

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE ANIL VERMA
ON THE 1st OF NOVEMBER, 2022
MISC. CRIMINAL CASE No. 47733 of 2022**

BETWEEN:-

SARITA BAI

.....APPLICANT

***(SHRI HARISH CHANDRA TRIPATHI, LEARNED COUNSEL FOR
THE APPLICANT)***

AND

**THE STATE OF MADHYA
PRADESH STATION HOUSE
OFFICER THROUGH POLICE
STATION STATION ROAD,
RATLAM DISTRICT RATLAM
(MADHYA PRADESH)**

.....RESPONDENT

***(SHRI GOVIND PUROHIT, LEARNED GA APPEARING ON BEHALF
OF ADVOCATE GENERAL)***

*This application coming on for hearing this day, the court
passed the following:*

ORDER

This petition is preferred under Section 482 of Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') for quashment of First Information Report registered at Police Station – Station Road, Ratlam bearing Crime No.572/2018 for offences punishable under Section 224, 120-B, 212 and 216 of the Indian Penal Code, 1860 (in short 'IPC') and consequential proceedings including Criminal Case No.1957/2018 pending before the Court of Judicial Magistrate First Class, Ratlam.

02- The facts of the case in brief are that the complainant (Constable No.207 Ravi Pahadiya) gave a complaint before the Police Station – Station Road, Ratlam by stating that the present applicant and other co-accused persons helped in absconding the accused, who was in custody for the offence punishable under the Narcotics Drugs and Psychotropic Substances Act, 1985 and another case. On 20/09/2018 co-accused Banti @ Mahipal was brought before the Ratlam Court by the police officials, then with the help of present applicant and other co-accused persons he fled away and absconded from the custody of the police officials. Therefore, a complainant has been launched Station Road Police Station, Ratlam and offence has been registered.

03- Learned counsel for the applicant contended that applicant is a old lady aged about 52 years. She has been implicated in this

offence only on the basis of memorandum under Section 27 of the Evidence Act given by the co-accused persons. Nothing has been recovered from his possession. FIR is very inconceivable. Applicant is the permanent resident of District Indore. FIR is completely an abuse of process of law. In order to harass the applicant and her family members, a false FIR has been launched against her. Hence, it is prayed that the FIR bearing Crime No.572/2018 and further proceeding in Criminal Case No. 1957/2018 pending before the JMFC, Ratlam be quashed.

04- *Per contra*, learned counsel for the respondent / State opposes the application by submitting that *prima-facie* evidence collected during the investigation, there is sufficient ample evidence available on record, which directly connect the applicant with the alleged crime. Therefore, no interference is warranted.

05- I have considered the fact of the case and rival contentions of the parties.

06- The law is well settled that the jurisdiction of this Court under Section 482 of Cr.P.C. is wide enough and that if the proceedings are going to result in abuse of process of the Court, then the high Court in exercise of powers under Section 482 of Cr.P.C. can quash such proceedings and nothing will come in the way.

07- From perusal of the record it reveals that the trial Court has

framed charges for offence punishable under Section 216 read with Section 120-B of the IPC against the present applicant Sarita Bai.

08- After perusal of the statement of Sachin Telang and Girish Kalra, it appears that the present applicant gave bag of absconded accused Banti @ Mahipal to her relative Goldy but nothing has been found on record that the present applicant directly met with the accused Banti @ Mahipal and also helped him from being apprehended.

09- To establish an offence under Section 216 of the IPC, it must be shown first that, (i) there has been an order for the apprehension of a certain person as being guilty of an offence; (ii) knowledge by the accused party of that order; and (iii) that harbouring or concealing by the accused of the person with the intention of preventing him from being apprehended.

10- In the instant case, the only allegation against the applicant is that she helped her husband, who is the main accused Banti @ Mahipal in absconding from the legal custody. The story narrated by the complainant in his FIR, is highly inconceivable and doubtful. Present applicant has been made accused on the basis of memorandum under Section 27 of the Evidence Act given by the co-accused person but nothing has been recovered from his possession. Therefore, in the eyes of law there is no evidential value of the aforesaid memorandum.

11- The word 'harbour' used in Section 216 of the IPC must be construed liberally. The person at whose instance harbouring is effected commits the offence, but mere giving of meal to those who are proclaimed offenders is not an offence within the meaning of Section 216 because in the absence of any evidence to that effect it cannot be held that the intention of the applicant / accused was to prevent the main accused from being apprehended. It must be shown that it was with an intention of preventing the harboured man from being apprehended.

12- Looking to the facts and circumstances of the case, it is found that the present applicant is the wife of the main accused Banti @ Mahipal, but she neither met her husband directly nor helped him in any manner. In the facts and circumstances of the present case, prosecution has failed to prove that the present applicant was harbouring the main accused with an intention to prevent the harboured person from being apprehended. Therefore, the trial Court has committed an error in framing charges against the present applicant for offence punishable under Section 216 and 120-B of the IPC.

13- In view of the aforesaid discussion, this Court is of the considered view that the prosecution of the present applicant tantamount to abuse of process of law. Hence, it is a fit case where the inherent power conferred under Section 482 of Cr.P.C. can be

exercised. Consequently, the petition is allowed and FIR dated 30/09/2018 registered at Crime No.572/2018 at Police Station – Station Road, Ratlam against the applicant under Section 224, 120-B, 212 and 216 of the IPC is hereby quashed. Consequently all further proceedings including the proceedings pending in Criminal Case No.1957/2018 before the Judicial Magistrate First Class, Ratlam and order of framing charges against the applicant are hereby quashed.

14- With the aforesaid, petition preferred under Section 482 of Cr.P.C. is hereby allowed.

Certified copy as per rules.

(ANIL VERMA)
J U D G E

Tej