

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

BEFORE HON. SHRI JUSTICE ALOK VERMA,J

M.Cr.C. No.5186/2014

**1 Salim Musabhai Miyanji
S/o Musabhai Ismail Miyanji
Aged about 50 years,
Occupation – Doctor,
R/o Opp. Bangla Bus Stand,
at Post Tankaria – 392240,
District Bharuch (Gujarat)**

..... Applicant

Vs.

**1 State of M.P.
Through Police Station Narayangarh,
District Mandsaur (M.P.)**

..... Respondent

Shri R.S. Raghuvanshi, learned counsel for the applicant.
Shri Mukesh Kumawat, learned Panel Lawyer for
respondent/State.

ORDER

(Passed on 22/01/2015)

This application under section 482 of Cr.P.C. is filed for quashment of criminal proceeding arising out of Crime No.77/2012, Police Station Narayangarh, District Mandsaur under section 8/18, 25 and 29 of Narcotics Drugs and

Psychotropic Substances Act (hereinafter referred to as 'the Act').

2. The facts relevant for disposal of this application are that on 16.03.2012, an information was received at the Police Station Narayangarh, District Mandsaur that some people were transporting contraband opium on motorcycle bearing registration No.GJ-16D-5731. On such information, police force was rushed to the spot and the motorcycle was intercepted. During the search, 3.750 Kgm. of contraband opium was found in the possession of the persons who were travelling on the motorcycle. They were arrested and case was registered against them. During the investigation, it was found that the said motorcycle was registered in RTO in the name of present applicant Salim Musabhai Miyanji.

3. According to petitioner, the said motorcycle was sold by the present applicant to one Faruk Daud Umta in the year 1997 itself. Further asserted by the present applicant that the Madhya Pradesh Police recorded statement of the petitioner in respect of the said motorcycle in which he gave them an information that the vehicle was sold by him to Faruk Daud Umta in the year 1997. However, they insisted that he should

get an agreement executed with the said person and copy of such agreement should be handed over to them. Accordingly, he traced the above named purchaser of the motorcycle and prepared an agreement dated 01.08.2012. According to the petitioner, police personnel Premsingh visited petitioner's house on 03.09.2012 and seized copy of aforesaid agreement. However, as per the petitioner, when charge-sheet was filed, his name arraigned as one of the accused in the case.

4. In the background of above facts, the present petition is filed, inter-alia, on the ground that as the ownership in the vehicle had already been passed to Faruk Daud Umta in the year 1997 and the motorcycle was not seized from possession of the present applicant, he cannot be made an accused in the case under section 25 of the Act because he was not owner, occupier, having the control or use of the conveyance and further he did not knowingly permit it to be used for commission by any person of an offence punishable under the provision of the Act.

5. Learned counsel for the petitioner relied on the judgment of Hon'ble Apex Court in **Rajiv Thapar and Others Vs. Madan Lal Kapoor**, in which the Hon'ble Apex

Court held that under section 482 of Cr.P.C., if the defence asserted by the accused is of such nature that it displaces the assertions contained in charges levelled against accused without necessity of recording any evidence then the High Court should use the extraordinary jurisdiction granted to it under section 482 Cr.P.C. in quashing the criminal proceeding against the accused. The relevant paragraphs 28, 29 and 30 may be reproduced here to understand the principle laid down by the Court :-

"28. The High Court, in exercise of its jurisdiction under Section 482 of the Cr.P.C., must make a just and rightful choice. This is not a stage of evaluating the truthfulness or otherwise of allegations levelled by the prosecution/complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused is. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/complainant, it would be impermissible to discharge the accused before trial. This is so, because it would result in giving finality to the accusations levelled by the prosecution/complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same. The converse is, however, not true, because even if trial is proceeded with, the accused is not subjected to any irreparable consequences. The accused would still be in a position to succeed, by establishing his defences by producing evidence in accordance with law. There is an endless list of judgments rendered by this Court declaring the legal position, that in a case where the

prosecution/complainant has levelled allegations bringing out all ingredients of the charge(s) levelled, and have placed material before the Court, prima facie evidencing the truthfulness of the allegations levelled, trial must be held.

29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 of the Cr.P.C., if it chooses to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 of the Cr.P.C., at the stages referred to hereinabove, would have far reaching consequences, inasmuch as, it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 of the Cr.P.C. the High Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or

alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:-

30.1. Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

30.2. Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

30.3. Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused.”

6. Going through the above paragraphs, it is clear that defence which can be accepted without any need of oral evidence may be taken into consideration while dealing with an application under section 482 Cr.P.C. The fact of that case may also be taken into consideration. In that case, the accused was a husband of the deceased who was the doctor pursuing diploma course in gynecology. She was admitted in hospital on 16.09.1992, as she was suffering from malaria. She was discharged on 20.09.1992 and two days thereafter, on 22.09.1992, she again fell ill when ecocardiography was conducted, it confirmed, presence of a large hole in her heart. She suffered from massive heart attack and had died on 26.09.1992 which proved fatal.

7. The Apex Court observed in para 38 of the judgment in that case, that the postmortem examination report conducted

by Medical Board comprising of 4 doctors, chemicals analysis findings contained in Central Forensic Science Laboratory's report, inquest report of the SDM and letter of Rejiv Kapoor, the brother of the deceased to her dated 22.09.1992, displaced the charges levelled against the accused. In that case, all such documents could be read without any need of oral evidence as they were such nature that there was no necessity for recording any evidence.

8. However, in the present case, reliance is placed on the oral statement recorded by the police which is not made part of the charge-sheet by the police only, the petitioner produces a letter issued under Right to Information Act by police inspector, Palej Police Station, Bharuch, and entry in daily station diary of the same police station dated 06.08.2012, it is stated by the petitioner that on suggestion by the police personnel who visited his residence, he got prepared an agreement on which the purchaser of the vehicle Faruk Daud Umta put his thumb impression. The agreement is by way of a memorandum of a transaction that took place in the year 1997. It is highly unnatural that a person who purchased the vehicle way back in the year 1997 would come forward to sign the

agreement knowing fully well that by doing so, he would step into the shoes of the present petitioner and would face a criminal trial in Madhya Pradesh. This agreement can only be read in evidence when it is proved by oral evidence by the executant of the agreement. Merely, the document itself and the oral statement of the accused himself given to the police cannot form basis, at this stage for exercising the power conferred under section 482 Cr.P.C.

9. In this view of the matter, in the considered opinion of this Court, no case is made out for interfering and using the power granted to this Court under section 482 Cr.P.C.

10. This application, therefore, is devoid of any merits and liable to be dismissed and dismissed accordingly.

(ALOK VERMA)
JUDGE