

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****RESERVED ON 6-9-2019****DELIVERED ON 11-9-2019****CRMP No. 2037 of 2019**

Dr. Laxman Chouhan, S/o Somsai Chouhan, aged about 34 years, R/o Rampur House Board Colony, House No. K/15, Korba, P.S. Rampur, Tahsil & District Korba (C.G.)

---- Petitioner**Versus**

1. Mu. Komal Chouhan, Wife of Dr. Laxman Chouhan, aged about 25 years,
 2. Minor Bedant Chouhan, S/o Dr. Laxman Chouhan, aged about 4 years, through legal natural guardian mother Komal Chouhan,
- Both are caste Ganda, All R/o Village Nawapara, P.S. Chhal, Tahsil Dharamjaigarh, District Raigarh (C.G.)

---- Respondents

For petitioner : Mr. S.K. Guha, Adv.

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

1. Petitioner has preferred this CRMP under Section 482 of the Code of Criminal Procedure (in brevity Cr.P.C.) for setting aside the order passed by the Judicial Magistrate First Class, Dharamjaigarh dated 18.03.2019 passed in Criminal M.J.C. No. 11/2016 whereby and whereunder he ordered petitioner to pay interim allowance for the maintenance allowance @ of Rs. 4000/- per month to the respondents, and the order passed by Additional Sessions Judge, Gharghoda dated 23.07.2019 in Criminal Revision No. 14/2019 whereby and whereunder he rejected the revision which was preferred against said order of JMFC, Dharamjaigarh.

2. This is admitted by petitioner that respondent No. 2 is his son.

3. In brief the petitioner's case is that respondent No. 1 left her matrimonial house without any just and sufficient reason. She is working as a Tailor. He is earning only Rs.5,500/- per month. He is bearing the study expenses of respondent No.2. Both the Courts have passed impugned orders arbitrarily.

4. Counsel for the petitioner submitted that both impugned orders are illegal, thus they may be set-aside.

5. para 20 of the judgment of Hon'ble Supreme Court in the matter of **Umesh Kumar Vs. State of Andra Pradesh and another** [(2013) 10 SCC 591], is relevant which is mentioned below:-

“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.”

6. In the judgment of Hon'ble Supreme Court in the matter of **Tilly Gifford Vs. Michael Floyd Ishwar and other** [(2018) 11 SCC 205] Hon'ble Supreme Court 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.”

7. 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.

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(7) xxx xxx xxx

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(9) xxx xxx xxx

(10) xxx xxx xxx

8. 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.**”

9. 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.....

10. From the aforesaid observations made by Hon'ble Supreme Court in the matter of **Umesh Kumar** (supra), **Tilly Gifford** (supra), **Parbatbhai Aahir** (supra), **Narinder Singh** (supra) and **State of UP** (supra), 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 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.

11. In the case in hand this is admitted by petitioner that respondent No. 1 is his wife and respondent No. 2 is his son. Prima facie it does not appear that respondent No. 1 is able to maintain herself. Prima facie it does not appear that petitioner has no sufficient means.

13. Prima facie it does not appear that both the impugned orders are illegal, or both the Courts had no jurisdiction to pass such orders or respondents prima facie initiated proceedings under Section 125 of CrPC vexatiously.

14. In the case in hand, it does not appear that there is an abuse of process of law in the proceedings of JMFC, Dharamjaigarh and Addl. Sessions Judge, Gharghoda or 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 cannot intervene in the orders of JMFC, Dharamjaigarh and Additional Sessions Judge, Gharghoda.

15. 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.

16. Consequently, the instant CRMP is dismissed at motion stage without entertaining it for final hearing.

17. In view of above, I.A. No. 1 is also disposed of.

Sd/-
Sharad Kumar Gupta
Judge

Pathak/-