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HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 441 of 2017****Order Reserved on : 04.04.2017****Order passed on : 11.04.2017**

Girish Sharma, Aged about 52 years, S/o Shri R.P. Sharma, R/o
HIG-02/441, Sector-1, Pandit Dindayal Upadhyaya Nagar, Pin-
492010, Raipur, Tahsil & Distt. Raipur (C.G.)

---- Petitioner**Versus**

State of Chhattisgarh, Through:- Incharge of Police Station
E.O.W./ACB, Raipur:- 492001, Tah & Distt- Raipur (C.G.)

---- Respondent

For Petitioner: Mr. V.G. Tamaskar, Advocate.
For Respondent/State: Mr. Arun Sao, Deputy Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal**ORDER [C.A.V.]**

(1) The petitioner is an employee of Chhattisgarh State Civil Supplies Corporation Limited, Raipur, which is a Government Company. In a Special Case No.794/2015 arising out of Crime No.09/2015 by Anti Corruption Bureau, Raipur relating to offence under Sections 109, 120-B, 409 & 420 of the Indian Penal Code, the petitioner was cited as prosecution witness, in which, two accused persons namely Kaushal Kishore Yadu & Sudhir Kumar Bhole made an application under Section 319/193 of the Code of Criminal Procedure. That application was rejected by the Special Judge, Anti Corruption Bureau, Raipur & First Additional Sessions Judge, Raipur by order dated 13.04.2016.

The said accused persons namely Kaushal Kishore Yadu & Sudhir Kumar Bhole filed Criminal Revision Nos. 403/2016 & 484/2016, respectively before this Court there-against.

(2) Both the Criminal Revisions have been allowed by this Court by its order dated 03.03.2017 directing the trial Court to proceed further with the trial by making the present applicant & two other accused persons as accused persons by issuing summons to them and thereafter proceed with the prosecution.

(3) In this petition filed under Section 482 of the Code of Criminal Procedure, sole relief claimed by the petitioner is that the Special Judge, Anti Corruption Bureau, Raipur & First Additional Sessions Judge, Raipur be restrained from arresting the petitioner in Special Case No.794/2015 arising out of Crime No.09/2015.

(4) Mr. Tamaskar, learned counsel appearing for the petitioner would submit that since the petitioner is a public servant, he cannot be arrested without sanction under Section 197 Cr.P.C., and, therefore, Special Judge, Anti Corruption Bureau, Raipur be restrained from arresting him by allowing instant writ petition.

(5) On the other hand, counsel for the State opposes the writ petition.

(6) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove with utmost circumspection.

(7) It is well settled law that inherent power conferred on this Court

under Section 482 CrPC has not to be exercised in the matter covered by specific provisions of the Code. In the present case, the petitioner has specific remedy of moving application for anticipatory bail under Section 438 of the Code of Criminal Procedure before the jurisdictional criminal court, if he apprehends his arrest in some criminal case, he cannot maintain petition under Section 482 of the Cr.P.C. to circumvent the statutory provision and claim blanket order of anticipatory bail in a petition under Section 482 of the Cr.P.C.

(8) In the matter of **Arun Shankar Shukla Vs. State of U.P. and others**¹, their Lordships of the Supreme Court has clearly held that expressions “abuse of the process of law” or “to secure the ends of justice” do not confer unlimited jurisdiction on the High Court and the alleged abuse of the process of law or the ends of justice could only be secured in accordance with law and held as under:-

“2. It appears that unfortunately the High Court by exercising its inherent jurisdiction under Section 482 of the Criminal Procedure Code (for short “the Code”) has prevented the flow of justice on the alleged contention of the convicted accused that it was polluted by the so-called misconduct of the judicial officer. It is true that under Section 482 of the Code, the High Court has inherent powers to make such orders as may be necessary to give effect to any order under the Code or to prevent the abuse of process of any court or otherwise to secure the ends of justice. But the expressions “abuse of the process of law” or “to secure the ends of justice” do not confer unlimited jurisdiction on the High Court and the alleged abuse of the process of law or the ends of justice could only be secured in accordance with law including procedural law and not otherwise. Further,

1 (1999) 6 SCC 146

inherent powers are in the nature of extraordinary powers to be used sparingly for achieving the object mentioned in Section 482 of the Code in cases where there is no express provision empowering the High Court to achieve the said object. It is well-nigh settled that inherent power is not to be invoked in respect of any matter covered by specific provisions of the Code. In the present case, the High Court overlooked the procedural law which empowered the convicted accused to prefer statutory appeal against conviction of the offence. The High court has intervened at an uncalled for stage and soft-pedalled the course of justice at a very crucial stage of the trial.

