THE HIGH COURT OF MADHYA PRADESH
PRINCIPAL SEAT AT JABALPUR

Hon'ble Shri Justice Rajendra Kumar Srivastava

M.Cr.C No.20085/2020

George Mangalapilly

VS.

State of M.P.

Shri M.J. Michael, learned counsel for the applicant.
Shri Ajay Tamrakar, learned P.L. for the respondent/State.
Shri Naresh Kumar Patel, learned counsel for the complainant.

O R D E R
(27.08.2020)

This petition under Section 482 Cr.P.C. has been filed by the applicant for quashing the criminal proceeding of case No. 161/2019 (RCT No. 704/2019) pending before the Court of JMFC, Satna arising out of Crime No. 582/2017 registered at Police StationCivil Line District-Satna for the offence punishable under Section 153-B(1) and 295-A of IPC as well as Section 3/4 of the M.P. Dharma Swatantrya Adhiniyam, 1968 (hereinafter referred as 'Adhiniyam, 1968')

2. According to case, on the basis of complaint filed by Dharmendra Dohar, the police has registered the FIR stating that some preachers of Christian community were alluring and inspiring the complainant by providing money to cause him to convert into their religion. Resultantly, he and one Nagendra Chaudhary have converted themselves

into their religion. The complainant further stated that they were five people present at the spot at the time of conversion and the applicant was one of them. The police has seized some cross sign and book of the Bible from the possession of complainant.

3. Learned counsel for the applicant submits that the proceeding pending before the JMFC, Satna is abuse of the process of law and deserves to be quashed on the ground that evidences stated in the charge-sheet and the statements recorded under Section 164 Cr.P.C are not supporting the story of the prosecution and thus, no prima facie case is made out against the applicant. He also submits that the complainant and Nagendra Choudhry did not make any single allegation in his statement recorded under Section 164 Cr.P.C. The other witnesses have also not alleged anything against the applicant. The statement of complainant has also been recorded before the trial Court in which he has turned hostile and not supported the case of prosecution. In fact, the whole story of the case is fictitious and is made up by the members of 'Bajrang Dal' as the complainant stated that people from the 'Bajranag Dal' caused him to sign a paper forcefully and he was not aware of the content of the paper. While framing the charges, the learned JMFC has not applied judicial mind in the facts of the case and the evidences placed alongwith the charge sheet. The JMFC has framed the charges arbitrarily. Therefore, the order of framing charges is also bad in law. He further submits that no case under Section 153-B and 295-A IPC are made out against the applicant because neither the complainant nor that of the eye witnesses disclosed the commission of the offence. It is further submitted that it

is to Magistrate to discharge the accused in case the charge sheet is found groundless but here in the case, the Magistrate failed to do so. Apart from that the complainant has no objection in case this petition is allowed. With the aforesaid submission, he prays to allow this petition. In support of his contention, he has relied on the various pronouncements of Hon'ble the Apex Court, same are mentioned here in under :

(I) State of Karnatka Vs. L. Muniswamy and Others reported in (1977) 2 SCC 699.

(II) Ramesh Rajagopal Vs. Devi Polymers Private Limited reported in (2016) 6 SCC 310.

(III) Gorige Pentaiah Vs. State of Andhra Pradesh Vs. and Others reported in (2008) 12 SCC 531.

4. On the other hand learned panel lawyer for the State opposes the petition submitting that at this advance stage of trial, this petition is not maintainable. The trial is going on and statement of some of the witnesses have already been recorded. It is for the trial Court to appreciate the statement and pass the judgment accordingly. In the petition filed under Section 482 Cr.P.C, same can not be looked into.

5. The learned counsel for the complaint do not oppose the petition and he is in agreement with the submission of learned counsel for the applicant.

6. Heard all the parties and perused the case.

7. The learned panel lawyer for the state raised the point of maintainability of this petition in the advance stage of trial. He also submitted that the statement of complainant recorded in trial Court, can

not be considered in this petition. In this regard in the case of **Ravikant Dubey Vs. State of MP** reported in **2014 SCC OnLine MP 1981,** the co-ordinate bench of this High Court discussed both the issues and held as under:

