

**IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR  
BEFORE**

**HON'BLE SHRI JUSTICE ANAND PATHAK**

**MISC. CRIMINAL CASE No. 22637 of 2023**

**Between:-**

**NARENDRA SINGH YADAV S/O SHRI  
BRAJMOHAN SINGH YADAV, AGED ABOUT 50  
YEARS, R/O GRAM AMROD POLICE STATION  
PIPRAI DISTRICT ASHOKNAGAR (MADHYA  
PRADESH)**

**.....PETITIONER**

**(BY SHRI LOKENDRA SINGH TOMAR AND MS. ANKITA  
SHARMA – ADVOCATE)**

**AND**

**STATE OF MADHYA PRADESH THROUGH  
POLICE STATION PIPRAI DISTRICT  
ASHOKNAGAR (MADHYA PRADESH)**

**.....RESPONDENT**

**(BY SHRI RAVINDRA SINGH KUSHWAH – DY. ADVOCATE  
GENERAL)**

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Reserved on	:	21-06-2023
Delivered on	:	23-08-2023

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*This petition having been heard and reserved for orders coming on for pronouncement this day, delivered the following:-*

**ORDER**

1. Present petition is preferred under Section 482 of the Code of Criminal Procedure, 1973 seeking quashment of the FIR registered at crime No.271/2015 under Sections 353, 332, 294, 186, 506, 333 of

IPC at Police Station Piprai District Ashoknagar as well as the consequential criminal proceedings pending by way of Criminal Case No.508/2017 before the trial Court.

2. Facts of the case as unfolded by prosecution is that on 30-11-2015 complainant Nitin Kumar Dongare, Dy. General Manager, MPMKVV Company Ltd. Mungaoli went for surprise check at village Amrod where he found that two transformers and one LT line were erected and constructed illegally without any permission. Three cases were registered by the complainant against the accused persons. Present petitioner Narendra Singh Yadav who was the Sarpanch at the relevant point of time, obstructed the proceedings and started misbehaving with the officers. He attacked them with the barbed wire lying at the agriculture field. Complainant sustained injuries over his head, hand and legs. He sustained fracture in his left hand. Not only this, petitioner exhorted his servant to beat complainant and other government employees accompanying the complainant and therefore, Praveen Tirki, Nepal Singh, Driver Som Singh were beaten up by the accused persons. They hurled verbal abuses and threatened him with dire consequences.
3. Case was registered against the petitioner. Interestingly, petitioner did not cooperate in investigation and absconded. Statements of complainant and other witnesses who accompanied the complainant at the time of inspection and they were witnesses to the incident, they made statements against the petitioner purportedly under Section 161

of Cr.P.C. Medical examination was done in which injuries were found to be sustained by the complainant.

4. It appears that during his absconsion petitioner tried to get benefit of anticipatory bail but his first bail application was dismissed as withdrawn vide order dated 13-11-2018 passed in M.Cr.C.No.42476/2018. His Second bail application under Section 438 of Cr.P.C. was dismissed vide order dated 17-02-2023 in M.Cr.C.No.8088/2023. Against order dated 17-02-2023, he went to the Supreme Court of India but his SLP (Cri.) No.4198/2023 got dismissed vide order dated 05-04-2023. Therefore, as per record, petitioner is in absconsion.
5. It further appears that when he was not found available (although surprisingly) then Farari Panchnama on different occasions were prepared and charge-sheet under Section 299 of Cr.P.C. was preferred. Proceedings were carried out by the trial Court as contemplated in Section 299 of Cr.P.C. and thereafter statements of witnesses were recorded. Complainant Nitin Kumar Dongare (PW-1) deposed on 25-04-2023 under Section 299 of Cr.P.C. and he stood to his earlier statement given under Section 161 of Cr.P.C. and supported the story of prosecution. He narrated the course of events and offence committed by the petitioner Narendra Singh Yadav. Although other witnesses Som Singh (PW-2), Nepal Singh (PW-3), Ashok (PW-4) and Praveen Tirki (PW-5) did not support the story of prosecution and declared hostile by the prosecution. Therefore, after the statements of

these witnesses, petitioner has preferred this petition for quashment of the FIR and other consequential criminal proceedings pending before the trial Court.