9. In our view, the order passed by the High Court entertaining the petition of the convicted accused under Section 482 of the Code is, on the face of it, illegal, erroneous and to say the least, unfortunate. It was known to the High Court that the trial Court passed proceedings to the effect that final judgment and order convicting the accused were pronounced by the trial court. It was also recorded by the trial Court that as the accused were absent, the Court had issued non-bailable warrants. In such a situation, instead of directing the accused to remain present before the Court for resorting to the steps contemplated by the law for passing the sentence, the High Court has overlooked the important legal aspect that the accused have a right of appeal against the order of conviction purported to have been passed by the trial Court. In such circumstances the High Court ought not to have entertained a petition under Section 482 of the Code and stonewalled the very efficacious alternative remedy of appeal as provided in the Code. Merely because the accused made certain allegations against the trial Judge the substantive law cannot be bypassed.

(9) The principle of law laid down by the Supreme Court in the matter of **Arun Shankar Shukla** (supra) has been followed with approval by the Supreme Court in the matter of **Hamida Vs. Rashid @ Rasheed & others**², in which their Lordships have held that petition under Section 482 of the Cr.P.C. could not have been entertained where there was specific provision (Section 439) in Cr.P.C. for redressal of the grievance of the aggrieved party is available. Paragraphs 6, 7 & 8 of report states as under:-

“6. We are in agreement with the contention advanced on behalf of the complainant appellant. [Section 482](#) Cr.P.C. saves the inherent powers of the High Court and its language is quite explicit when it says that nothing in [the 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 [the Code](#), or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. A procedural Code, however exhaustive, cannot expressly provide for all time to come against all the cases or points that may possibly arise, and in order that justice may not suffer, it is necessary that every court must in proper cases exercise its inherent power for the ends of justice or for the purpose of carrying out the other provisions [of the Code](#). It is well established principle that every Court has inherent power to act ex debito justitiae to do that real and substantial justice for the administration of which alone it exists or to prevent abuse of the process of the Court. As held by the Privy Council in [Emperor v. Khwaja Nazir Ahmad](#) AIR 1945 PC 18 with regard to [Section 561-A](#) of the Code of Criminal Procedure, 1898 ([Section 482](#) Cr.P.C. is a verbatim copy of the said provision) gives no new powers. It only provides that those which the Court already inherently possesses shall be preserved and is inserted, lest it should be

2 (2008) 1 SCC 474

considered that the only powers possessed by the Court are those expressly conferred by [the Code](#) and that no inherent power had survived the passing of the Act.

7. It is well established principle that inherent power conferred on the High Courts under [Section 482](#) Cr.P.C. has to be exercised sparingly with circumspection and in rare cases and that too to correct patent illegalities or when some miscarriage of justice is done. The content and scope of power under [Section 482](#) Cr.P.C. were examined in considerable detail in [Madhu Limaye v. State of Maharashtra](#)³ and it was held as under :

"The following principles may be stated in relation to the exercise of the inherent power of the High Court -

(1) That the power is not to be resorted to if there is a specific provision in [the Code](#) for the redress of the grievance of the aggrieved party;

(2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;

(3) That it should not be exercised as against the express bar of law engrafted in any other provision [of the Code](#)."

8. [In State v. Navjot Sandhu](#) (2003) 6 SCC 641 (para 29), after a review of large number of earlier decisions, it was held as under :

"29. The inherent power is to be used only in cases where there is an abuse of the process of the Court or where interference is absolutely necessary for securing the ends of justice. The inherent power must be exercised very sparingly as cases which require interference would be few and far between. The most common case where inherent jurisdiction is generally exercised is where criminal proceedings are required to be quashed because they are initiated illegally, vexatiously or without jurisdiction. Most of the cases set out herein above fall in this category. It must be remembered that the inherent power is not to be resorted to if there is a specific provision in [the Code](#) or

3 AIR 1978 SC 47

any other enactment for redress of the grievance of the aggrieved party. This power should not be exercised against an express bar of law engrafted in any other provision **of the Criminal Procedure Code**. This power cannot be exercised as against an express bar in some other enactment."

(10) Applying the ratio of law laid down by the Supreme Court in the above referred cases, it is quite vivid that petition under Section 482 of the Cr.P.C. seeking blanket order of anticipatory bail circumventing Section 438 Cr.P.C. is held to be not maintainable in law.

(11) Accordingly, the Cr.M.P. fails and is hereby dismissed. However, the petitioner is at liberty to proceed in accordance with law.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr.M.P. No. 441 of 2017

Girish Sharma

Versus

State of Chhattisgarh & others.

Head Note

English

Petition under Section 482 of the Code of Criminal Procedure is not maintainable to claim anticipatory bail.

HINDI

अग्रिम जमानत का दावा करने वाली याचिका धारा 482 द.प्र.सं. के अंतर्गत पोषणीय नहीं है ।

