

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL MISC. PETITION NO. 656 OF 2016

Jaiprakash Shukla, S/o Late Shri G.P. Shukla, aged about 48 years (now 56 years), Ex. C.E.O. Janpad Panchayat, Jaijaipur, R/o Block Colony, Jaijaipur, P.S. & Tahsil Jaijaipur, District Janjgir-Champa (C.G.), permanent R/o behind Sai Mandir, Daganiya, College Ward, Raipur, Tahsil and District Raipur (C.G.)

... Petitioner

Versus

State of Chhattisgarh, through the District Magistrate, Janjgir, District Janjgir-Champa (C.G.)

... Respondent

For Petitioner	:	Mr. S.C. Verma, Advocate.
For Respondent-State	:	Mr. Ashish Shukla, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

C A V Order

Reserved on : 07.12.2016

Delivered on : 02.01.2017

1. By way of the present petition under Section 482 of CrPC, the Petitioner has sought for the quashment of the criminal proceedings initiated against him in Criminal Case No. 157 of 2013 whereby the Petitioner has been prosecuted for the offence under Sections 420, 467, 468, 471, 409/34 of IPC.
2. Brief facts relevant for the adjudication of the case are that one Shankarlal Sahis (who is now deceased) on 7.9.2009 filed a complaint under Section 200 of CrPC before the Judicial Magistrate First Class, Jaijaipur, District Janjgir-Champa, alleging that the Petitioner herein who was in between working as the Chief Executive Officer of Janpad Panchayat, Jaijaipur and a host of other persons working under the said Janpad Panchayat is said to have committed great amount of misappropriation, illegality and irregularity while embezzling the government money received under the Employment Guarantee Scheme. It

is alleged that the accused persons, all of whom have connived together and have prepared false and fabricated documents, muster rolls, bills etc., for the purpose of showing work in the execution of the Employment Guarantee Scheme and have in the process withdrawn huge amount of money, thus causing loss to the State Exchequer.

3. On receipt of the said complaint, the Magistrate ordered for the registration of the FIR and for conducting an investigation and to proceed further, vide its order dated 7.9.2009. Based on the said order of the Magistrate, the Police Station, Jaijaipur registered Crime No. 244 of 2009 and after investigation, charge-sheet was filed on 15.9.2009 against about 10 persons including the Petitioner. In the charge-sheet it was alleged that all the accused persons including the Petitioner have committed the offence under Sections 420, 467, 468, 471, 409/34 of IPC and the matter was put to trial.

4. The Trial Court after hearing the accused persons vide its order dated 14.4.2014 framed charges against the Petitioner for having committed the offence under Sections 420, 467, 468, 471, 409/34 of IPC. Being aggrieved by the said framing of charge, the Petitioner preferred a revision petition before the First Additional Sessions Judge, Sakti, District Janjgir-Champa wherein the matter was registered as Criminal Revision No. 20 of 2015. The Revisional Court also vide its order dated 29.3.2016 rejected the revision petition, upholding the framing of charge against the Petitioner, which led to the filing of the present petition under Section 482 of CrPC.

5. Foremost of the contention of the Counsel for the Petitioner is that even if the entire version of the prosecution without any addition or subtraction in the charge-sheet is taken into consideration even then there is no iota of material available either in the charge-sheet which has

been collected in the course of investigation, by which the Petitioner could have been implicated in the said case. It was next contended by the Counsel for the Petitioner that it is a case where in fact the Petitioner was posted as the Chief Executive Officer of Janpad Panchayat, Jaijaipur for a very brief time, i.e., from 24.4.2007 to 18.7.2008. That during the said period no amount of money whatsoever has been released by the present Petitioner by which it could be attributed that even if the allegation are correct then the Petitioner might have received any benefits from the said alleged fraudulent and illegal transactions. Counsel for the Petitioner submits that the only basis of the documents with which they are proceeding against the Petitioner is the muster-roll which was issued while the Petitioner was working as the Chief Executive Officer of the Janpad Panchayat.

