is fixed for argument before framing of charge. This Court has no hesitation in holding that the claims which the Petitioner have raised in the present Petition, can also be raised before the Court below at the time of argument

before framing of charge. In case if the Petitioner raises these arguments there is no reason why these grounds would not be considered by the Court below while deciding the issue of framing of charge. At this juncture when FIR which has been lodged on 03.05.2016, charge –sheet was filed on 12.09.2016 and matter being fixed for argument before framing of charge on 28.12.2016 this Court is of the opinion that it would not be proper to hold a mini trial or conduct a roving inquiry so as to ascertain whether any offence is made out against the present Petitioner or not.

12. With the aforesaid observation the present Petition stands disposed off.

Sd/-

(P. Sam Koshy)
JUDGE