A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 3482 of 2016

An application under Section 482 of the Code of Criminal Procedure, 1973

Deepak Oram ***…..*** ***Petitioner***

-versus-

State of Orissa ***……*** ***Opposite Party***

For Petitioner : Mr. L.N. Patel, Advocate

For Opp. Party : Mr. J. Katikia, A.G.A.

CORAM:
HONOURABLE MISS JUSTICE SAVITRI RATHO

JUDGMENT
06.06.2023

Savitri Ratho, J. I have heard Mr. L.N. Patel, learned counsel for the petitioner and Mr. J. Katikia, learned Addl. Govt. Advocate for the State.

2. This application under Section - 482 of the Cr.P.C. had originally been filed on 27.10.2016 with a prayer for " *setting aside / quashing the order dated 29.09.2005 passed by the learned S.D.J.M.,*

Sambalpur in C.T. Case No. 2058 of 2011 arising out of Jujumara P.S. Case No. 57 of 2004".

On 11.01.2017, M.C. No. 129 of 2017 for amendment was filed in Court for amendment of the prayer portion. It was allowed on the same day .The consolidated petition was filed in court on the same day.

On 13.01.2017, this Court directed the learned counsel for the petitioner to get the up-to-date ordersheet in C.T. Case No.2058 of 2011 from the Court of the Learned S.D.J.M., Sambalpur after which M.C. No. 509 of 2017 was filed on 01.03.2017 for amendment of the case number mentioned as "C.T. Case No 2058 of 2011" in paragraphs 1, 9, 13 and the prayer portion to "C.T. Case No.2058(A) of 2004". Prayer for amendment / correction was allowed on 07.03.2017 and consolidated petition was filed in court on the same day.

3. In the consolidated application filed on 07.03.2017 of the Code of Criminal Procedure, prayer has been made for " *quashing the entire proceeding pending in the Court of the learned S.D.J.M., Sambalpur in C.T. Case No. 2058(A) of 2004 arising out of Jujumara P.S. Case No. 57 of 2004".*

Copy of the order dated 29.09.2005 passed in C.T. Case No.2058 of 2011 has been annexed as Annexure-1. Copy of the FIR in Jujumara P.S. Case No.57 of 2004 has been annexed as Annexure-2. Copy of the judgment in S.T. Case No.183/76 of 2011 has been annexed as Annexure-3 and copies of the depositions of P.W.1 to P.W.6 have been annexed as Annexure-4 series to the CRLMC.

4. After 07.03.2017, the matter was listed after more than five years on 17.10.2022. It was adjourned on that day on the prayer of the learned counsel for the petitioner. It was again adjourned on 28.10.2022 and on 22.11.2022. On 8.12.2022, this Court found that although prayer had been made to quash the entire proceeding in C.T. Case No. 2058(A) of 2004 arising out of Jujumara P.S. Case No. 57 of 2004 but not a single document of such case had been filed nor had the uptodate ordersheet in C.T. Case No. 2058 of 2004 been filed inspite of order passed earlier. The petitioner was directed to produce the latest ordersheet in C.T. case No. 2058 (A) of 2004 and the case was posted to 13.12.2022. The matter was adjourned on 13.12.2022, 04.01.2023, 01.02.2023, 24.02.2023 and 04.05.2023 by the learned counsel for the petitioner.

5. On 04.05.2023 it was adjourned to 05.05.2023 as a last chance and the learned counsel for the petitioner had undertaken to produce the documents and complete his arguments on that day. As up-to-date order sheet in the case had not been filed, on 04.05.2023 this Court called for a report from the learned trial court through the Registry asking for the present status of the case. On 04.05.2023, the learned counsel for the petitioner had filed copies of the decisions relied on by him.

