

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Misc. Petition No.751 of 2014Order reserved on: 16-4-2019Order delivered on: 13-5-2019

V.P. Khare, S/o Shri B.B. Khare, aged about 50 years, R/o Kapil Nagar,
Sarkanda, PS Sarkanda, District Bilaspur (C.G.)

---- Petitioner

Versus

State of Chhattisgarh, Through PS Uрга, District Korba (C.G.)

---- Respondents

For Petitioner: Ms. Seema Singh, Advocate.

For Respondent / State: -

Mr. Chandresh Shrivastava, Deputy Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. The petitioner herein seeks quashment of Criminal Case No.1425/2011 pending against him in the Court of Chief Judicial Magistrate, Korba for commission of offence punishable under Sections 420, 467, 468, 471, 409 and 120B of the IPC.
2. The Branch Manager, Zila Sahakari Kendriya Bank, Barpali Branch on 17-9-2011 lodged a complaint in the concerned police station that a godown was sought to be constructed under the supervision of the petitioner as Assistant Engineer and the entry in the measurement book was to be made by the other co-accused B.P. Kashyap. It was further alleged in the complaint that the contractor co-accused – Govind Kumar Agrawal was paid against the construction of godown a sum of ₹ 5,02,986/- out of which entries of a sum of ₹ 1,50,000/- were fabricated, as on inspection by the

Executive Engineer, the base concreting was not found up to the mark as per the technical specifications for construction of godown. On the basis of the said complaint, the first information report (FIR) was registered and investigation was carried out and after investigation, final report under Section 173 of the CrPC was filed against B.P. Kashyap, Govind Kumar Agrawal and the petitioner herein, but so far as the petitioner and Govind Kumar Agrawal are concerned, charge-sheet was filed in their abscondence. This petition for quashing of criminal case has been filed mainly on the ground that initiation and continuation of criminal prosecution against the petitioner is nothing but abuse of the process of the Court, as he has been roped in false and fabricated case since he has lodged complaint against the Chairman of the Zila Sahakari Kendriya Bank Maryadit alleging corruption and the necessary ingredients for constituting the aforesaid offences are absolutely lacking in the charge-sheet so filed against him.

3. Ms. Seema Singh, learned counsel for the petitioner, would submit that if the allegations made in the FIR which culminated into charge-sheet against the petitioner are taken at their face value and accepted in their entirety, they do not constitute any offence or make out a case against the petitioner, as such, the criminal proceeding initiated is manifestly attended with mala fide and with an ulterior motive for wreaking vengeance, as he has dared to lodge complaint against the Chairman of the Zila Sahakari Kendriya Bank Maryadit and the Branch Manager of the Zila Sahakari Kendriya Bank, Barpali Branch is the first informant of the criminal case initiated against him. She would further submit that co-

accused B.P. Kashyap – Sub Engineer, who is the main culprit has already been acquitted by the order of the criminal Court – Judicial Magistrate First Class, Korba in Criminal Case No.383/2014 (State of Chhattisgarh v. Badri Prasad Kashyap) on 31-1-2019 for want of evidence and the petitioner's case is identical to that and therefore he is entitled for same relief and he is also entitled for quashment of entire criminal proceeding.

4. Mr. Chandresh Shrivastava, learned Deputy Advocate General appearing for the State / respondent, would oppose the submissions and would submit that on the basis of the material placed on the charge-sheet, prima facie evidence is available to connect the petitioner with the offence alleged against him and as such, the petitioner neither joined the investigation nor co-operated in the trial and even did not make himself available for interrogation and even after his application for anticipatory bail was rejected by this Court, he is the person who has neither participated in the investigation nor standing trial till now, therefore, he is not entitled to invoke the extraordinary inherent jurisdiction of this Court under Section 482 of the CrPC, as such, the petition deserves to be dismissed and he be asked to stand trial for above-stated case, as it is pending since 13-12-2011.
5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
6. On the report of the Branch Manager, Zila Sahakari Kendriya Bank, Barpali Branch, Out Post Urga, FIR under Crime No.946/2011 dated 17-9-2011 was registered against the petitioner and two other

accused persons – Govind Kumar Agrawal and Badri Prasad Kashyap for the offence punishable under Sections 420, 467, 468, 471 and 472 read with Section 34 of the IPC at Police Station Kotwali, Korba. The petitioner herein thereafter did not join the investigation and remain absconded. His application for anticipatory bail was rejected by this Court in M.Cr.C.(A)No.76/2012 decided on 5-3-2012 and even thereafter, he did not keep himself present for filing charge-sheet and therefore against the petitioner herein and co-accused Govind Kumar Agrawal, no charge-sheet till date has been filed, as the final report under Section 173 of the CrPC clearly records that after the arrest of the petitioner herein and other co-accuse, charge-sheet under Section Section 173(8) of the CrPC will be filed separately. As such, at present and till now, the petitioner remained absconding and even he has not been charge-sheeted by the jurisdictional police and criminal trial is not at all pending against him and waiting its commencement. He has also not co-operated in the trial and in the investigation.

