
(2019) 08 CHH CK 0028

Chhattisgarh High Court

Case No: Criminal Miscellaneous Petition (CRMP) No. 1623 Of 2019

Sandip Kumar Singh

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision: Aug. 2, 2019

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 320, 437(6), 482
- Indian Penal Code, 1860 - Section 34, 409, 420

Hon'ble Judges: Sharad Kumar Gupta, J

Bench: Single Bench

Advocate: Pragalbh Sharma, H.S. Ahluwalia

Final Decision: Dismissed

Judgement

Sharad Kumar Gupta, J

1. Petitioner has preferred this CRMP under Section 482 of the Code of Criminal Procedure (in brevity Cr.P.C.) for quashing the impugned order

dated 18-2-2019 passed by 1st Addl. Sessions Judge, Ambikapur Distt. Sarguja in Criminal Revision No. 10/2019 and praying for his release on bail.

2. In brief petitioner's case is that he is facing trial for the offences punishable under Sections 409, 420, read with Section 34 of IPC along with other

co-accused. Charges were framed on 4-5-2018. The trial is not concluded within a period of 60 days from the 1st date fixed for taking evidence i.e.

18-5-2018. His application filed under Section 437(6) of Cr.P.C. was rejected by JMFC, Sitapur, Sarguja on 31-12- 2018. He preferred revision which

was also rejected by 1st Addl. Sessions Judge, Ambikapur Distt. Sarguja. Order of the 1 st Addl. Sessions Judge, Ambikapur Distt. Sarguja is

contrary to the law. The provisions of Section 437(6) of the Cr.P.C. are mandatory. The JMFC, Sitapur had no reason to apprehend that petitioner would abscond on his release on bail.

3. In brief, the case of the respondent is that he was posted as Office Assistant in CG Gramin Bank Shakha, Sedam. He and other co-accused embezzled Rs. 33,89,090 /- by manipulating in accounts of hundred of account holders. The impugned orders are just and proper and do not suffer from any infirmity. Thus, the instant petition may be dismissed.

4. Counsel for the petitioner argued that provisions of Section 437(6) of the Cr.P.C. are mandatory. In the case in hand, petitioner is not responsible for delay in trial. Both the Courts have committed illegality and acted arbitrarily while passing the impugned orders.

5. Govt. Advocate submitted that the orders passed by both the Courts do 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.

6. It would be pertinent to mention the provisions of Section 437(6) of the Cr.P.C. which reads as under :-

437. When bail may be taken in case of non-bailable offence- (6) If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

7. In the matter of Atul Bagga -v- State of Chhattisgarh reported in 2010 (1) MPHT 65 this Court held in para 11 that :-

11. The question that arises for determination is as to what factors should weigh with the Magistrate while refusing grant of bail under sub-section (6) of Section 437 of the Code. In my considered opinion, apart from the gravity of offence and the quantum of punishment, one or more of the following factors, among others may weigh with the Magistrate while refusing bail :-

(a) the overall impact of the offence and the release of the person accused of such offence on the society,

- (b) the possibility of tempering of evidence by the accused,
- (c) the possibility of the accused absconding if released on bail and lastly,
- (d) the delay in conclusion of the trial within a period of 60 days if attributable to the accused.

8. In the order passed in Rameshwar Singh Kurre -v- State of CG (2006 CRLJ 4107) in para 9 & 11, this Court observed as under :-

9. A bare reading of the above provision makes it clear that the provision is mandatory in nature, but also provides discretion to the Court to refuse

bail on special reasons to be recorded by it in writing. The Court is busy or Court is over burdened with work are not reasons which can be accepted

for refusal of the bail but refusal of the bail on merit by the High Court can certainly be considered by the trial Court as also non-production of the

applicant due to his illness or for any other reasons which caused hindrance in proceeding the trial can also be taken into consideration for refusal of the bail.

11. Right of liberty does not mean to infringe the right of others, therefore, if the provision shall be construed liberally by applying its benefit without due consideration it will amount to provide tool in the hand of hardened and habitual criminals.

9. Looking to the aforesaid judicial precedents laid down by this Court in the matters of Atul Bagga (supra) and Rameshwar Singh Kurre (supra), this

Court finds that the provisions of Section 437(6) of the Cr.P.C. are not mandatory but they are directory in nature.

10. In the case in hand, about 10 witnesses have been examined by the prosecution.

11. The Trial Court has rejected the said application of petitioner on the ground that evidence of some witnesses cannot be recorded on account of

non-production of accused from jail, there is possibility of absconding of petitioner if he is released on bail. Revisional Court gave the finding that there is possibility of adverse impact on the society if he is released on bail.

12. In the case in hand, offences are grievous in nature.

13. Aforesaid grounds are just and proper and in conformity with the judicial precedents laid down by this Court in the matter of Atul Bagga (supra) and Rameshwar Singh Kurre.

14. 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.

Â (5)Â Â xxxÂ Â Â Â Â Â Â Â xxxÂ Â Â Â Â Â Â Â xxx

Â (6)Â Â xxxÂ Â Â Â Â Â Â Â xxxÂ Â Â Â Â Â Â Â xxx

Â (7)Â Â xxxÂ Â Â Â Â Â Â Â xxxÂ Â Â Â Â Â Â Â xxx

Â (8)Â Â xxxÂ Â Â Â Â Â Â Â xxxÂ Â Â Â Â Â Â Â xxx

Â (9)Â Â xxxÂ Â Â Â Â Â Â Â xxxÂ Â Â Â Â Â Â Â xxx

Â (10) xxxÂ Â Â Â Â Â Â Â xxxÂ Â Â Â Â Â Â Â xxx

15. 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 and 29.2, 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.

29.2- When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(i) ends of justice, or

(ii) to prevent abuse of the process of any court. While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

16. In the case in hand, it does not appear that there is an abuse of process in the proceedings of JMFC, Sitapur and 1st Addl. Sessions Judge,

Ambikapur Distt. Sarguja or intervention is necessary to secure ends of justice. Thus, looking to the aforesaid judicial precedents laid down by Hon'ble

Supreme Court in the matters of Parbatbhai Aahir (supra) and Narinder Singh (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, Sitapur and 1 st Addl. Sessions Judge, Ambikapur Distt. Sarguja.

17. Looking to the above mentioned facts and circumstances of the case, 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. Consequently, the instant CRMP is dismissed at motion

stage without entertaining it for final hearing.