6. On 05.05.2023, a Memo had been filed by learned counsel for the petitioner where it was stated that a true copy of order dated 21.03.2023 had been filed but the document annexed to the Memo was a typed copy of the order dated 07.01.2023. As the learned counsel for the petitioner submitted that the date in the Memo was a typographical error, the Memo and the document were taken on record. Perusal of the typed copy of order dated 07.01.2023 reveals that S.T. case No. 14/33 of 2018 was posted for hearing on 07.01.2023 and on that day, accused Ganga Sahu and Deepak Oram were present but no chargesheet witnesses were present and summons was directed to be sent to the witnesses and the case was posted to 21.01.2023 for hearing.

7. The report vide letter No. 477 dated 05.05.2023 of the in Charge Additional Sessions Judge (LR & LTV) Sambalpur sent via email was received on 05.05.2023 and taken on record. Perusal of the same reveals that case record had been committed to the Court of Sessions on 20.01.2018 and was registered as S.T. Case No 14 of 2018 and was received on transfer on 17.01.2020 in that Court and renumbered as S.T. Case No. 14/33 of 2018. A discharge petition had been filed by Ganga Sahu and Deepak Oram and the same was rejected on 22.03.2021 and charge had been framed in the case on 22.03.2021 and thereafter hearing of the case had commenced. Till 05.05.2023 no witness had been examined and the case had been adjourned to 06.05.2023 for hearing.

OTHER RELEVENT FACTS

8. It is apparent from the photocopies of order dated 11.08.2004 and order dated 05.04.2006 passed in C.T. No 2058 of 2004 by the learned SDJM Sambalpur, that the petitioner was released on bail pursuant to order passed by the Sessions Judge, Sambalpur and on 05.04.2006, he was not present in the Court which was in violation of conditions imposed in the bail order.

9. Five co-accused persons stood trial in ST Case No. 183/75 of 2011 in the Court of the learned Adhoc Additional District and Sessions Judge (Fast Track), Sambalpur. They were acquitted by judgment dated 28.04.2012.

10. Two years after the judgment dated 28.04.2012 was passed in S.T. Case No.183/75 of 2011, the petitioner filed this application under Section 482 of Cr.P.C., on 27.05.2016. During pendency of this CRLMC, he filed CRLMC No. 4169 of 2016 before this Court challenging the order dated 05.04.2006 passed by the learned SDJM Sambalpur. The application was disposed of by order dated 10.03.2017. Operative portion of the order corrected vide order dated 22.03.2017 passed in M.C. No. 650 of 2017 is extracted below:

> *"5. Considering the submissions of the learned counsel for the parties and in order to give an opportunity to the accused to face the trial , it is directed that in the event the petitioner surrenders before the learned SDJM Sambalpur in C.T.Case No. 2058 (A) of 2004 within a period of two weeks hence and moves for bail , he shall be released on bail on such terms and conditions as the learned magistrate may deem just and proper"…* (emphasis supplied)

PROSECUTION CASE

11. The brief facts of the prosecution case as per the FIR dated 26.07.2004 lodged at the Jujumara Police Station by one Saroj Kumar Oram, elder brother of deceased Panchanan Oram is that that in the night of 25/26.07.2004 at about 1.00 a.m. while he was on duty at Jhankarpali Check Gate, Kanta Oram, Shyam Oram, Bal Oram and Pramod Oram of his village came to him and told that in the same night while they were present on NH-42 near Pahadi Dhaba along with the deceased Panchanan Oram, a Maruti van came from Rairakhol side at high speed and dashed against Panchanan Oram causing his instant death and fled away towards Sambalpur side. On the basis of such report, Jujumura P.S. Case No. 57 of 2004 registered under Sections 279/304-A of IPC against the driver of the unknown Maruti Van. During investigation, the I.O. A.S.I. visited the spot, examined the informant and some other witnesses, conducted inquest over the dead body of the deceased Panchanan Oram, prepared the inquest report and also sent the body for post mortem examination.