6. According to the Counsel for the Petitioner, the only evidence which is claimed to be an incriminating material is the muster-roll which has a seal and signature of the Petitioner. The Petitioner however submits that the seal and signature on the vouchers is affixed at the time of releasing of the muster-roll to the different Panchayats under the said Janpad Panchayat and thereafter the muster-roll and the relevant documents for the execution of the Employment Guarantee Scheme is maintained by the respective Panchayats and the Petitioner has no role whatsoever to play in the execution of the said work.

7. It is also contended by the Counsel for the Petitioner that subsequently also since there is no payments which have been released by the Petitioner it cannot be said that the Petitioner was in any manner under hand-in-glove with the other accused persons if any in the commission of the said offences. According to the Counsel for the Petitioner, the very basis on which the case has been registered is a bald,

vague and omnibus complaint which ought not to have taken cognizance of, as it does not disclose any individual overt-act played by each of the accused persons including the Petitioner, and in the absence of which the registration of the complaint itself is bad in law.

8. According to the Counsel for the Petitioner, if the Petitioner in the given facts and circumstances of the case is made to face the trauma of trial, his career itself may get jeopardized which would amount to nothing less than misuse of the process of law as well as the Court. According to the Counsel for the Petitioner, he had obtained a document under the Right to Information Act, which clearly denotes that at the relevant point of time the Petitioner was not posted as the Chief Executive Officer and that during the period that he was posted, there was no payment which is said to have been released to any of the beneficiaries. Therefore, the Petitioner could not have been made an accused and the Magistrate ought to have taken into consideration these facts while firstly registering the case and secondly at least at the time of framing of charge.

9. Counsel for the Petitioner further submits that the law so far as the quashment of the proceeding is concerned is well settled right from the landmark decision of the Hon'ble Supreme Court rendered in the case of **State of Haryana & Others v. Bhajana Lal & Others, 1992 Supp (1) SCC 335**, till recent also. That, in case, if the Court finds that a bare perusal of the charge-sheet by itself would reveal that there is no incriminating material available against the alleged accused person then the High Court in exercise of its inherent extraordinary powers conferred under Section 482 of CrPC has all the rights to quash the entire proceedings. Relying on the said principles, he submits that in the present case also if the entire version of the prosecution as it is taken note of, even then there is no

material by which even a suspicion or a doubt is created for impleading the Petitioner as an accused person.

10. Counsel for the Petitioner heavily relies upon the complaint lodged by the Complainant which is the basis of the initiation of the criminal case, and further also refers to Annexure P-6 which is a document provided under the Right to Information Act by which the Respondent categorically disclosing the fact that no payment whatsoever has been made at the behest of the Petitioner, so as to even raise a doubt on the credibility and integrity of the Petitioner. He submits that the Petitioner was posted as the Chief Executive Officer for a very brief period from 24.4.2007 to 18.7.2008 and that during the said period except for the releasing of the blank muster-roll there has been no role whatsoever played or even alleged against the Petitioner, and therefore the Petitioner could not have been made an accused person and the present petition deserves to be allowed and the Petitioner be discharged from the charges levelled against him.

11. Counsel for the State on the contrary opposing the petition submits that it is a case where it is only the charges which have been framed against the Petitioner and the other accused persons and that the allegations and submissions put forth by the Counsel for the Petitioner are all matters of evidence and which cannot be looked into by this Court in exercise of its powers under Section 482 of CrPC. The State Counsel took the stand that in exercise of its powers under Section 482 of CrPC, the Court would not embark on the enquiry to ascertain the veracity of the allegations. According to the Counsel for the State, all those contentions which the Petitioner has raised are in fact his defence and defence cannot be permitted to be a ground for quashment of the criminal prosecution itself, in exercise of powers conferred upon this Court under Section 482 of CrPC. According to the State Counsel, the High Court while exercising

powers under Section 482 of CrPC, is neither exercising the appellate jurisdiction nor does it exercise the revisional jurisdiction and therefore the powers so conferred upon this Court has to be used very sparingly and not as the matter of routine.

