

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRMP No. 980 of 2018**

- Smt. Bindu Gupta W/o Shri Gopal Gupta Aged About 36 Years
R/o Navgadi, Police Station Bariyapur, Munger Bihar At Present
B. P. Sinha Colony, Surendra Gali, Jovra Fatak, Post Dhansar
District Dhanbad Jharkhand

---- Petitioner**Versus**

- State Of Chhattisgarh Through The Station House Officer, Police
Station Bhilai Bhatti, District Durg Chhattisgarh

---- Respondent

For petitioner	:	Mr. Arvind Dubey, Adv.
For Respondent	:	Mr. H.S. Ahluwalia, Dy. Adv. Gen.

Hon'ble Shri Sharad Kumar Gupta, Judge**ORDER ON BOARD****23-8-2019**

1. The CRMP is formally admitted.
2. With consent of both the parties, heard the matter finally.
3. Petitioner has preferred this CRMP under Section 482 of the Code of Criminal Procedure (in brevity Cr.P.C.) to quash the impugned order dated 27-01-2017 passed by Addl. Sessions Judge, Durg in S.T. No. 181/2002 and for a direction to release the amount of Rs. 12,00,000/- in her favour.
4. In brief petitioner's case is that a charge sheet was filed against her husband namely Gopal Singh @ Gopal Kumar Gupta and other co-accused for the offences punishable under Section 120(B), 364, 365, 364(A), 344, 346 and 395 of the Indian Penal Code (for brevity 'IPC') regarding kidnapping of complainant Jaichand Baid. The allegation was also that they received Rs. 25,00,000/- as ransom. It was also allegation on Gopal Singh @ Gopal Gupta that he had deposited

amount which he received as ransom by kidnapping Jaichand Baid and others, in the petitioner's saving account No. 11245 of Bank of India Manaidhand, Dhanbad, Jharkhand, in her account number 12415 of State Bank of India, Main Branch, Dhanbad, Jharkhand, FD account No. 3854 of Bank of India, Main Branch Dhanbad, and in the FD account of her brother Rakesh Ranjan bearing No. 3855. During the investigation said accounts were freeze. Gopal Singh @ Gopal Gupta has been acquitted on 28-02-2015 by 4th Additional Sessions Judge, Durg. The amount of said accounts is her self-earned money. She filed an application under Section 452 of the Cr.P.C. before the Additional Sessions Judge, Durg which was rejected. The impugned order is erroneous and bad in law. Said amount does not relate to the offence.

5. In brief the respondent's case is that other co-accused are absconding, thus, the impugned order is just and proper.

6. Counsel for the petitioner argued that husband of the petitioner is already acquitted, thus, it would not be proper to continue freezing of said accounts of petitioner.

7. Counsel for respondent submitted that the impugned order does not suffer from any illegality or material irregularity which calls for interference by this Court exercising the powers vested under Section 482 of the Cr.P.C.

8. It would be noteworthy to mention para No. 30 of the judgment dated 28.02.2015 passed by 4th Additional Session Judge in ST No. 181/2002 wherein Gopal Singh @ Gopal Kumar Gupta was an accused, which reads as under :-

“जहां तक जप्तशुदा संपत्ति का प्रश्न है इस प्रकरण में अन्य अभियुक्त फरार है। अतः

जप्तशुदा संपत्ति का निराकरण प्रकरण के अंतिम निराकरण के समय किया जावे।”

9. Additional Sessions Judge, Durg rejected the petitioner's application on 27-01-2017 on the ground that other co-accused are absconding, thus, no order was passed for disposal of the seized property in the said judgment.

10. In the case in hand the husband of the petitioner has been already acquitted in ST No. 181/2002, thus the Additional Sessions Judge, Durg committed illegality in not unfreezing the said accounts in S.T. 181/2002.

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

(8) xxx xxx xxx

(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 case in hand, it appears that there is an abuse of process of law in the proceedings of Additional Sessions Judge, Durg dated 21-1-2017 and intervention is necessary to secure ends of justice. Thus, looking to the aforesaid judicial precedent laid down by Hon'ble Supreme Court in the matters of **Parbatbhai Aahir** (supra), this Court finds that on the ground of abuse of process and to secure ends of justice, this Court must intervene in the impugned orders of Additional Sessions Judge, Durg.

14. Looking to the above mentioned facts and circumstances of the case, looking to the aforesaid judicial precedent laid-down by Hon'ble Supreme Court in the matter of **Narinder Singh** (supra) this Court finds that it is a fit case where the extra ordinary jurisdiction of Section 482, Cr.P.C. be invoked which is invoked sparingly with care and circumspection.

15. FD Account No. 3855 does not belong to petitioner. It belongs to her brother Rakesh Ranjan. Thus, petitioner cannot not claim any relief regarding this account number.

16. Consequently, the instant CRMP is partly allowed. The impugned

order passed by the Addl. Sessions Judge dated 27-1-2017 is set aside. Aforesaid accounts of petitioner bearing No. 11245, 12415, FD account No. 3854 are unfreeze in ST No. 181/2002 subject to condition that petitioner shall execute a personal bond of Rs. 10,00,000/- along with one surety for Rs. 5,00,000/- to the satisfaction of the Additional Sessions Judge, Durg to the effect that she will comply any subsequent order passed in this sessions trial. Thereafter, the Additional Sessions Judge, Durg shall issue the appropriate order regarding unfreezing the above accounts. The prayer regarding FD account No. 3855 is rejected because this amount belong to Rakesh Ranjan.

Sd/-
Sharad Kumar Gupta
Judge

Pathak/-