Further developments in the case (as narrated in the judgment in S.T. Case No. 183/75 of 2011 - Annexure 3) is that during

further investigation by the I.O., it was ascertained that on 25.07.2004 at about 6.00 p.m. while the accused Balaram Oram Kanta Oram, Promod Kujur and Shyam Oram were sitting near the betel shop situated at Jhankarpali Check gate, the accused Durga @ Surubabu Munda along with the other accused came there in some vehicles and all of them planned to commit theft of aluminum wires from near the electric tower of Lambdunguri jungle of village Sitlenpali. To execute their plan they talked to the deceased Panchanan Oram who agreed to climb the tower, which was 100 feet in height to cut the electric line for a consideration amount of eight hundred rupees. Accordingly, when the deceased Panchanan Oram was cutting the high voltage electric line after climbing the tower he lost his balance and fell down on the ground sustaining severe injuries on his head and died at the spot. To give the death the colour of a vehicular accident, the accused persons shifted the dead body of the deceased Panchanan Oram towards NH-42 near Pahadi Dhaba, informed Saroj Kumar Oram, the bother of the deceased that the deceased has died due to an accident caused by an unknown Maruti Van. After completion of the investigation charge sheet dated 13.05.2005 was submitted under Sections 304/379/

511/201/34 of IPC against nine accused persons including the present petitioner.

PROSECUTION WITNESSES

12. The prosecution has examined six witnesses, in S.T. Case No. 183/75 of 2011 to prove its case. P.W.1 is the informant and the elder brother of the deceased, P.W.2 was the local Sarpanch, P.W.3 is a witness to the inquest, P.W.4 is the medical officer who has conducted the post mortem examination over the dead body of the deceased and P.W.5 and P.W.6 are two local witnesses. Ext.1 to Ext.5 has also been tendered into evidence on behalf of the prosecution. On the other hand, no evidence, either oral or documentary has been adduced from the side of the defence. P.Ws.1, 2, 3, 5 and 6 did not support the prosecution case and were cross examined under Section 154 of the Evidence Act by the prosecution.

13. The learned trial Court found that the prosecution has failed to prove a case under Section 304/34 of IPC against the five accused persons who were facing trial and acquitted them.

SUBMISSIONS

14. Mr. L.N. Patel, learned counsel for the petitioner submits that FIR had been lodged against driver of unknown Maruti van and charge sheet has been submitted under Sections 304/379/511/201/34 of the IPC against nine persons including the petitioner, namely : 1) Shyam Oram, 2) Pramod Kujur, 3) Kanta Oram, 4) Balaram Oram. 5) Deepak Oram, 6) Ganga Sahu, 7) Kalachand @ Natua @ Ananda Saha, 8) Dharmendra Suna and 9) Durga @ Surubabu Munda. The petitioner had been granted bail on 11.08.2004 by the learned Sessions Judge, Sambalpur and during course of the trial, the petitioner could not appear before the Court below and on 05.04.2006 the learned Magistrate issued fresh NBW against him. The case against him was split up. The NBW issued against him has been quashed on 10.03.2017 in CRLMC No. 4169 of 2016 by this Court and he was directed to be released on bail. The five co-accused persons who faced trial have been acquitted vide judgment dated 30.04.2012. As the allegations against the acquitted persons and the petitioner is the same, no useful purpose will be served if the petitioner is made to face trial for which the proceedings against him should be quashed. In support of his

submissions, he relies on the decisions of this Court in the case of ***Central Bureau of Investigation vs. Akhilesh Singh*** reported in ***(2005) 30 OCR (SC) 201***, ***Premananda Sahu vs. State of Orissa*** reported in ***2012 (II) OLR 961*** and ***Satyaban Pradhan @ Kuna Pradhan vs. State of Odisha*** reported in ***(2016) 63 OCR 87***.

15. Mr. J. Katikia, learned Addl. Govt. Advocate for the State has submitted that the present petitioner should not be shown any indulgence as he absconded for almost ten years since 2006 for which the case had to be split up and five co accused persons stood trial. Although the judgment of acquittal has been passed in 2014, he has approached this Court in the year 2016 but did not move this application for which during the pendency of this CRLMC, the case has been committed and to the Court of Sessions and charge has been framed against the petitioner and another co-accused and summons have been issued to the prosecution witnesses. As the petitioner has not come to the Court with clean hands, the CRLMC should be dismissed.