6. It is the submission of learned counsel for the petitioner that except complainant all other witnesses did not support the story of prosecution and declared hostile. Beside that he has been falsely implicated by the police. He is suffering from severe heart disease and therefore, on this count also his case be considered and FIR and criminal proceedings against him be quashed.
7. Learned counsel for the respondents/State opposed the submissions and referred the conduct of petitioner. According to him, petitioner is Sarpanch of concerned Gram Panchayat and he is a habitual offender having long list of criminal cases. Beside that, he manipulated the witnesses, used his period of absconsion and now most of the witnesses turned hostile. However, complainant Nitin Kumar Dongare deposed against him, therefore, the trial is to be conducted. He undertakes that police shall arrest the accused soon. He prayed for dismissal of this petition.
8. Heard learned counsel for the parties at length and perused the documents.
9. This is the petition preferred by the petitioner/accused on the pretext that some of the witnesses in their statements taken under Section 299 of Cr.P.C. did not support the story of prosecution, therefore, case registered against him be quashed.

10. It is also an admitted fact that case was registered against him at the instance of complainant Nitin Kumar Dongare who happens to be Dy. General Manager of MPMKVV Company Ltd. Mungaoli and offences registered against the petitioner were under Sections 353, 332, 294, 186, 506, 333 of IPC. Meaning thereby that petitioner as Sarpanch obstructed the work of public servant during their duty and nature of allegations are serious in nature.
11. Since the charge-sheet has been filed in abscondion of petitioner under Section 299 of Cr.P.C. and his anticipatory bail applications have been repeatedly rejected by this Court and stood confirmed by the Supreme Court also, therefore, petitioner has no statutory protection as such at present. At the very instance, it is apposite to reproduce Section 299 of Cr.P.C. which reads as under:

***“299. Record of evidence in absence of accused.***

*(1) If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try 2 , or commit for trial] such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions and any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial for, the offence with which he is charged, if the deponent is dead or incapable of giving*

*evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.*

*(2) If it appears that an offence punishable with death or imprisonment for life has been committed by some person or persons unknown, the High Court or the Sessions Judge may direct that any Magistrate of the first class shall hold an inquiry and examine any witnesses who can give evidence concerning the offence and any depositions so taken may be given in evidence against any person who is subsequently accused of the offence, if the deponent is dead or incapable of giving evidence or beyond the limits of India.”*

12. The deductions of the highlighted portion of the provision categorically show that there must be previous proof that the accused person is absconding as well as there is not immediate prospect of arresting him. At this juncture, the word “proved” would entail the same meaning as finds place in the Indian Evidence Act, 1872 which reads as follows:

***Section 3:***

*“Proved”- A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable*

*that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.*

13. Thus, the Magistrate or the Court must satisfy themselves on the basis of material produced before them, that the accused person is absconding and there is no immediate prospect of arresting him and this fact is said to be proved when there is evidence before the Court or Magistrate, as the case may be, either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. Thus, without arriving at the satisfaction as is prerequisite for the aforesaid Section by the Magistrate or the Court, no further proceedings can be initiated under Section 299 of Cr.P.C.
14. The magistrate should arrive at a satisfaction which can preferably be done by recording reasons for invoking procedure so established under Section 299 of Cr.P.C. and as the word **proved** is on a higher pedestal than for initiating proceedings under Sections 82 & 83 of Cr.P.C. which contains words as “**reason to believe**”, therefore, even if any proclamation is issued against an accused person, still it must be proved that the accused person is absconding and there is no immediate prospect of arresting him.
15. Furthermore, the proceedings under Sections 82, 83 of Cr.P.C. can also be utilised to arrive at a conclusion that the accused is absconding and there is no prospect of arresting him and thereby can very well

