

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****RESERVED ON 17-9-2019****DELIVERED ON 25-9-2019****CRMP No. 820 of 2014**

- Padamlochan Yadav @ Bablu S/o Late Shyamlal Yadav Aged About 45 Years R/o Village Krishnapur, Near Urdana Barrier, Ps Kotra Road, Raigarh, Tah. And Distt. Raigarh, Civil And Rev. Distt. Raigarh C.G.

---- Petitioner**Versus**

1. A.K. Dhritlahre S/o Not Known Aged About 45 Years, occupation Service (Deputy Collector), R/o Narayanpur, Distt. Narayanpur, Civil And Rev. Distt. Narayanpur C.G.
2. Bhuvnesh Yadav S/o Not Known Aged About 35 Years Occupation - Service, Former Commissioner, Municipal Corporation, Raigarh And At Present R/o Bilaspur C.G.
3. K.K. Wasnik S/o Not Known Aged About 35 Years Occupation Service, SHO, City Kotwali Raigarh C.G. R/o Raigarh C.G.
4. State of C.G. S/o Through The Collector/D.M. Raigarh C.G.

---- Respondents

For petitioner	:	Mr. Vivek Kumar Tripathi, Adv.
For respondent 2	:	Mr. Sudeep Agrawal, Adv.
For respondent No. 1 and 3	:	Mr. Amarnath Rai, Adv.
For Respondent No. 4	:	Mr. D.C. Verma, Govt Adv.

Hon'ble Shri Sharad Kumar Gupta, Judge**CAV ORDER**

1. Petitioner has preferred this CRMP under Section 482 of the Criminal Procedure Code, (for short 'Cr.P.C.') to quash the impugned order dated 28-1-2013 passed by JMFC, Raigarh in unregistered complaint case filed by himself and impugned order dated 7-6-2014 passed by 2nd Addl. Sessions Judge, Raigarh in Criminal Revision No. 123/2013 and to order to register the offences against the respondents No. 1, 2 and 3 as per the complaint.

2. In brief the case of the petitioner is that he had filed a complaint for the offences punishable under Section 435, 451, 504 and 506-B of the

Indian Penal Code (for Short IPC) against respondents No. 1 to 3 alleging that they have committed house trespass and got demolished his six shops by JCB machine which were constructed over Khasra No. 130/1 measuring area 0.0028 hectare and caused wrongful loss for Rs. 7 lacs to him. The said land belongs to him. JMFC Raigarh had called the report from SHO, Raigarh. On 28-1-2013 JMFC Raigarh dismissed the complaint. Being aggrieved he preferred a criminal revision which was also dismissed on 7-6-2014. Being aggrieved he preferred this CRMP. The impugned orders are contrary to law. In the case in hand trial Court would have examined the allegation made in the complaint and evidence produced by him. Instead of it trial Court considered the defence of respondents No. 1 to 3. the demolishing process has been done without any demarcation report.

3. In brief the case of the respondents is that petitioner had made construction in Khasra No. 129 which is the government land, on account of which the roaming vehicles were not visualized and there was apprehension of accident. A revenue case was registered by Tehsildar Raigarh. A report from revenue inspector was obtained. Notice was given to petitioner who refused to receive it, his notice was effected by affixing. On 23-10-2009 an order was passed to remove the encroachment made by the petitioner and SHO Raigarh was requested to provide police force. In pursuance of that order the encroachment made in Khasra No. 129 was removed.

4. Counsel for the petitioner submitted that trial Court ignored the evidence led by petitioner and gave the weightage to the defence of the respondents No. 1, 2 and 3 advanced by them. Without demarcation report respondent No. 1, 2 and 3 removed the construction. The construction was made in Khasra No. 130/1 which belongs to the petitioner.

5. Counsel for the respondents argued that the petitioner had made the construction on Kh. No. 129 which is the government land. After adopting the legal recourse the encroachment was removed from the Khasra No. 129 for which they were legally entitled.

6. In the judgment of Hon'ble Supreme Court in the matter of **Rajib Ranjan and others -v- R. Vijay Kumar** [(2018) 1 SCC 615], it has been

observed that:-

“The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. Where the case with civil nature converts into criminal prosecution, the High Court can quash the proceedings in exercise of its inherent powers under Section 482, Cr.P.C.”

