

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****RESERVED ON 18-9-2019****DELIVERED ON 19-9-2019****CRMP No. 1340 of 2017**

- Narendra Chandra Das S/o Late Narayan Chandra Das, Aged About 50 Years R/o Village Digma, Nehrunagar, Police Station Gandhinagar, District, Surguja Chhattisgarh

---- Petitioner**Versus**

1. Smt. Pratima Das W/o Narendra Das, Aged About 45 Years
2. Ku. Anita Das D/o Narendra Das Aged About 28 Years
3. Ku. Sunita Das, D/o Narendra Das, Aged About 26 Years

All R/o Village Dharamjaigarh, Police Station and Post Office Dharamjaigarh,
District Raigarh, Chhattisgarh

---- Respondent

For petitioner	:	Ms. Priyanka Mehta, Adv.
For respondent	:	Mr. Vivek Bhakta, 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 impugned order passed by the 5th Addl. Sessions Judge, Raigarh, Distt. Raigarh dated 25-7-2017 in Criminal Revision No. 127/2016 whereby and whereunder he dismissed the revision.

2. Respondents had preferred an application under Section 127 of the Cr.P.C. against the petitioner before JMFC, Dharamjaigarh. In Cr.M.J.C. No. 60/2005, JMFC Dharamjaigarh passed an order on 26-7-2016 and ordered the petitioner to pay enhanced allowance for the maintenance to respondents at the rate of Rs, 1,500/-, 1,000/-, 1,000/- per month respectively, instead of Rs. 300/-, 150/-, 150/- per month respectively, from the date of application the respondent No. 2 and 3 would be entitled to get said allowance for maintenance till they attain majority.

3. Being aggrieved the petitioner preferred a criminal revision. In Cr. Revision No. 127/2016, 5th Addl. Sessions Judge, Raigarh passed an order on 25-7-2017 dismissing the revision.

4. Being aggrieved the petitioner has preferred this CRMP.

5. In brief the petitioner's case is that both subordinate Courts have failed to appreciate the facts and circumstances of the case in proper perspective. The JMFC, Dharamjaigarh committed illegality in enhancing the allowance for maintenance. The trial Court has not given the finding as to why the enhanced allowance for maintenance is payable from the date of application. Trial Court overlooked the provisions of Section 354 (6) of Cr.P.C.

6. In brief the respondents' case is that petitioner has failed to point out the illegality or material irregularity, thus, this Court should not intervene in the matter exercising power under Section 482 of Cr.P.C.

7. Counsel for the petitioner to substantiate his argument placed reliance on the judgment of Hon'ble Supreme Court in the matter of **Nagendrappa Natikar -v- Neelamma** [2014(14) SCC 452] wherein following judicial precedent has been laid down :-

“Suit for maintenance under the Hindu Adoption and Maintenance Act, 1956 is maintainable despite compromise in Section 125, Cr.P.C. proceedings.

8. Counsel for the petitioner further placed reliance on the decision of Hon'ble Supreme Court in the matter of **Shail Kumari Devi and another -v- Krishna Bhagwan Pathak** [2008(9)SCC 632] wherein following judicial precedent has been laid down :-

“Though an express order with reason is necessary but no special reason are required to be recorded. Granting maintenance only from the date of order would not be correct.

9. To resolve the dispute in the case in hand, it would be relevant to extract the provisions of Section 125(2) Cr.P.C. which reads thus :-

“125(2) Any such allowance for the maintenance or interim maintenance and expenses for proceedings shall be payable from the date of order or, if so ordered, from the date of application for maintenance or interim maintenance and expenses of proceedings, as the case may be.”

10. It would be pertinent to mention the provision of Section 354(6), Cr.P.C. which reads thus :-

“354. **Language and contents of judgment:-**(6)- Every order under section 117 or sub-section (2) of Section 138 and every final order made under section 125, Section 145 or Section 147 shall contain the point or points for determination the decision thereon and the reasons for the decision.

11. From the aforesaid provisions of Section 125(2) and 354(6) Cr.P.C. and aforesaid judicial precedent laid down by Hon'ble Supreme Court in the matter of **Shail Kumari Devi** (supra), this Court finds that Court may order that allowance for maintenance is payable either from the date of order or from date of the application, but Court should record reasons in both eventualities.

12. Looking to the facts and circumstances of the case, petitioner does not get any help from the aforesaid judicial precedent laid down by Hon'ble Supreme Court in the matter of **Nagendrappa Natikar** (supra).

13. 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 Cr.P.C. 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.”

14. 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.”

15. 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

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(10) xxx xxx xxx

16. 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.”

17. 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.....

18. 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 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.

19. For not giving the reason for payment of enhanced allowance for the maintenance from date of application, it cannot be said that order is illegal.

20. 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 127 of Cr.P.C. vexatiously.

21. In the case in hand, it does not appear that there is an abuse of process in the proceedings of JMFC, Dharamjaigarh and 5th Addl. Sessions Judge, Raigarh regarding proceedings of Section 127, Cr.P.C. 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 5th Additional Sessions Judge, Raigarh.

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 CRMP is dismissed at motion stage without entertaining it for final hearing.

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

Sd/-
Sharad Kumar Gupta
Judge