invoke section 299 of Cr.P.C. for recording the evidence of witnesses before them {See: *Nirmal Singh Vs. State of Haryana reported in 2000 S.C.C. (Cri.) 470*}. Speaking order is also required so as to initiate proceedings under Section 299 of Cr.P.C., stating reasons for the proposal of invoking the same, especially in relation to jurisdictional fact being proved as is stated in first part of the section. {See: *Jayendra Vishnu Thakur Vs. State of Maharashtra & Anr., (2010) 2 S.C.C. (Cri.) 500*}.

16. Although proceedings under Section 299 of Cr.P.C. and under Section 82 of Cr.P.C. are two independent proceedings and for moving under Section 299 of Cr.P.C., Investigating Officer/Prosecution is not required to move under Section 82/83 of Cr.P.C. necessarily. Once the Court of Magistrate forms the satisfaction that accused is deliberately concealing himself from the eyes of law and there is no immediate prospects of arresting him then proceedings under Section 299 of Cr.P.C. can be carried out.
17. Division Bench of Punjab and Haryana High Court in the case of **Nirmal Singh alias Manbir Singh, 1998 Cri.L.J. 1008** held that mere on recording of reasons for examining the witnesses under Section 299 of Cr.P.C. by the Magistrate or the Court as the case may be will not vitiate the proceedings undertaken under the provisions of Section 299 of Cr.P.C. This judgment is given node of affirmation by



the Apex Court in the case of **Nirmal Singh (supra)**. Relevant discussion is in para 4 which reads as under:

*“In view of the rival stand of the parties, the sole question that arises for consideration is under what circumstances and by what method, the statements of five persons could have been tendered in the case for being admissible under Section 33 of the Evidence Act and whether it can form the basis of conviction. Section 299 of the Code of Criminal Procedure consists of two parts. The first part speaks of the circumstances under which witnesses produced by the prosecution could be examined in the absence of the accused and the second part speaks of the circumstances, when such deposition can be given in evidence against the accused in any inquiry or trial for the offence with which he is charged. This procedure contemplated under Section 299 of the Code of Criminal Procedure is thus an exception to the principle embodied in Section 33 of the Evidence Act inasmuch as under Section 33, the evidence of a witness, which a party has no right or opportunity to cross-examine is not legally admissible. Being an exception, it is necessary, therefore, that all the conditions prescribed, must be strictly complied with. In other words, before recording the statement of the witnesses, produced by the prosecution, the Court must be satisfied that the accused has absconded or that there is no immediate prospect of arresting him, as provided under first part of Section 299(1) of the Code of Criminal Procedure. In*

*the case in hand, there is no grievance about non-compliance of any of the requirements of the first part of sub-section (1) of Section 299 Cr.P.C. When the accused is arrested and put up for trial, if any, such deposition of any witness is intended to be used as an evidence against the accused in any trial, then the Court must be satisfied that either the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience, which would be unreasonable. The entire arguments of Mr. Gopal Subramaniam, appearing for the appellant is that any one of these circumstances, which permits the prosecution to use the statements of such witnesses, recorded under Section 299(1) must be proved and the Court concerned must be satisfied and record a conclusion thereon. In other words, like any other fact, it must first be proved by the prosecution that either the deponent is dead or is incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances would be unreasonable. In the case in hand, there is no order of the learned trial Judge, recording a conclusion that on the materials, he was satisfied that the persons who are examined by the Magistrate under Sec.299(1) are dead, though according to the prosecution case, it is only after summons being issued and the process server having*

