

THE HIGH COURT OF MADHYA PRADESH**SINGLE BENCH****(SHRI JUSTICE ANAND PATHAK)****Miscellaneous Criminal Case No.10107/2012****Chhabiram Tomar and others****Vs.****State of Madhya Pradesh and another**

Shri R.K. Sharma, learned Senior Counsel with Shri R.K. Soni and Shri Mahendra Choudhary, learned counsel for the petitioners.

Shri Yogesh Chaturvedi, learned Public Prosecutor for the respondent No.1/State.

None present for the respondent No.2.

Whether approved for reporting : Yes

Law laid down:

1) Petition under Section 482 of Cr.P.C. is maintainable even if petitioner is absconding because the Section 482 of Cr.P.C. is inherent jurisdiction vested into the court and reflected through Section 482 of Cr.P.C, however, sheen of equity, fair play and good conscience erodes and scope of such petition is extremely

narrow.

2) If the accused is proclaimed offender then he cannot invoke jurisdiction under Section 482 of Cr.P.C. for any interim relief or any relief of such nature amounting to grant of anticipatory bail as the same would be contrary to the mandate of Hon'ble Apex Court rendered in the case of **Lavesh Vs. State (NCT of Delhi)** reported in **(2012) 8 SCC 730** and law laid down in the case **State of M.P. Vs. Pradeep Sharma** reported in **(2014) 2 SCC 171**.

ORDER

24.01.2019

The present petition under Section 482 of Cr.P.C. has been preferred by the petitioners for quashment of FIR lodged against them vide Crime No.149/2012, registered at Police Station Matabasaiya, District Morena, for alleged offence under Sections 294, 323, 506-B, 342, 336 and 34 of IPC readwith Section 3(1) (X) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

2. It is the submission of learned Senior Counsel for the petitioners that an FIR was lodged by the complainant Narendra Jatav on 02.11.2012 with the allegation that on 01.11.2012 around

at 4:30 pm, daughter of petitioner No.1 (who is Sarpanch of the Village) while driving motorcycle dashed and accident took place in which Lalli, who is daughter of complainant, got injured. Therefor, complainant alongwith other persons reached the house of petitioners and told them about the accident and act of daughter of petitioner No.1, but in return, complainant received verbal abuse and manhandling (*Marpeet*). Therefore, complaint has been made and FIR has been registered against petitioners. The said FIR has been put to challenge by the petitioners.

3. It is submitted by the learned Senior Counsel for the petitioners that FIR has wrongly been lodged against them. No *prima facie* case is made out against the petitioners on the basis of contents of FIR. Police *malafide* proceeded against the petitioners on a false complaint. No ingredients of provisions of Atrocities Act are found in the FIR. The fundamental rights of the petitioners are affected. Therefore, this case has been registered.

4. Learned Senior Counsel further submits regarding maintainability of petition under Section 482 of Cr.P.C. to bring home the fact that if petitioners are absconding even then petition under Section 482 of Cr.P.C is maintainable and even if they are proclaimed offenders even then they can invoke the inherent jurisdiction under Section 482 of Cr.P.C. Learned Senior Counsel

relied upon in the case of **Sunil Clifford Daniel Vs. State of Punjab** reported in **(2012) 11 SCC 205** and **Sujit Biswas Vs. State of Assam** reported in **(2013) 12 SCC 406**. It is hereby submitted that because of the fact that a person is absconding after commission of crime then by that act itself it cannot be inferred that said abscondance is an additional circumstance against the said persons to hold him guilty for commission of offence.

5. Learned Public Prosecutor for the respondent No.1/State opposed the prayer and submits that in view of law laid down by the Hon'ble Apex Court in the case of **Lavesh Vs. State (NCT of Delhi)** reported in **(2012) 8 SCC 730** and law laid down in the case **State of M.P. Vs. Pradeep Sharma** reported in **(2014) 2 SCC 171**, petition under Section 482 of Cr.P.C. is not maintainable because on **20.03.2013** proceedings for proclamation of absconder were initiated and during the period of absconsion, petitioner No.1 committed crime regularly. Therefore, he prays for dismissal of this petition.