JUDICIAL PRONOUNCEMENTS

16. Apart from the decisions relied on by the learned counsel for the petitioner there are various other decisions of Supreme Court

and different High Court on this point. It would be apposite to refer to them.

16.1 The Full bench of the Kerala High Court in the case of ***Moosa vs. Sub Inspector Of Police on 23 December, 2005*** reported in ***2005 SCC OnLine Ker 605 : (2006) 1 KLT 552 (FB): 2006 Cri LJ 1922 (FB)*** had been called upon to decide the question whether acquittal of a co-accused in a prior trial meant that the absconding accused who is subsequently tried is also entitled to an acquittal. After an exhaustive discussion of various decisions, the Full Bench summarized the legal position as follows:

> *" . In the light of the above discussions, we may summarise the legal position as follows:*
>
> *(i) The inherent powers of the High Court reserved and recognised under Section 482 of the Code of Criminal Procedure are sweeping and awesome; but such powers can be invoked only.*
>
> *(a) to give effect to any order passed under the Code of Criminal Procedure or*
>
> *(b) to prevent abuse of process of any court or*
> *(c) otherwise to secure the ends of justice. Such powers*

may have to be exercised in an appropriate case to render justice even beyond the law.

(ii) Considering the nature, width and amplitude of the powers, it would be unnecessary, inexpedient and imprudent to prescribe or stipulate any straight jacket formula to identify cases where such powers can or need not be invoked.

(iii) But such powers can be invoked only in exceptional and rare cases and cannot be invoked as a matter of course. Where the Code provides methods and procedures to deal with the given situation, in the absence of exceptional and compelling reasons, invocation of the powers under Section 482 of the Code of Criminal Procedure is not necessary or permissible.

(iv) The fact that an accused can seek discharge/dropping of proceedings/acquittal under the relevant provisions of the Code in the normal course would certainly be a justifiable reason, in the absence of exceptional and compelling reasons, for the High Court not invoking its extraordinary powers under Section 482 Cr.P.C.

(v) In a trial against the co-accused the prosecution is not called upon, nor is it expected to adduce evidence against the absconding co-accused. In such trial the prosecution

cannot be held to have the opportunity or obligation to adduce all evidence against the absconding co-accused. The fact that the testimony of a witness was not accepted or acted upon in the trial against the co-accused is no reason to assume that he shall not tender incriminating evidence or that his evidence will not be accepted in such later trial.

(vi) On the basis of materials placed before the High Court in proceedings under Section 482 of the Code of Criminal Procedure (which materials can be placed before the court in appropriate proceedings before the subordinate courts) such extraordinary inherent powers under Section 482 of the Code of Criminal Procedure cannot normally be invoked, unless such materials are of an unimpeachable nature which can be translated into legal evidence in the course of trial.

(vii) The judgment of acquittal of a co-accused in a criminal trial is not admissible under Sections 40 to 43 of the Evidence Act to bar the subsequent trial of the absconding co-accused and cannot hence be reckoned as a relevant document while considering the prayer to quash the proceedings under Section 482 Cr.P.C. Such judgments will be admissible only to show as to who were the parties in theearlier proceedings or the factum of acquittal.

(viii) While considering the prayer for invocation of the extraordinary inherent jurisdiction to serve the ends of justice, it is perfectly permissible for the court to consider the bona fides - the cleanliness of the hands of the seeker. If he is a fugitive from justice having absconded or jumped bail without sufficient reason or having waited for manipulation of hostility of witnesses, such improper conduct would certainly be a justifiable reason for the court to refuse to invoke its powers under Section 482 of the Code of Criminal Procedure.

(ix) The fact that the co-accused have secured acquittal in the trial against them in the absence of absconding co-accused cannot by itself be reckoned as a relevant circumstance while considering invocation of the powers under Section 482 of the Code of Criminal Procedure.

(x) A judgment not interparties cannot justify the invocation of the doctrine of issue estoppel under the Indian law at present.