7. Section 482 of the CrPC provides as under: -

“482. Saving of inherent powers of High Court.— Nothing in this 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 this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

8. Vide Section 482 of the CrPC, the High Court possesses inherent powers to do real and substantial justice in three circumstances. Firstly, where the jurisdiction is invoked to give effect to an order of Court, secondly, if there is an abuse of the process of the Court and thirdly, in order to secure the ends of justice. Inherent powers can be exercised only for either of the three purposes specifically

mentioned in the section. It can be invoked in respect of any matter covered by the specific provision of the Code. Under Section 482 of the CrPC, a party gets no vested right or inherent right to seek interference. In exercise of the jurisdiction, the Court itself steps in only to meet the contingencies therein catalogued. The inherent jurisdiction under Section 482 of the CrPC is to be exercised sparingly and with circumspection and the Court should not embark upon an enquiry whether the allegations in the complaint would be established by evidence or not.

9. As noticed herein-above, FIR against the petitioner was registered on 17-9-2011 and his application for anticipatory bail having been rejected by this Court way back on 5-3-2012, the petitioner is still in abscondence duly recorded in the final report filed against one B.P. Kashyap on 13-12-2011 clearly stating that the petitioner and one Govind Agrawal are still in abscondence and after their arrest, separate charge-sheet will be filed against them under Section 173(8) of the CrPC. The petitioner does not believe in the rule of law and has neither co-operated in the investigation nor even after the rejection of his application for grant of anticipatory bail and after dismissal of his writ petition (criminal) by the Supreme Court with liberty to file petition before this Court, the petitioner has not even either surrendered or allowed the charge-sheet to be filed against him and therefore even trial against him could not commence.
10. In this factual scenario, it cannot be held that there is abuse of the process of the Court or in order to secure the ends of justice, this petition under Section 482 of the CrPC has been filed. The petitioner is one who is a complete lawbreaker who does not

believe in the rule of law, yet willing to get the deserving prosecution throttled. Even otherwise, he cannot be allowed to take advantage of the acquittal of other co-accused Badri Prasad Kashyap on 31-1-2019 in which it has already been recorded by the learned Judicial Magistrate First Class in paragraph 3 that the petitioner herein is still in abscondence. Co-accused Badri Prasad Kashyap was charge-sheeted and he participated in the trial and ultimately, upon appreciation of evidence let-in in that trial by the prosecution, the trial Magistrate has come to a final conclusion that there is no case for conviction made out against that person. Since no charge-sheet has been allowed to be filed by the petitioner against him as his abscondence is in continuance, the evidence let in against that accused person cannot be read in favour of the present accused person, as that evidence let in for that person cannot be read into the evidence for the purpose of the present accused who has even neither stood for trial nor faced the trial. Therefore, the argument raised on behalf of learned counsel for the petitioner that since B.P. Kashyap – co-accused has been honourably acquitted, the petitioner is also entitled for acquittal by quashing the FIR and the charge-sheet, lacks merit and has no legs to stand and it is liable to be rejected. It is accordingly, rejected.

11. The next contention of learned counsel for the petitioner that the petitioner has been mala fide prosecuted as he has dared to lodge complaint against the Chairman of the Bank, is also not born out from the material placed on the record by the petitioner. No document has been filed in this petition to demonstrate that the

petitioner has been implicated in the instant criminal case mala fide on account of the complaint made by him against the Chairman of the Bank with whom the petitioner was working earlier on the post of Assistant Engineer. On the other hand, it cannot be held that there is no material brought on record by the prosecution against the petitioner to stand trial.

12. It is well settled law as laid down by the Supreme Court in the matter of State of Haryana and others v. Bhajan Lal and others¹ that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. The extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice. The court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint.
13. I am of the considered opinion that the FIR and charge-sheet filed and the material available on record clearly justify the registration, continuance and prosecution of the petitioner for the aforesaid offences and the petitioner's case does not fall under any of the categories of cases formulated in Bhajan Lal's case (supra) {sub-paragraphs (1) to (7) of paragraph 102 of the judgment} calling for the exercise of extraordinary or inherent powers of this Court to quash the FIR itself. Consequently, I do not find any merit in petition under Section 482 of the CrPC filed by the petitioner. It deserves to be and is accordingly dismissed leaving the petitioner to raise all the points at appropriate proceeding.

¹ 1992 Supp (1) SCC 335

14. It is clarified that all the statements / findings recorded herein-above are only for the purpose of determining the petition under Section 482 of the CrPC and this has nothing to do with the merits of the matter. The trial Court would proceed strictly in accordance with law without being prejudiced by any of the observations made herein.

Sd/-
(Sanjay K. Agrawal)
Judge

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