12. Counsel for the State further contended that the matter is yet to be thrashed out in the course of leading evidence wherein it could be ascertained whether the Petitioner has in fact played any role in the alleged illegal transaction causing embezzlement of government funds or not, and which cannot be ascertained without evidence and therefore the petition being misconceived deserves to be rejected. According to the State Counsel, this Court under Section 482 of CrPC would not conduct a mini trial or a roving enquiry to reach to the conclusion, whether any evidence is available in the charge-sheet or the documents enclosed along with charge-sheet, by which the Petitioner could be implicated. Counsel for the State relies upon the case of **K.L.E. Society & Ors. v. Siddalingesh, AIR 2008 SCW 1993**, and also the case of **State of A.P. v. Gourishetty Mahesh & Ors., 2010 Cr.L.J. 3844**.

13. Before this Court deal with certain admitted facts of the present case, it would be necessary to refer to the recent judicial pronouncements that have been made by the Hon'ble Supreme Court in regard to quashment of criminal prosecution in exercise of powers under Section 482 of CrPC. Foremost, it would be relevant to refer to the guiding principles laid down by the Supreme Court in the landmark case of *Bhajana Lal* (1992 Supp (1) SCC 335) :

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration

wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice...

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) xxx xxx xxx

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and made out a case against the accused.

(4) xxx xxx xxx

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) xxx xxx xxx

(7) xxx xxx xxx”

14. The said principles laid down in the case of *Bhajan Lal* still hold good and the Hon'ble Supreme Court further reiterating the said principles laid down in the case of *Bhajan Lal*, recently in **2014 (10) SCC 616 (N. Soundaram v. P.K. Pounraj & Another)** has held as under:

“**13.** ...Taking the allegations and the complaint as they were, without adding 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...”

15. In **2015 (7) SCC 423 (Manik Taneja & Anr. v. State of Karnataka & Anr.)**, the Hon'ble Supreme Court again held as follows :

“**13.** Of course, in exercise of its jurisdiction under Section 482 CrPC, the court should be extremely cautious to interfere with the investigation or trial of a criminal case and should not stall the investigation, save and except when it is convinced beyond any manner of doubt that the FIR does not disclose commission of offence and that continuance of the criminal prosecution would amount to abuse of process of the court.”

16. In the case of **Rajiv Thapar & Ors. v. Madan Lal Kapoor, 2013 (3) SCC 330**, the Hon'ble Supreme Court in paragraph 29 held that :

“**29.** The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 CrPC, if it chooses to quash the initiation of the prosecution against an

accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 CrPC, at the stages referred to hereinabove, would have far reaching consequences, inasmuch as, it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 CrPC the High Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 CrPC to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice."

Based on the discussions made on the basis of the judicial pronouncements, the Hon'ble Supreme Court further laid down certain principles to be taken note in a petition seeking quashment of criminal proceeding invoking the powers under Section 482 of CrPC, which are as under:

"30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:

30.1. *Step one:* whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e. the material is of sterling and impeccable quality?

30.2. *Step two:* whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e. the material is

sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. *Step three:* whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

30.4. *Step four:* whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused.”

17. The view taken in the cases of *Bhajan Lal* and *Rajiv Thapar* (supra) has been reiterated by the Hon'ble Supreme Court again in one of the very recent decisions rendered in the case of **Amanullah & Anr. v. State of Bihar & Ors., 2016 (6) SCC 699.**

18. Having considered the aforesaid authoritative judicial pronouncements made by the Hon'ble Supreme Court so far as the quashment of charge is concerned, if we look into the factual matrix of the present case what is not disputed by the either side is that, the Petitioner was working as Chief Executive Officer of Janpad Panchayat Jaijaipur from 24.4.2007 to 18.7.2008. Further, a perusal of the document (Annexure P-6) which is a document enclosed along with the petition, the contents of which have been admitted by the Counsel for the State to be true, reflects that during the period that the Petitioner had worked as Chief Executive Officer of Janpad Panchayat Jaijaipur no payment whatsoever has been released at the behest of the Petitioner. The said document further discloses the fact that, in fact during the period that the Petitioner was

working as the Chief Executive Officer neither was any sanction granted nor was any approval granted for the execution of work of which embezzlement is alleged against the Petitioner. The document (Annexure P-6) very clearly has also given the details of the officers during whose period the approval and sanction was obtained and payments were released and also who were the persons who had certified the valuation.