*reported those persons to be dead, their former statements were tendered as evidence in trial and were marked as Exhibits PW48/A to PW48/E. As has been stated earlier, since the law empowers the Court to utilise such statements of persons whose statements were recorded in the absence of the accused as an exception to the normal principles embodied in Section 33 of the Evidence Act, inasmuch as the accused has been denied of the opportunity of cross-examining the witnesses, it is, therefore, necessary that the pre-conditions for utilising such statements in evidence during trial must be established and proved like any other fact. There possibly cannot be any dispute with the proposition of law that for taking the benefits of Section 299 of the Code of Criminal Procedure, the conditions precedent therein must be duly established and the prosecution, which proposes to utilise the said statement as evidence in trial, must, therefore, prove about the existence of the pre-conditions before tendering the evidence. The Privy Council, in fact in the case of Chainchal Singh vs. Emperor, AIR (33) 1946 PC, Page 1, in analysing the applicability of Section 33 of the Evidence Act, did come to the conclusion that when the evidence given by the prosecution witness before the Committing Magistrate is sought to be admitted before the Sessions Court under Section 33 on the ground that the witness was incapable of giving evidence, then that fact must be strictly proved and this may be more so in those cases*

*where the witness was not cross-examined in the Committing Magistrates Court by reason of the accused not having been represented by a counsel. In that particular case the process server had been examined, who stated that he found the witness ill and unable to move from his house, but that was not treated to be sufficient to hold that the prosecution has discharged its burden of proving that the witness is not available. But having said so, Their Lordships did not interfere with the conviction on the ground that the Court can interfere only if, it is satisfied that grave and substantial injustice has been caused by mis-reception of the evidence in the case. On a mere perusal of Section 299 of the Code of Criminal Procedure as well as Section 33 of the Evidence Act, we have no hesitation to come to the conclusion that the pre-conditions in both the Sections must be established by the prosecution and it is only then, the statements of witnesses recorded under Section 299 Cr.P.C. before the arrest of the accused can be utilised in evidence in trial after the arrest of such accused only if the persons are dead or would not be available or any other condition enumerated in the second part of Section 299(1) of the Code of Criminal Procedure is established. In the case in hand, after the process server reported the fact of death of the concerned persons, who were summoned as witnesses and whose statements had already been recorded under Section 299 Cr.P.C. on the application of the prosecution, the said*

*statements were tendered as evidence and have been exhibited as Exhibits PW48/A to PW48/E. The learned Sessions Judge as well as the High Court relied upon the said statements for basing the conviction of the appellant. So far as the compliance of the first part of Section 299 (1) is concerned, the same is established through the evidence of PW28, who at the relevant time was working in Army as well as the S.H.O., Safidon also submitted before the Magistrate that the arrest of the accused could not be procured, as he was absconding and in fact there was an order from the Magistrate for issuance of proclamation under Section 82 of the Code of Criminal Procedure. The High Court in fact, on consideration of the entire materials did record a finding that the requirements of first part of Section 299 of the Code of Criminal Procedure must be held to have been established and there was no illegality in recording the statements of the five persons as the accused had been absconding and there was no immediate prospect of the arrest of the said accused. So far as the requirements of second part of Section 299 of the Code of Criminal Procedure is concerned, the impugned Judgment of the High Court indicates that the Court looked into the original records and it was found that the summons had been sent by the learned trial Judge, summoning the witnesses repeatedly to appear before the trial Court and on every occasion, the summons were received back with the report that the persons have already died. The High Court*

*has also indicated as to how on each occasion, summons issued to the five witnesses have been returned back with the report that the persons are dead.”*