> *"8. In view of the above, the questions of law which requires consideration are as follows:*
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> *(i) Whether petition preferred by the applicants underSection 482 of the Code for quashing the FIR can be entertained, when trial has been started and evidence of some witnesses have also been deposed before the Trial Court?*
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> *(ii) Whether evidence recorded by Trial Court duringtrial can be considered for quashing the FIR? (iii) Whether any ground is available for quashing the FIR in view of the facts and laws available on record?*
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> *Regarding question of law no. (i):*
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> *9. Learned Senior Counsel for the applicantssubmitted that inherent powers can be used at any stage to prevent abuse of process of any Court or otherwise to secure the ends of justice. It makes no different whether trial has been started or not and whether some evidence has been deposed before the Trial Court or not. In support of his contention he placed reliance in the case of Sathish Mehra (supra) and Joseph Salvaraja v. State of Gujrat, (2011) 7 SCC 59.*
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> *10. On the contrary, it is submitted by learned counselfor the respondent no. 2 that at this stage this petition cannot be entertained otherwise meaning of trial shall demolish. Apart that, it cannot be overlooked that at the time of preferring the charge-sheet, thereafter at the time of framing the charges, and afterwards when trial has been started the relief for quashing the FIR was not prayed by the applicants and because of that no substance in this petition and the same is liable to be dismissed.11. In the case of Joseph Salvaraja (supra), it was held by the Apex Court that FIR can be quashed, even if the charge-sheet has been filed. Similarly in the case of Sathish Mehra (supra) it was held by the Supreme Court that the power to interdict a proceeding either at the threshold or at an intermediate stage of the trial is inherent in a High Court on the broad principle that in case the allegations made in the FIR or the criminal complaint, as may be, prima facie do not disclose a triable offence there can be reason as to why the accused should be made to suffer the agony of a legal proceeding that more often than not gets protracted. A prosecution which is bound to become lame or a sham ought to interdicted in the interest of justice as continuance thereof will amount to an abuse of the process of the law. This is the core basis*

on which the power to interfere with a pending criminal proceeding has been recognized to be inherent in every High Court. The power, though available, being extraordinary in nature has to be exercised sparingly and only if the attending facts and circumstances satisfies the narrow test indicated above, namely, that even accepting all the allegations levelled by the prosecution, no offence is disclosed. However, if so warranted, such power would be available for exercise not only at the threshold of a criminal proceedings but also at a relatively advanced stage thereof, namely, after framing of the charge against the accused. In fact the power to quash a proceeding after framing of charge would appear to be somewhat wider as, at that stage, the materials revealed by the investigation carried out usually comes on record and such materials can be looked into, not for the purpose of determining the guilt or innocence of the accused but for the purpose of drawing satisfaction that such materials, even if accepted in its entirety, do not, in any manner, disclose the commission of the offence alleged against the accused.

12. Therefore, in the considered view of this Court thispetition is maintainable also even when trial is at advance stage. The question is answered accordingly.

Regarding question of law no. (ii):-

13. It is submitted by learned counsel for therespondent no. 2 that the evidence deposed in the Trial Court by the witnesses should also be taken into consideration. On the contrary, it is submitted by learned Senior Advocate for the applicants that such evidence cannot be taken into consideration otherwise there will not be any difference to decide the case on merits by pronouncement of the judgment and to decide the case by invoking the inherent powers under Section 482 of the Code. It is pertinent to mention here that evidence of witness deposed during the trial can be appreciated only on merits for pronouncement of the judgment and for this purpose provisions under Sections 225 to 235 have been prescribed in Chapter XVIII of the Code, whereas inherent powers of the Court has been provided under Section 482 of Code as mentioned in Chapter XXXVII of the Code.

14. Only the Trial Court can appreciate the evidenceon merits at the initial stage. This Court in exercise of inherent jurisdiction cannot assume the jurisdiction either of the trial Court or appellate Court and appreciate the evidence, the exclusive role assigned to the said Courts, in the inherent jurisdiction of this Court. While exercising the jurisdiction under Section 482 of the Code, this Court is not supposed to embark upon an enquiry as to whether the evidence in question is reliable or not or whether on a reasonable appreciation of the same would not sustain the accusation. This Court is not functioning at this stage as a court of appeal or revision. In exercise of inherent