19. Another admitted fact which has come on record is that by way of an affidavit filed by the police authorities as per the order dated 27.9.2016 of this Court, wherein the police authorities have admitted the fact that the Chief Executive Officers of the Janpad Panchayats release blank muster-rolls to the different Gram Panchayats with the seal and sign of the Programme Officer or the Chief Executive Officer to the Janpad Panchayat, which is an admitted fact in the present case also. Thereafter, the muster-rolls, vouchers, bills and receipts were all prepared and processed at the Gram Panchayat level and it is only thereafter they are forwarded to the Janpad Panchayat. In the instant case, the Petitioner during the brief period has only released certain muster-rolls with the seal and signature in the capacity of Chief Executive Officer of Janpad Panchayat. Merely because there is a blank muster-roll with a seal and signature which was a condition precedent for being released to the different Gram Panchayats having the signature of the Petitioner, in the opinion of this Court would not be sufficient enough to implicate him as an accused person in the case, unless other ingredients are required for the making out an offence under Section 420, 467, 468, 471 and 409 of IPC. The prosecution during the course of investigation also has not been able to collect any incriminating material so far as the Petitioner is concerned by which it could be even suspected for the Petitioner to have played some role in the commission of the offence. In the absence of any such material,

in the opinion of this Court particularly, in the light of the judicial pronouncements referred to in the preceding paragraphs, it would not be appropriate for the Petitioner to be forced to face the trial as an accused person.

20. The State Counsel in the course of arguing the matter does not dispute the fact that in the charge-sheet, the only incriminating material as per the prosecution against the present Petitioner was the muster-rolls which were used for the purpose of making false entries for drawing wages for the workers who have not been engaged by the Panchayat. However, the State in its affidavit dated 27.09.2016 has admitted the fact that the muster-rolls which have been used in the commission of the offence were released by the Petitioner with his seal and signature over it and they have also admitted the fact that all the said muster-rolls were released well in advance as per the procedure and practice in the Janpad Panchayat where all the muster-rolls which were issued to the Gram Panchayat were provided with seal and signature of the Chief Executive Officer.

21. In the light of the affidavit of the State Government filed on 27.09.2016, the case of the Petitioner further gets strengthened on the fact that he had in the course of discharge of his official duties released the blank muster-rolls to the concerned Gram Panchayats with his seal and signature on it. This being the position, firstly, it was all the more necessary for the investigating agency to have investigated into the case and find out as to how the Petitioner is being implicated in the case with the said blank muster-rolls, which the prosecution has miserably failed to do so. Secondly, the admitted position from the charge-sheet is that, no payment whatsoever was released during the brief tenure of the Petitioner as the Chief Executive Officer so as to even doubt his integrity, which again is on the basis of the information provided under the Right to Information Act by

the State Government which is also part of this petition, has not been rebutted, contradicted, doubted or disputed by the prosecution. Thus, there is no reason to disbelieve the same.

22. If we look into the judicial pronouncements referred to in the preceding paragraphs, the land-mark judgment in case of *Bhajan Lal* (supra) clearly enunciates the principle, that even if the entire contents of the charge-sheet are taken on its face value and accepted in its entirety, there was no *prima facie* material to constitute offence against the Petitioner. The Hon'ble Supreme Court also held that with the uncontroverted allegation made in the complaint or FIR and the evidence which have been collected during the course of the investigation do not disclose commission of any offence or that the available material in the charge-sheet if any prudent person cannot reach to a conclusion there being sufficient ground for proceeding against the accused, the High Court in exercise of its power under Section 482 of CrPC would be justified in quashing the proceeding so as to prevent misuse of process of law.

23. The Criminal Misc. Petition thus deserves to be and is accordingly allowed. The criminal prosecution so far as the Petitioner is concerned in Criminal Case No. 157 of 2013 stands quashed and he is discharged from the charges levelled against him.

Sd/-
(P. Sam Koshy)
Judge