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Single Bench

IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr.M.P.No. 113 /2013.

APPLICANT

(Accused)

Arvind Darpan, S/o Late Shiv
Shankar, Caste Kumhar, aged
about 27 years, r/o village
Koranga, Police Station Kunkuri
& Tahsil Kansabel Civil &
revenue Distt. ^{Jashpur} Kunkuri (C.G.),

113/13
Presented by Shri. K. K. K.
dated 20/12/13

Versus

RESPONDENT

State of Chhattisgarh through its
secretary of Home Department,
Mahanadi Bhavan New Raipur.
(C.G.) S.H.D P.S. KUNKURI Distt.
Jashpur (C.G.)
Crime No. 88/2013

APPLICATION UNDER SECTION 482 OF THE CODE OF
CRIMINAL PROCEDURE

BEING AGGRIEVED BY ORDER DATED 13.09.2013
PASSED IN SESSION CASE NO. 50/2013 BY LEARNED
ADDITIONAL SESSIONS JUDGE, KUNKURI (C.G.)
WHEREBY THE LEARNED ADDITIONAL SESSIONS JUDGE
HAS REJECT THE SUBMISSION OF APPLICANT AND
IMPOSED THE CHARGE AND REGISTERED THE SESSION
CASE NO. 50/2013. THE APPLICANT BEGS TO PREFER
THIS PETITION ON THE FOLLOWING FACTS AND
GROUNDS :-





HIGH COURT OF CHHATTISGARH AT BILASPUR

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Cr. M.P. No. 1131 of 2013

APPELLANTS

Arvind Darpan

-Vs-

RESPONDENT

State of Chhattisgarh

Present

Mr. Akhilesh Kumar, counsel for the appellant.

Mr. Anil S. Pandey, Govt. Advocate, for the State.

Single Bench: Hon'ble Goutam Bhaduri J.

ORAL JUDGMENT
(23.12.2013)

Heard on admission.

2. This is a petition under Section 482 of the Code of Criminal Procedure seeking quashment of the order dated 13.09.2013 passed by the learned Additional Sessions Judge, Kunkuri (C.G) in Sessions Case No.50/2013.
3. The primary grounds raised by the applicant is that the offence which is being tried is barred by section 198 Cr.P.C., since the cognizance leads to filing of complaint by the victim. He further submits that considering the statement of the prosecutrix, no case is made out u/s 376 IPC as there has been no forcible rape.
4. On the other hand, learned State Counsel opposes the prayer.
5. I have gone through the statements of the prosecutrix wherein she has stated that she is orphan and the accused had stayed with her for a considerable period and during this period, he committed sexual intercourse with her on the assurance that he will marry her and ultimately when the matter comes to marriage, it was refused by him.
6. *Prima facie*, it appears to this court that no case is made out



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warranting interference by this Court u/s 482 Cr.P.C., at this stage, as the matter is still to be tested on the floor of the evidence while the prosecutrix is examined and cross examined before the trial Court.

7. Hon'ble the Supreme Court in case of *M/s. Zandu Pharmaceutical Works Ltd. and others v. Md. Sharaful Haque and others* (AIR 2005 SC 9) has laid down the principles in para 8 thus :

"8. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "*quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest*" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the



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complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

8. Applying the aforesaid principles, I am of the considered view that it is not a fit case to quash the proceedings or set aside the impugned order dated 13.09.2013, at this stage and it is left open to the learned trial Court to record the findings after examination of witnesses and on evidence being adduced.

9. Accordingly, the petition is dismissed.

Sd/-
Vacation Judge

Rao