(xi) Conscious of the above general principles, the High Court has to consider in each case whether the powers under Section 482 of the Code of Criminal Procedure deserve to be invoked. Judicial wisdom, sagacity, sobriety and circumspection have to be pressed into service to identify that rare and exceptional case where invocation of

the extraordinary inherent jurisdiction is warranted to bring about premature termination of proceedings subject of course to the general principles narrated above.

16.2 In the case of ***Akhilesh Singh*** (supra), the respondent was one of the accused in a case Section 120 B of the IPC read with Section -302 IPC and Section 109 of the IPC. The allegations against him were that he had entered into a conspiracy with the main accused Dr Sanjay Singh and in furtherance of the common object of the conspiracy joined hands with the other accused to commit the murder of Syed Modi. He was admittedly not present in Lucknow on the date of occurrence but had been implicated on the basis of conspiracy with Dr Sanjay Singh, the original accused. Dr Sanjay Singh and Ms. Ameeta Kulkarni were discharged by the Sessions Court and this order was challenged unsuccessfully in the High Court as well as the Supreme Court by the C.B.I. After the order of discharge attained finality which was eight years after discharge of the main accused, Akhilesh Singh challenged the order framing charge against him in the High Court. The Single Judge allowed the application and quashed the charges against him. The Supreme Court did not interfere with the orders either on merits or on the ground that the accused had approached the High

Court at a belated stage, holding that the order had attained finality only in 1994 after which the accused had approached the High Court by filing the application under Section 482 Cr.P.C. It further held that once the main accused who had hatched the conspiracy and who had the motive to kill the deceased had been discharged and the order had attained finality, the Single Judge was justified in holding that no useful purpose would be served by proceeding against the Respondent.

16.3 In the case of **Kanhu Behera v. State of Orissa, 2005 (II) OLR, 386**, this Court held as follows:-

> *"7. In the present case perusal of the case diary reveals that the petitioner is the uncle-in- law of the deceased and the only allegation against him in the FIR is that he along with other family members demanded additional dowry of Rs.5,000/-. Except this allegation, there is no other evidence against him. None of the witnesses except the informant has even taken the name of the petitioner in their statements before the I.O. Since there is no prima facie case against the petitioner for the alleged offences and the principal accused persons have already been acquitted after a full-fledged trial, continuance of the criminal proceeding against the petitioner would be undoubtedly abuse of the process of the Court as in the present facts and*

circumstances of the case, the chance of conviction of the petitioner is totally bleak."

16.4 In the case of **Premananda Sahu** (supra) , this Court after referring to a number of decisions of the Supreme Court and this Court, quashed the proceedings after holding as follows :

"*16. In such situation, it will be always appropriate for the Court, for the ends of justice as well as to prevent abuse of the process of law to quash the proceeding against such absconding accused in its entirety by exercising the inherent power under section 482 Cr.P.C. It is needless to mention that the inherent powers of the High Court recognized under section 482 Cr.P.C. can always be used to prevent abuse of the process of any court or otherwise to secure the ends of justice and in appropriate cases, such power is required to be exercised to render justice even beyond law.*

17. In the above parameters, examining the facts of the present case, this Court is of the view that if the petitioner is required to face the trial, such trial would definitely be a futile exercise and will amount to an abuse of the process of law. This Court further finds that this is an appropriate case where the criminal proceeding against the petitioner is required to be quashed."

16.5 In the case of ***Satyaban Pradhan*** (supra) this Court has held as follows :

> *"9. In applying the principle laid down in the aforesaid cases, this Court finds that the main accused Madhab Chandra Sahoo, who had allegedly assaulted the informant on his face by means of a stone with an intention to commit his murder, has already been acquitted. The allegation against the present petitioner is that he caught hold of the informant and threw him on the ground and caught hold of him. When the prosecution could not prove the main allegation of commission of offence under section 307 of the I.P.C. against the co-accused and he has been acquitted of the charges under Section 232 Cr.P.C., there is hardly any possibility of proving the case under section 307/34 of the I.P.C. against the present petitioner. So, in this view of the material on record, this Court is of the opinion that it will be appropriate for this Court, for ends of justice and to prevent abuse the process of law to quash the proceeding against the absconding accused i.e. the petitioner in its entirety by exercising the inherent power under Section 482 of the Cr.P.C."*