> *powers this Court cannot quash the order by weighing the correctness or sufficiency of the evidence. It cannot also consider the defence documents. It has only to see if the entire evidence collected by the Investigating Agency is to be believed, whether it constitutes an offence or not. The truthfulness, sufficiency or acceptability of the evidence deposed in the Court can be judged only at the stage of trial. The aforesaid view of this Court is well supported by the principle laid down in the following judgments:*
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> *(I) Raman Lal v. State of Rajasthan, 2001 CRI.L.J.800;*
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> *(II) Ram Swarup Singh v. State of Bihar, 2006 CRI.L.J.4441; and*
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> *(III) Udyag Shukla v. Sessions Judge, Nainital, 2007 CRI.L.J. 707; and*
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> *15. Accordingly it is decided that at the time of usinginherent powers provided under section 482 of the Code, the evidence deposed before the Trial Court during the trial, cannot be looked into for the purpose of quashing the FIR. The only facts mentioned in the FIR and other material available on record produced along with the charge-sheet would be looked into for this purpose. The question is answered accordingly."*

8. Accordingly, I sum up by stating that quashment of criminal proceedings under Section 482 Cr.P.C. can be done at any stage of trial as it is in order to secure the ends of justice. Furthermore, while exercising power under Section 482 Cr.P.C., the evidence deposed before the trial Court can not be looked into.

9. The applicant has preferred this petition under Section 482 Cr.P.C. for quashment of Criminal Proceeding inter-alia pending in the Court of JMFC, Satna. It would become necessary to consider the scope and ambit of Court's powers under Section 482 Cr.P.C. The High Court has inherent power to do substantial justice in the case and also to prevent abuse of process of law and to secure the ends of justice. However, the Court should exercise its power

sparingly, carefully and with great caution. In the case of **State of Haryana Vs. Bhajan Lal** reported in **1992 SCC (Cri) 426**, the Hon'ble Apex Court has laid the principle relating to the exercise of the extraordinary power of High Court under Section 482 Cr.P.C., same is reproduced here in under :-

> *"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*
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> *(1) where the allegations made in the First InformationReport or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;*
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> *(2) where the allegations in the First InformationReport and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;*
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> *(3) where the un-controverted allegations made in theFIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;*
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> *(4) where the allegations in the FIR do not constitute acognizable offence but constitute only a noncognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;*
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> *(5) where the allegations made in the FIR or complaintare so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;*

> *(6) where there is an express legal bar engrafted inany of the provisions of the code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;*
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> *(7) where a criminal proceeding is manifestly attendedwith malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."*

10. Further, in the case of **Madhavrao Jiwajirao Scindia Vs. Sambhajirao Chandrojirao Angre** reported in **(1988) 1 SCC 692,** the Hon'ble Apex Court observed as under :-

> ***"7.****The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."*

11. Keeping in mind the above said principle, I would prefer to decide the present petition only by considering FIR and documents annexed with the charge sheet submitted by the applicant. On perusal of the records of the case, offence under Sections 153-B(1) and 295-A IPC are sought to be tried by JMFC, Satna for which sanction as provided under Section 196 of Cr.P.C. is mandatory. On further perusal of case, I find that the prosecution has obtained the sanction from District Magistrate Satna. On bare perusal of said sanction, it is found that the same has been given in only respect of offence under

Section 3/4 of Adhiniyam, 1968. Therefore, the requirement of sanction under section 196 Cr.P.C. is not fulfilled in the case in respect of offence under Section 153-B(1) and 295-A of IPC. In this regard, in the case of **Sarfaraz Sheikh Vs. State of M.P.** passed in **M.Cr.C No. 174/2017,** co-ordinate bench of this Court has dealt with the similar issue and held as under:-

> *"Admittedly, no sanction was accorded by the State Government as on the date, when the trial court had taken cognizance of the aforesaid offence under sections 147, 153/149, 153 A/149 and 188 IPC. As such, the cognizance so taken was in excess of the jurisdiction of the trial court and has been rightly set aside by the coordinate Bench of this Court while deciding M.Cr.C. No.6979/2016 (supra). The contention of respondent's/State's counsel that subsequently sanction being accorded on 16.08.2016 the defect of want of sanction for offence under sections 153-A and 153-B IPC stands cured and proceedings cannot be continued for the simple reason that the requirement of sanction by State Government as contemplated under section 196 Cr.P.C. is before cognizance is taken and not subsequently. It is not an incidence of procedural irregularity which could be remedied retrospectively*
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> *Taking cognizance of an offence kicks starts the prosecution of a delinquent and involves a process of interference with his personal liberty, therefore, the requirement of prior sanction of the State Government is a basic jurisdictional fact before further action may be taken for taking cognizance of the offence. Hence, this Court is unable to accept the contention that subsequent sanction accorded on 16.08.2016 shall legalize the prosecution initiated after taking cognizance on 05.03.2016, hence, contention is rejected."*