6. Heard learned counsel for the rival parties and perused the documents appended thereto.

7. Petitioners in the present petition are seeking quashment of FIR registered at the instance of petitioners. Here, it is to be seen

that whether petitioners are entitled for hearing under Section 482 of Cr.P.C., if proclamation for absconsion under Section 82 of Cr.P.C. has been initiated. In the instant case admittedly as per the submission, he has been proclaimed absconder, therefore, they are running from the course of justice. Although, Section 482 of Cr.P.C. nowhere bars any such eventuality and the Hon'ble Apex Court in the case of **Sujit Biswas (Supra)** while taking into consideration earlier judgment of Hon'ble Apex Court in the case of **Bipin Kumar Mondal Vs. State of West Bengal** reported in **(2010) 12 SCC 91** and **Matru Vs. State of U.P.** reported **(1971) 2 SCC 75** has held as under:-

22. Whether the abscondance of an accused can be taken as a circumstance against him has been considered by this Court in **Bipin Kumar Mondal v. State of W.B.**, wherein the Court observed: (SCC pp. 98-99, paras 27-28)

“27. In **Matru v. State of U.P.**, this Court repelled the submissions made by the State that as after commission of the offence the accused had been absconding, therefore, the inference can be drawn that he was a guilty person observing as under: (SCC p.84, para 19)

‘19. The appellant's conduct in absconding was also relied upon. Now, mere absconding by itself does not necessarily lead to a firm conclusion of

guilty mind. Even an innocent man may feel panicky and try to evade arrest when wrongly suspected of a grave crime such is the instinct of self-preservation. The act of absconding is no doubt relevant piece of evidence to be considered along with other evidence but its value would always depend on the circumstances of each case. Normally the courts are disinclined to attach much importance to the act of absconding, treating it as a very small item in the evidence for sustaining conviction. It can scarcely be held as a determining link in completing the chain of circumstantial evidence which must admit of no other reasonable hypothesis than that of the guilt of the accused. In the present case the appellant was with Ram Chandra till the FIR was lodged. If thereafter he felt that he was being wrongly suspected and he tried to keep out of the way we do not think this circumstance can be considered to be necessarily evidence of a guilty mind attempting to evade justice. It is not inconsistent with his innocence.'

28. Abscondence by a person against whom FIR has been lodged, having an apprehension of being apprehended by the police, cannot be said to be unnatural. Thus, in view of the above, we do not find any

force in the submission made by Shri Bhattacharjee that mere absconding by the appellant after commission of the crime and remaining untraceable for such a long time itself can establish his guilt. Absconding by itself is not conclusive either of guilt or of guilty conscience.”

While deciding the said case, a large number of earlier judgments were also taken into consideration by the Court, including *Matru* and *State of M.P. v. Paltan Mallah*.

23. Thus, in a case of this nature, the mere abscondance of an accused does not lead to a firm conclusion of his guilty mind. An innocent man may also abscond in order to evade arrest, as in light of such a situation, such an action may be part of the natural conduct of the accused. Abscondance is in fact relevant evidence, but its evidentiary value depends upon the surrounding circumstances, and hence, the same must only be taken as a minor item in evidence for sustaining conviction. (See *Paramjeet Singh V. State of Uttarakhand* and *Sk. Yusuf Vs. State of W.B.*)

8. Similarly, in the case of **Bharat Chaudhary and another Vs. State of Bihar** reported in **AIR 2003 SC 4662**, the Hon'ble Apex Court has held as under:-

“7. From the perusal of this part of S. 438 of the Crl. P.C., we find no restriction in regard to exercise of this power in a suitable case either by

the Court of Sessions, High Court or this Court even when cognizance is taken or charge sheet is filed. The object of S.438 is to prevent undue harassment of the accused persons by pre-trial arrest and detention. The fact, that a Court has either taken cognizance of the complaint or the investigating agency has filed a chargesheet, would not by itself, in our opinion, prevent the concerned courts from granting anticipatory bail in appropriate cases. The gravity of the offence is an important factor to be taken into consideration while granting such anticipatory bail so also the need for custodial interrogation, but these are only factors that must be borne in mind by the concerned courts while entertaining a petition for grant of anticipatory bail and the fact of taking cognizance or filing of charge sheet cannot by themselves be construed as a prohibition against the grant of anticipatory bail. In our opinion, the courts i.e. the Court of Sessions, High Court or this Court has the necessary power vested in them to grant anticipatory bail in non-bailable offences

under S.438 of the CrI. P.C. even when cognizance is taken or charge sheet is filed provided the facts of the case require the Court to do so.”