16.6 In the case of ***Hidayat Khan @ Hidayatullah Khan vs. State of Orissa*** reported in ***(2017) 68 Orissa Criminal Reports 945***, this Court has held as follows :

"7 …… There is no settled principle of law that whenever some accused persons are acquitted after facing trial or discharged by the trial Court, the co-accused should also be discharged or the proceeding in respect of such co-accused should also be quashed. Absconding accused cannot be given premium to frustrate the justice or to misuse the process of law by treating him at par with those accused who have shown respect for legal processes and have appeared and have not evaded their arrest ....."

16.7 In the case of ***Ajaya Kumar Sethi vs. 2018 SCC OnLine Ori 275*****,** this Court rejected the prayer of the co accused for quashing of the proceedings holding as follows**:**

" 14. It cannot be lost sight of the fact that it is a case of abduction and gang rape of a married lady. Even if the victim has not supported the prosecution case during trial of the co-accused persons, the possibility of the victim supporting the prosecution case during the course of trial of the petitioner cannot be ruled out. In that event, what would be the evidentiary value of the victim's statement after confrontation of her previous statement given while deposing as P.W.5 in case of the co-accused persons, is to be assessed by the learned trial Court. The victim may give explanation as to why she did not support the prosecution case while she was examined during trial of the co-accused

persons in spite of the fact that she gave her statement before police as well as before the Magistrate implicating the accused persons. The learned trial Court may accept such explanation. If the accused against whom accusation of abduction and gang rape is there remains as an absconder, watches the criminal proceeding in respect of the co-accused persons and after such proceeding ended in acquittal before the learned trial Court, he comes out of his hiding place either because he felt that it had become insecure or because he believed that his presence would sooner nor later be discovered by his pursuers or that in view of the acquittal of the co-accused persons, the prosecution case against him has become weak and the Court accepts his plea on the basis of the evidence adduced in the trial of the co-accused persons and quashes the proceeding against him then it would be a travesty of justice.

15. What will happen in future in the trial of the petitioner cannot certainly be predicted at this stage. This Court cannot assume a thing and quash the criminal proceeding against the petitioner on the ground that the co-accused persons have been acquitted as the victim has not supported the prosecution case. It cannot be said that the continuance of the criminal proceeding against the petitioner in spite of acquittal of the co-accused persons would be an abuse of

process. When prima facie materials are there on record against the petitioner for commission of offences under which the charge sheet has been submitted, I am not inclined to invoke the inherent power under section 482 of Cr.P.C. to quash the impugned order and the criminal proceeding against the petitioner in G.R. Case No. 844 of 2003."..

DISCUSSION

17. On a conspectus of various decisions of the Supreme Court and different High Courts, it is apparent that there is no universal rule that in each and every case of acquittal of a co accused, the case against an absconding co accused has to be quashed. When the conclusion in the subsequent trial can be predicted with certainty that there is no chance of conviction of such co accused, valuable time and resources of the trial court should not be wasted for holding such a trial. There can also be no quarrel over the proposition that no useful purpose would be served by compelling an accused who face a trial subsequently, where the main accused who has been tried earlier, has been acquitted or discharged due to paucity or non availability of evidence and there is no chance of better evidence being adduced in the subsequent trial or where the evidence against all the accused persons

is inseparable and indivisible. But for arriving at such a conclusion and quashing the proceedings, the High Court has to carefully examine the nature of evidence already adduced in the concluded trial and the nature of materials available against the absconding accused and the type of evidence which may or can be adduced against the accused who has not faced the trial. If the fate of the trial cannot be predicted with certainty, the proceeding should not be quashed.

