

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL MISC. PETITION NO. 807 OF 2016

Gyanchand Jain, S/o Bhola Ram Jain, aged about 39 years, R/o Avasiya Mohalla, Jaalbandha, Police Station Khairagad, Distt. Rajnandgaon (C.G.)

... Petitioner

Versus

State of Chhattisgarh, through Station House Officer, Police Station Jaalbandha, Khairagad, Distt. Rajnandgaon (C.G.)

... Respondent

For Petitioner	:	Ms. K. Tripti Rao, Advocate.
For Respondent-State	:	Mr. Ashish Shukla, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

05/01/2017

1. The present petition has been preferred by the Petitioner invoking the provisions of Section 482 of CrPC, seeking for quashment of the charge-sheet filed in Crime No. 249 of 2015 registered at Police Station Khairagarh, District Rajnandgaon where the Petitioner is being prosecuted for the offence under Section 34 of the Chhattisgarh Excise Act.
2. The Petitioner assails the filing of the charge-sheet and initiation of the criminal prosecution on the ground that he has been falsely implicated in the criminal case at the instance of some local influential persons who were otherwise involved in the racket of illicit sale of liquor. According to the Petitioner, he is a whistle blower of the said area and is also a part time journalist and as a part of his profession he had highlighted certain antisocial activities that were prevailing in the locality of village Jaalbandha at Tahsil Khairagarh, District Rajnandgaon. According to him, he had published various such illegal activities in the newspaper against some of the persons of the locality who were involved in illegal sale of scrap as well as liquor and on account of which they had threatened him of being falsely implicated in some case or the other to teach him a lesson. According to him, much before the

date of lodging of the FIR itself, he had issued letters to the Superintendent of Police at Durg intimating about the threat that he had received periodically from the antisocial elements of the locality of falsely implicating him in one of the excise matters. According to the Petitioner, he has been repeatedly making written complaints to the Superintendent of Police at Durg on various dates before lodging of the FIR as also subsequent to the lodging of the FIR, which itself is a sufficient strong piece of material to show that he has been falsely implicated in the said case only on account of the fact that he, as a journalist, had published certain news articles of the illegal activities that had transpired in the said locality.

3. Counsel for the Petitioner drew the attention of the Court to the orders passed by this Court while granting anticipatory bail to the Petitioner and refers to the observations made therein, wherein this Court had taken note of all these averments made by the Petitioner for the purpose of granting anticipatory bail to him. She also refers to certain newspaper articles that have been enclosed along with the petition, to show that the news articles have been published at the instance of the Petitioner and which has become the root cause for the lodging of the case against him, and thus she sought for the quashment of the entire criminal prosecution in Crime No. 249 of 2015 registered at Police Station Khairgarh, District Rajnandgaon.

4. Counsel for the State however opposing the petition submits that all the contentions of the Petitioner as raised, are all matter of evidence and can only be ascertained and decided after the prosecution leads its evidence to establish its case. According to him, at this juncture, it would be not proper for this Court to rely upon the materials which have been enclosed with the petition and only based on those averments quash the entire criminal prosecution. The State Counsel submits that since the Petitioner has already got an advantage of anticipatory bail, he should not shy away from facing the

trial. The State Counsel further submits that from the investigation and the materials which are produced in the case diary, it reflects that it is a case where the premises where the alleged liquor was said to have been placed, was locked from the outside and the Petitioner was not available there and it is only after the Petitioner was called upon by the police authorities and when he had opened the door, the police authorities could enter inside and reached the area where they found the boxes of liquor and the premises was of the Petitioner. The State Counsel further submits that whether the contentions put forth by the Counsel for the Petitioner are true or not can only be decided after the proper evidence is recorded, where the Petitioner can also cross-examine the prosecution witnesses in this regard to establish his innocence. The State Counsel thus prayed for the rejection of the petition.

5. Having heard the rival contentions put forth on either side and on perusal of the record, undisputedly, an FIR has in fact been lodged against the Petitioner on 21.7.2015, i.e., about 1½ years of time from now, and the allegation in the said FIR is that the Petitioner was found in illegal possession of 5.58 bulk liters of Goa English liquor. It is also not in dispute that the Petitioner is a part time journalist. Further, from the record it also reflects that the Petitioner already has been enlarged on anticipatory bail by this Court vide its order dated 10.2.2016 in the present case. Now, as regards the contention of the Counsel for the Petitioner so far as the Petitioner having been falsely implicated in the case, in the opinion of this Court, the place from where the consignment was seized is a premises belonging to the Petitioner and therefore it cannot be said that there was no evidence against the Petitioner, thus there is some evidence.

6. Whether this evidence is sufficient for the conviction of the Petitioner or not, or, whether the entire case has been falsely implicated at the hands of the influential people, is a matter which can only be adjudicated upon after the

evidence is recorded where the Petitioner would also get an opportunity of elaborately cross-examining the prosecution witnesses so as to prove his innocence and also to establish the fact that it is a concocted case.

7. So far as the power under Section 482 of CrPC is concerned, the Supreme Court in more than a couple of decisions has repeatedly held that the power under Section 482 of CrPC has to be sparingly used for quashment of FIR and charge-sheet. It has also been held by the Supreme Court in a catena of decisions that at the time of the filing of charge-sheet or lodging of the FIR, all that the police authorities have to look into is, whether there is some prima facie case or material available against the accused or not. In the instant case, from the fact that the recovery of 5.58 bulk liters of Goa English liquor was made from the premises of the Petitioner, there appears to be some material available in the hands of the prosecution. Whether it is a case where the consignment has been planted by the interested persons, is a matter of fact to be adjudicated upon only by way of evidence, which cannot be considered by this Court only relying upon the documents enclosed with the petition.

8. For the foregoing reasons, this Court is of the opinion that it is not a fit case where the entire charge-sheet can be quashed at this juncture. Accordingly, the present petition being devoid of merits the same is dismissed.

Sd/-
(P. Sam Koshy)
Judge