7. Hon'ble Supreme Court in the matter of **Umesh Kumar Vs. State of Andhra Pradesh and another** [(2013) 10 SCC 591], in Para 20 observed thus:-

“**20.** The scope of Section 482 CrPC is well defined and inherent powers could be exercised by the High Court to give effect to an order under CrPC; to prevent abuse of the process of court; and to otherwise secure the ends of justice. This extraordinary power is to be exercised *ex debito justitiae*. However, in exercise of such powers, it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its prima facie satisfaction about the existence of sufficient ground for proceedings against the accused and the Court cannot look into materials, the acceptability of which is essentially a matter for trial. Any document filed along with the petition labelled as evidence without being tested and proved, cannot be examined. The law does not prohibit entertaining the petition under Section 482 CrPC for quashing the charge-sheet even before the charges are framed or before the application of discharge is filed or even during the pendency of such application before the court concerned. The High Court cannot reject the application merely on the ground that the accused can argue legal and factual issues at the time of the framing of the charge. However, the inherent power of the Court should not be exercised to stifle the legitimate prosecution but can be exercised to save the accused from undergoing the agony of a criminal trial.”

8. Hon'ble Supreme Court in the matter of **Tilly Gifford Vs. Michael Floyd Ishwar and other** [(2018) 11 SCC 205] has observed in Para 3 as under:-

“**3.**Time and again, it has been emphasised by this Court that the power under Section 482 CrPC would not permit the High Court to go into disputed questions of fact or to appreciate the defence of the accused. The power to interdict a criminal proceeding at the stage of investigation is even more rare. Broadly speaking, a criminal investigation, unless tainted by clear mala

fides, should not be foreclosed by a court of law.”

9. In the matter of **State of Haryana and others -v- Choudhary Bhajan Lal and others** reported in AIR 1992 SC 604, Hon'ble Supreme Court has observed in para 108 as under:-

“108. 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, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(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 make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(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) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

10. In the matter of **R.P. Kapur -v- State of Punjab** reported in AIR 1960 SC 866, in para 6, the Full Bench of Hon'ble Supreme Court has observed as under :-

“The inherent power of the High Court under Section 561-A of the Code cannot be exercised in regard to matters specifically

covered by the other provisions of the Code. The inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction.

Some of the categories of cases where the inherent jurisdiction to quash proceedings can and should be exercised are :-

(i) Where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding in respect of the offence alleged. Absence of the requisite sanction may, for instance, furnish cases under this category.

(ii) Where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not.

(iii) Where the allegations made against the accused person do constitute offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained."

11. In **Parbatbhai Aahir v. State of Gujarat**, [(2017) 9 SCC 641], again the Hon'ble Supreme Court has had an occasion to consider whether the High Court can quash the FIR/complaint/criminal proceedings, in exercise of the inherent jurisdiction under Section 482 CrPC. Considering a catena of decisions on the point, the Hon'ble Supreme Court summarised the following propositions:

"(1) Section 482 CrPC preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High

Court.

(2) xxx xxx xxx

(3) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

(4) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.

(5) xxx xxx xxx

(6) xxx xxx xxx

(7) xxx xxx xxx

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(9) xxx xxx xxx

(10) xxx xxx xxx

12. In the matter of **Narinder Singh v. State of Punjab** [(2014) 6 SCC 466], after considering the decision in **Gian Singh v. State of Punjab**, [(2012) 10 SCC 303], in para 29.1, Their Lordships summed up as under:

“29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised **sparingly and with caution.**”

13. In the matter of **State of UP v. Golkonda Linga Swamy** [(2004) 6 SCC 522] Hon'ble Supreme Court observed that while exercising the power under Section 482 of Cr.P.C. the court does not function as a court of appeal or revision.....