18. In the trial of the co accused, the prosecution does not have the opportunity or obligation to adduce all evidence against the absconding co-accused. The fact that the testimony of a witness was not accepted or acted upon in that trial against the co-accused is no reason to assume that such witness shall not tender incriminating evidence or that his evidence will not be accepted in such later trial. It may be possible that a witness may not have come to the witness box or having come, may not have deposed against the accused persons in the trial for a variety of reasons including false implication, threats from absconding accused or failure to recollect the incident. But this does not mean that such a witness will never implicate the accused in the subsequent trial. Similarly a witness who has not come to the

witness box in the first trial, may appear and depose against an accused who has not faced the previous trial.

19. The High Court under Section 482 of the Code of Criminal Procedure, 1973, has the inherent power to pass such orders as may be considered 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. Such power can also be exercised suo motu. But is has to be exercised sparingly and with circumspection. It is to be exercised *ex debito justitiae* to prevent abuse of process of court, but should not be exercised to stifle legitimate prosecution. (See ***State of Haryana vs. Bhajan Lal, reported in 1992 Supp (1) SCC 335 : (AIR 1992 SC 604 ;State of Karnataka vs. M. Devendrappa : (2002) 3 SCC 89; A.P. vs. Golconda Linga Swamy* : *2004 SCC (Crl.) 1805***. As the law in this regard has been settled in a catena of decisions of the Supreme Court including the aforesaid decisions and reiterated by this Court in a number of decisions, it is not necessary to make an elaborate discussion of the same. But it is necessary to state that it is also been decided in a number of decisions that the absconding accused who have scant regard for the legal process , should not be shown any

indulgence while exercising the extraordinary power under Section – 482 Cr.P.C.

20. While considering the prayer of an accused for quashing of proceedings in exercise of power under Section – 482 Cr.P.C., where the chances of conviction of the accused is bleak, delay in approaching the Court may not be a ground for rejecting the application if the High Court is satisfied that allowing the proceedings to continue will be an exercise in futility and result in wastage of time and resources of the Court. But at the same time, it is open to the High Court to take into account, the bona fides and conduct of the accused who invokes exercise of the extraordinary power under Section 482 of the Cr.P.C. Whether such accused absconded or jumped bail, the reasons for doing so and whether he has waited "*for manipulation of hostility of witnesses*"? Conduct of an accused can be a justifiable reason for the court to refuse to exercise its power under Section 482 of the Code of Criminal Procedure.

21. By order dated 29.09.2005, after perusal of the chargesheet and connected papers, the learned SDJM, Sambalpur found a prima facie case against nine accused persons including the petitioner. But

neither the copy of the chargesheet, nor the statements of the witnesses have been filed or produced for perusal of the Court for the purpose of comparison of the nature of allegations against them. The FIR as discussed earlier does not depict the prosecution case against the accused persons which was unearthed subsequently.

22. The petitioner had been arrested and released on bail during investigation of the case. As he did not appear in the case on a subsequent date i.e. 05.04.2006 NBW of arrest was issued against him. He remained at large for almost ten years. Five co accused persons who faced trial were acquitted by judgment dated 30.04.2012.This CRLMC was filed on 27.10.2016. But while the CRLMC remained pending in this Court, the case was in respect of the petitioner and one Ganga Sahu in the Court below was committed to the Court of Sessions, application filed by them for discharge was dismissed and charge has been framed against them on 20.03.2021 and summons issued to the prosecution witnesses.

23. In view of the facts of the case and developments which have taken place during pendency of the CRLMC and the settled position of law as discussed above, I do not consider this to be a

fit case to exercise power under Section – 482 of the Crl.P.C. and quash the proceedings in C.T. Case No.2058(A) of 2004.

24. The CRLMC is accordingly dismissed.

25. The observations made in this CRLMC application are for the purpose of adjudication of this application only. They should not be taken as an opinion on the merits of the case. The learned trial Court is required to decide the matter in accordance with law in the light of evidence which would be adduced by both sides.

26. The learned trial Court is requested to take steps to complete the trial within a period of six months of receipt of this judgment.

27. Registry is requested to communicate a copy of this judgment to the learned trial court forthwith.

.....
(Savitri Ratho)
Judge

Orissa High Court, Cuttack.
The 6th day of June, 2023.
S.K. Behera, Senior Stenographer.