- 18.** Therefore, the requirement of law as per Section 299 of Cr.P.C. is two fold (i) proved that an accused person has absconded, (ii) there is no immediate prospect of arresting the accused. In instant case, from the proceedings of trial Court it appears that the trial Court has considered the steps taken by the police to arrest the accused while issuing arrest memo from time to time and the report of Station House Officer of Police Station Piprai District Ashoknagar written to the Superintendent of Police, Ashoknagar. Trial Court also refers different orders passed by the trial Court from time to time but of no avail. Therefore, the trial Court came to a specific finding that accused is absconding and his chance of arrest in near future is not possible.
- 19.** Therefore, the Court below vide order dated 27-02-2023 declared the petitioner as absconder under Section 299 of Cr.P.C. and issued permanent arrest warrant against him. At the same time, trial Court directed the prosecution to lead evidence. Therefore, it is a case where the trial Court rightly came to the conclusion about the absconsion and impossibility to arrest him in near future. Both these aspects were categorically discussed, therefore, the proceedings under Section 299 of Cr.P.C. were rightly undertaken.
- 20.** So far as arguments of counsel for the petitioner about status of witnesses (who turned hostile) is concerned, it does not have much ground for the reason that complainant Nitin Kumar Dongare (PW-1)

categorically deposed against the petitioner in his examination-in-chief. Even otherwise witnesses who did not support the story of prosecution and declared hostile, when cross-examined by the prosecution then they divulged some details in respect of proceedings undertaken and therefore, those facts are always available with the trial Court to consider as per law. It is not a case where petitioner can get any benefit under extraordinary jurisdiction under Section 482 of Cr.P.C.

21. Complainant has deposed against the petitioner and many other witnesses including the police witnesses are yet to be examined, therefore, no case for interference is made out.
22. Facts of the case depict a very gloomy picture of Administration of Justice because in the case in hand surprisingly the police authorities were unable to arrest the petitioner who was Sarpanch of Gram Panchayat. Since he holds the public office, therefore, it would not have been difficult for the police to arrest the petitioner. He apparently used his period of absconsion purportedly to intimidate the witnesses who incidentally turned hostile. In the case of **State of U.P. Vs. Ramesh Prasad Mishra, (1996) 10 SCC 360, Krishna Mochi Vs. State of Bihar, (2002) 6 SCC 81, K. Anbazhagan Vs. Superintendent of Police and others, (2004) 3 SCC 767, Manu Sharma Vs. State (NCT of Delhi), (2010) 6 SCC 1, State Through PS Lodhi Colony, New Delhi Vs. Sanjeev Nanda, (2012) 8 SCC 450 and Ramesh Vs. State of Haryana (2017) 1 SCC 529 Apex**

Court has highlighted the glaring defects in the system where witnesses turn hostile and Apex Court held that evidence of the hostile witnesses could not be totally rejected, even if they have not spoken in favour of prosecution case. It can be subjected to close scrutiny and that portion of the evidence which is in consonance with the case of prosecution or defence may be accepted.

23. Therefore, trial Court still has sufficient material to consider the case in its entirety rather than to accept the submission of petitioner on the strength of deposition of some witnesses who turned hostile.
24. If the contentions of petitioner are allowed to stand then it would be a mockery of justice because it would be very easy for the person of political, economic, or muscular strength to commit offence, remain in absconsion, pressurize the police system to file charge-sheet under Section 299 of Cr.P.C. and thereafter compel the witnesses not to support the story of prosecution and cause them to declare hostile. Therefore, without participating in the investigation and trial such type of mischievous criminals would have last laugh and would render the Administration of Justice vulnerable to the extent of frailty. Same is not permissible. In the instant case, petitioner is still at large and is under absconsion. On the one hand he is avoiding arrest and on the other hand, he preferred the instant petition under Section 482 of Cr.P.C. to quash the FIR as well as consequential criminal proceedings. His absconsion removes the sheen of his arguments.
25. *Resultantly*, the petition preferred by the petitioner sans merits and is



hereby **dismissed**.

- 26.** Before parting, it is expected from the Superintendent of Police Ashoknagar that he would instruct the concerned Police Officer specially Station House Officer, Police Station Piprai District Ashoknagar to take proactive steps to arrest the accused. Collector, Ashoknagar is also expected to rise to the occasion and/or take appropriate steps against the petitioner if he is still serving as Sarpanch, ensure appropriate proceedings against him as per law. Copy be sent to these authorities.

**(Anand Pathak)**  
**Judge**