14. From the aforesaid observations made by the Hon'ble Supreme Court, following legal propositions emerge:-

- i. Inherent powers enumerated in section 482, CrPC can be exercised by the High Court to give effect to an order under Cr.P.C. to prevent abuse of process of Court and to otherwise secure the ends of justice;
- ii. Inherent power under Section 482, Cr.P.C. is to be exercised sparingly and with caution;
- iii. The High Court cannot appreciate the evidence as it can only

evaluate material document on record to the extent of its prima facie satisfaction about the existence of sufficient grounds for proceedings against the accused;

- iv. The Court cannot look into the material, acceptability of which is essentially a matter for trial;
- v. Power under Section 482 Cr.P.C. does not permit the High Court to go into disputed questions of fact or to appreciate the defence of the accused;
- vi. While exercising the power under Section 482, Cr.P.C. Court does not function as a court of appeal or revision;
- vii. Where the allegations made in the first information report or the complaint, and other materials accompanying the FIR or complaint prima facie disclose a cognizable offence or make out a case against the accused, powers under Section 482 Cr.P.C. should not be exercised;
- viii. Where there is bar to the institution and continuance of the proceedings, powers under Section 482 Cr.P.C. should not be exercised;
- ix. Where a criminal proceeding is not manifestly attended with malafide with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and person grudge, powers under Section 482 Cr.P.C. should not be exercised;
- x. If a case with civil nature converted into criminal prosecution to pressurize the accused or harass him then Court can intervene in the matter by exercising the power embodied in Section 482, Cr.P.C.

15. During the inquiry police had collected - true copy of the Khasra Panchshala wherein Khasra No. 129, measuring 0.190 is described as road, true copy of order sheet of Tehsildar dated 16-10-2009 wherein it has been mentioned that petitioner had encroached on road and forest land and was raising construction, the true copy of order sheet dated 19-10-2009 wherein it has been mentioned that petitioner refused to accept the notice, the true copy of order sheet dated 21-10-2009 notice was

effected by affixing and ex-parte proceeding was done against petitioner, true copy of order dated 23-10-2009 passed by the Tehsildar, Raigarh under Section 248(1) of the Land Revenue Code, directing to remove the encroachment.

16. In the case in hand, as per the observation made by Hon'ble Supreme Court in the matter of **Umesh Kumar** (supra), this Court cannot appreciate the evidence as it can only evaluate material document on record to the extent of its prima facie satisfaction about the existence of sufficient grounds for proceedings against the accused.

17. In the case in hand, as per the observation made by Hon'ble Supreme Court in the matter of **Gonkonda** (supra), this Court does not function as a court of appeal or revision.

18. The materials collected by police official during the inquiry, are not related to the defence of respondent No. 1 to 3.

19. In the case in hand, as per the allegations made in complaint and other materials collected by police officials under inquiry, the complaint prima facie does not disclose a cognizable offence or does not make out a case against the respondents No. 1 to 3. More over, prima facie it appears that alleged offences have been committed by the respondents No. 1 to 3 while acting or purporting to act in the discharge of their official duty, thus, previous sanction of state government is essential under Section 197 of the Cr.P.C., which is not obtained in the case in hand, thus legal bar to the institution and continuance of criminal proceedings operates in the case in hand. Thus, aforesaid observation made by Hon'ble Supreme Court in the matter of **Choudhari Bhajanlal** (supra) and **R.K. Kapur** (supra) are applicable against the petitioner.

20. In the case in hand, prima facie it appears that the case with civil nature has been converted into criminal prosecution to pressurize the respondents No. 1 to 3 or harass them. Thus, aforesaid observation made by Hon'ble Supreme Court in the matter of **Rajib Ranjan** (supra) is applicable against the petitioner.

21. In the case in hand, it appears that there is no abuse of process in dismissing of said complaint case and no intervention is necessary to secure ends of justice. Thus, looking to the aforesaid observation made

by Hon'ble Supreme Court in the matter of **Parbatbhai Aahir** (supra), this Court finds that on the ground of abuse of process and to secure ends of justice, this Court can not intervene in the impugned orders of said complaint case.

22. Looking to the above mentioned facts and circumstances of the case, looking to the aforesaid observation made by Hon'ble Supreme Court in the matter of **Narinder Singh** (supra) this Court finds that it is not a fit case where the extra ordinary jurisdiction of Section 482, Cr.P.C. be invoked which is invoked sparingly with care and circumspection.

23. Consequently, the instant Cr.M.P. is dismissed at motion stage without entertaining it for final hearing.

Sd/-
(Sharad Kumar Gupta)
Judge