9. Beside that the Hon'ble Apex Court in the case of **Lavesh (Supra)** has held as under:-

“12. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and declared as “absconder”. Normally, when the accused is “absconding” and declared as a “proclaimed offender”, there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code is not entitled the relief of anticipatory bail.”

10. From the guidance given by the Hon'ble Apex Court in different cases referred above, it appears that abscondance of accused does not lead to a final conclusion of his guilt or *mens rea*. Therefore, even if he is absconding even then petition under

Section 482 of Cr.P.C. is maintainable for the reasons that Section 482 of Cr.P.C. contemplates Inherent Jurisdiction of this Court vested into it and the assertion of Inherent Jurisdiction is reflected in the statute, i.e. Code of Criminal Procedure through Section 482 of Cr.P.C. and said inherent jurisdiction cannot be curtailed by way of another provisions contained in Code of Criminal Procedure, like Sections 82 and 83 of Cr.P.C. by which a person is declared as Proclaimed Absconder. In other words, Inherent Jurisdiction of this Court cannot be circumscribed or cannot lie at the mercy of some other provisions contained in the Code or any other Statute. Although, it is also true that the said Inherent Jurisdiction has to be invoked sparingly and in very exceptional circumstances.

11. Therefore, this Court is of the considered opinion that the petitioners can invoke jurisdiction under Section 482 of Cr.P.C. even if they are proclaimed absconders, but they cannot seek any interim relief or any relief of such nature which amounts to grant of anticipatory bail to the person concerned because the grant of anticipatory bail is restricted by the Hon'ble Apex Court if the accused is proclaimed offender. (See: **Lavesh Vs. State (NCT of Delhi)** reported in **(2012) 8 SCC 730** and **State of M.P. Vs. Pradeep Sharma** reported in **(2014) 2 SCC 171**). Therefore,

interim relief having the trappings of grant of anticipatory bail cannot be granted to the person seeking it as it is contrary to the mandate of Hon'ble Apex Court in **Lavesh (Supra) and Pradeep Sharma (Supra)**. It is also true that if person seeks remedy under Section 482 of Cr.P.C. while in abscondance then he loses principles of Equity, Fair Play and Good Conscience and his case shall be considered on strict legal principles. Therefore, scope of Section 482 of Cr.P.C. in such eventuality would be extremely narrow.

12. Although Section 482 of Cr.P.C. is meant to prevent the abuse of process of law and to advance the cause of justice, but it is equally true that the facts of the case must be such to invoke the jurisdiction which is otherwise sparingly exercised. Beside that, sheen of the arguments of petitioner erode if they are absconding because in that condition equity or fair play go against them. Justiciability and Justifiability may not co-exist in such eventuality.

13. The Hon'ble Apex Court in the case of **Taramani Parakh Vs. State of M.P. and others** reported in **2015 Cr.L.J. (SC) 2031** has held that quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court would be more inclined to permit continuation

of prosecution rather than quashing it at initial stage. The Court is not expected to marshal the record with a view to decide admissibility and reliability of the documents or record but is an opinion formed *prima facie*.

14. The facts of the case are tested on the anvil of such legal position then it appears that allegations are specific and complainant has made the statement regarding physical and verbal abuse. Although it is yet to be tested that whether verbal abuse constituted offence under the Atrocities Act, but for that investigation is held up because of abscondance of petitioners. Therefore, at this juncture, no interference can be made.

15. Investigating Officer has to take statement of the petitioners as well as to proceed further if they are available for interrogation, but their abscondance has held up the case. Looking to the nature of allegations, totality of circumstances and the course of events, case is not such, where interference cannot be made under extraordinary jurisdiction under Section 482 of Cr.P.C. Petitioners have to plead and proof their part of innocence if any, before the trial Court in accordance with law.

16. Petition sans merit and is hereby dismissed.

(Anand Pathak)
Judge