12. Accordingly, in view of mandates laid down under Section 196 Cr.P.C, in absence of proper sanction in respect of offence under section 153-B(1) and 295-A of IPC, the JMFC, Satna has exceeded its jurisdiction while taking cognizance in the case under Section 153-B(1) and 295-A of IPC. It is settled by the Hon'ble Supreme Court in the case of **Smt. Nagawwa Vs. Veeranna Shivallngappa Konjalgi** reported in **1976 AIR 1947** that if the

complaint suffers from fundamental legal defects, such as, want of sanction or absence of complaint by legally competent authority and the like, order of the Magistrate can be quashed or set aside on the above said ground. Therefore, criminal proceeding in respect of offence under Section 153-B(1) and 295-A of IPC against the applicant deserves to be quahsed.

13. As far as, offence under Section 3/4 of Adhiniyam, 1968 is concerned, the prosecution has obtained mandatory sanction from District Magistrate Satna. Section 3 of Adhiniyam, 1968 restricts the person to convert or attempt to convert any person from one religious to another directly or indirectly religious by way of allurement or force. Further, Section 4 of Adhiniyam, 1968 prescribes punishment for contravention of Section 3. Both the provisions are also reproduced herein below:-

> *"3. Prohibition of forcible conversion. - No person shall convert or attempt to convert, either directly or otherwise, any person from one religious faith to another by the use of force or by allurement or by any fraudulent means nor shall any person abet any such conversion.*
>
> *4. Punishment for contravention of the provisions of Section 3. - Any person contravening the provisions contained in Section 3 shall, without prejudice to any civil liability, be punishable with imprisonment which may extend to one year or with fine which may extend to five thousand rupees or with both "Provided that in case the offence is committed in respect of a minor, a women or a person belonging to the Scheduled Castes or Scheduled Tribes the punishment shall be imprisonment to the extent of two years and fine up to ten thousand rupees.*

14. On perusal of FIR, it is reflected that the named FIR was registered against the applicant by the complainant

Dharmendra Kumar Dohar. It is alleged in the FIR that the applicant and other coaccused were alluring him to cause him to convert into their religion

and the complainant along with his friend Nagendra Chaudhri converted themselves into their religion. Also in the statements recorded under Section 161 Cr.P.C., the complainant alleged against the applicant. He specifically stated that the applicant and other coaccused provided him bible book and money (Rs. 5000/-) on account of religion conversion. The complainant disclosed the name of present applicant specifically for the alleged incident. Further, another witness namely Shankar Singh has also deposed in his 161 statement that the preachers were forcing and alluring the villagers for conversion of religion. He also stated that they used to come at village for alluring the villagers for conversion. Therefore, prima facie, allegations are found against the applicant for constituting the aforesaid offence, however, in statement recorded under Section 164 Cr.P.C., the complainant and other witnesses are not found stable with their earlier version as that of FIR and 161 statements but it is well settled principle of law that statement made under Section 164 of the Code of Criminal Procedure may be used to corroborate or contradict a statement made in the Court. A statement made by the witness under Section 164 CrPC can be used for the purpose of cross-examining

him and discrediting his evidence in the trial Court.

15. Here in the case, admittedly, the trial is going on and some of the witnesses have been examined by the trial Court. Learned counsel for the applicant raised the ground of hostility of the

complainant before the trial Court but same can be appreciated in trial, and at this stage same can not be looked into. However, the complainant Dharmendra Dohar has no objection in quashing the proceeding but looking to the fact that the offence is relating to religion and significant to maintain public tranquility, the Adhiniyam, 1968 clearly provides for the maintenance of public order, hence, under inherent jurisdiction, I do not think fit to give it

overemphasized. Therefore, considering the allegations made in the FIR as well as 161 Statements, I am not inclined to quash the proceeding in respect of offence under Section 3/4 of Adhiniyam, 1968.

16. Accordingly, this petition is **partly allowed.** Criminal proceeding of case No. 161/2019 (RCT No. 704/2019) pending

before the Court of JMFC, Satna in respect of offence under Section 153-B(1) and 295-A of IPC is hereby quashed for want of proper sanction. The criminal proceeding shall be continued in respect of offence under Section 3/4 of Adhiniyam, 1968.

(Rajendra Kumar Srivastava)
Judge

L.R.