

(2017) 01 MP CK 0212
In the Madhya Pradesh High Court
Case No : 1542 of 2016

Sumatchand S/o late Moolchand

APPELLANT

Vs

Smt. Kunti Bai W/o Lakhmichand

RESPONDENT

Date of Decision : 23-01-2017

Acts Referred:

Code of Criminal Procedure, 1973, Section 482, Section 227 - Saving of inherent powers of High Court - Discharge
Indian Penal Code, 1860, Section 302

Citation : (2017) 01 MP CK 0212

Hon'ble Judges : Vivek Agarwal

Bench : Single Bench

Advocate : Arun Pateria, Harish Dixit

Final Decision : Dismissed

Judgement

1. Petitioner has filed this petition under Section 482 of the Code of Criminal Procedure for quashing further proceedings of Sessions Trial No.101/2015 on the ground that earlier Sessions Court had conducted trial and has acquitted all other co-accused persons which were named in the FIR while the petitioner was absconding on the ground that no evidence was produced against those accused persons constituting any offence under the provisions of Section 498-A and 304-B or in the alternative 302/34 or 306 of IPC.

2. It is petitioner's contention that since she is similarly placed, therefore, no fruitful purpose will be achieved if trial is permitted to be continued against the petitioner. In support of the contention, petitioner has placed reliance on the order of this Court passed in the M.Cr.C.No.3185/2009 dated 1.7.2009 wherein this Court held that same witnesses being available against the petitioner and since their evidence has already been recorded during the trial of co-accused persons, therefore, there appears to be no prospect

of the case ending in conviction and permitting the trial of the petitioners on the

basis of same evidence appears to be wastage of valuable time, and therefore, relying on the judgment of the Supreme Court in the case of Satish Mehra v. Delhi Administration and another as reported in 1996 SCC (Cri) 1104 the proceedings were quashed. Similarly, reliance has been placed on the order of this Court in M.Cr.C.No.269/2003, so also on the order of this Court passed in M.Cr.C.No.1701/2007 dated 4.4.2007 wherein reliance has been placed on the judgment of Supreme Court in the case of Prem Lata and others v. State of Punjab as reported in AIR 1991 SC 69 and it has been held that since the material witnesses did not support the prosecution story and rather they gave statement in favour of the accused persons, therefore, no purpose will be served if trial is permitted to be continued against the petitioners.

3. Learned Public Prosecutor on the other hand submits that in the case of Satish Mehra (supra) the Apex Court has held that "but when the Judge is fairly certain that there is no prospect of the case ending in conviction the valuable time of the Court should not be wasted for holding a trial only for the purpose of formally completing the procedure to pronounce the conclusion on a future date. We are mindful that most of the Sessions Court in India are under heavy pressure of workload. If the Sessions Judge is almost certain that the trial would only be an exercise in futility or a sheer waste of time it is advisable to truncate or snip the proceedings at the stage of Section 227 of the Code itself." Learned Public Prosecutor further submits that the fact remains that the prosecution witnesses, who had not deposed against the co-accused persons who have been acquitted, are available and they are free to point out any act of lapse against the present petitioner who had not participated in the earlier trial and was absconding and this prospect cannot be overruled merely because certain witnesses have given evidence against the prosecution story. Therefore, allowing the petition will be against

the interest of justice and he further submits that it cannot be said that the case against the present petitioner will also end in acquittal.

4. It is true that if the prosecution witnesses would not have been available, then their testimony would have been read as it is even in the case of present petitioner, but since it is not the case of the petitioner that those witnesses are not available, a valuable right of the prosecution to examine those witnesses vis a vis the conduct of the present petitioner in the alleged offence cannot be taken away, and therefore, in my opinion, the decisions as has been cited by the petitioner are distinguishable inasmuch as this aspect of witnesses deposing against the present petitioner has not been considered and thus, those decisions are distinguishable. Therefore, in the opinion of this Court, there is no ground for exercise of extraordinary jurisdiction to extend the benefit to the petitioner, specially when he has not approached this Court with clean hands and was absconding during the trial. Thus, petition fails and is dismissed.