

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Crl.Misc. No.M-30076 of 2014
Date of Decision : 5.10.2015

Vinny Bains @ Kanwar Navdeep Singh Bains and anotherPetitioner

Vs.

State of Punjab and anotherRespondents

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CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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Present : Mr. Lalit Rishi, Advocate for the petitioners.
Mr. D.S. Virk, AAG, Punjab.

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1. To be referred to the Reporter or not ?
2. Whether the judgement should be reported in Digest ?

RAMESHWAR SINGH MALIK, J

Petitioners, by way of instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short) seek quashing of impugned FIR No.36 dated 23.2.2005 under Sections 124-A, 153-A and 120-B of the Indian Penal Code ('IPC' for short), under Sections 52, 53, 55 of the Copy right Act and under Sections 65, 66 and 67 of I.T. Act 2000, registered at Police Station Division No.6, Jalandhar (Annexure P-1) and order dated 10.6.2005 (Annexure P-3), whereby petitioners were declared proclaimed offenders, besides the criminal proceedings arising out of the impugned FIR.

Notice of motion was issued.

Learned counsel for the petitioners submits that the petitioners have been falsely implicated in the present case. Even after treating the allegations

levelled against the petitioners to be true on their face value, no offence is disclosed against the petitioners. He also submits that petitioners were illegally declared as proclaimed offenders, vide impugned order dated 10.6.2005 (Annexure P-3). Thereafter, co-accused of the petitioners were granted the benefit of doubt and were acquitted of the charges framed against them, vide judgement of acquittal dated 16.11.2011 (Annexure P-2). Learned counsel for the petitioners prays for quashing the impugned FIR (Annexure P-1), impugned order dated 10.6.2005 (Annexure P-3) declaring the petitioners as proclaimed offenders and also the criminal proceedings arising out of the impugned FIR, by allowing the present petition. In support of his arguments, he places reliance on following judgements :-

Sudo Mandal @ Diwarak Mandal Vs. State of Punjab, 2011 (2) RCR (Crl.) 453 (P&H), **Jasvinder Singh Vs. State of Punjab and another**, 2013 (1) RCR (Crl.) 310 (P&H) **Kulwant Singh Vs. State of Punjab and another**, 2011 (3) RCR (Crl.) 266 (P&H) and **Vinod Kumar @ Vinod Saddi Vs. State of Punjab**, 2011 (2) RCR (Crl.) 438 (P&H).

On the other hand, learned counsel for the State, submits that the petitioners had been declared proclaimed offenders more than 10 years ago and inspite of said fact, they have shown no respect to the law during all these long 10 years. Neither they surrendered before the learned court of competent jurisdiction nor they sought any anticipatory bail, because of which the petitioners are not entitled to invoke the inherent jurisdiction of this court under Section 482 Cr.P.C. Judgements relied upon by learned counsel for the petitioners are not applicable to the facts of the present case as the same are clearly distinguishable. Learned counsel for the State would next contend that while acquitting the co-accused of the petitioners, the learned trial court has issued a direction to put up the case file

as and when the petitioners are arrested and produced for facing trial. Allegations were very serious in nature and the present petition is liable to be dismissed.

It is pertinent to note that after arguing the case at considerable length and failing to convince this court on merits, learned counsel for the petitioners sought permission of the court to withdraw the present petition, with liberty to the petitioners to raise all possible pleas available to them before the learned trial court, at the appropriate stage of trial. Permission was granted and the petition was dismissed as withdrawn, with liberty as prayed for. However, after some time, learned counsel for the petitioners again appeared before this court and requested for passing an order on merits.

Having heard learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, instant one has not been found to be a fit case, warranting interference at the hands of this court, while exercising its inherent jurisdiction under Section 482 Cr.P.C. for the following more than one reasons.

It is a matter of record that the petitioners were declared proclaimed offenders by the learned court of competent jurisdiction way back on 10.6.2005 (Annexure P-3). It is also not in dispute that neither the petitioners ever surrendered before the learned court of competent jurisdiction nor they sought any pre-arrest bail. They are running from the law for the last more than 10 long years. Having said that, this court feels no hesitation to conclude that when the petitioners never faced the criminal trial, they cannot claim parity with their co-accused, who have been acquitted by the learned trial court after conducting the trial against them and the impugned FIR deserves to be upheld.

During the course of hearing, when a pointed question was put to learned counsel for the petitioners, as to why the petitioners did not surrender before the learned court of competent jurisdiction during all this long period of more than 10 years, after having been declared as proclaimed offenders, he had no answer and rightly so, it being a matter of record. Possibility of availability of cogent and convincing evidence, sufficient for recording the conviction of the petitioners, cannot be ruled out and, as a matter of fact, the same has not been ruled out even by the learned counsel for the petitioners, during the course of his arguments. Under these circumstances, it can be safely concluded that petitioners are not entitled to invoke the inherent jurisdiction of this court under Section 482 Cr.P.C., for quashing of the impugned FIR and the criminal proceedings arising therefrom.

In view of what has been discussed herein above, the question that falls for consideration of this court is, whether petitioners can be granted the benefit of doubt, without granting the prosecuting agency a chance to substantiate the allegations against the petitioners, levelled against them in the impugned FIR, particularly when the petitioners never stood trial even for a day. After giving anxious consideration to the peculiar fact situation obtaining in the present case, this court is of the considered view that the legitimate prosecution cannot be quashed by this court, particularly when the allegations are very serious in nature, including under Sections 124-A, 153-A and 120-B IPC, therefore, the impugned FIR is not liable to be quashed and the same deserves to be upheld, for this reason also.

Coming to the judgements relied upon by learned counsel for the petitioners, there is no dispute about the law laid down therein. However, on close perusal of the cited judgements, none of them have been found to be of any help to

the petitioners, being distinguishable on facts. It is the settled proposition of law that peculiar facts and circumstances of each case are to be examined, considered and appreciated first before applying any codified or judgemade law thereto. Sometimes, difference of one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundrao Rao and another Vs. State of Tamil Nadu and others**, 2002 (3) SCC 533.

The Hon'ble Supreme Court, in its celebrated judgement in the case of **State of Haryana and others Vs. Ch. Bhajan Lal and others**, 1992 AIR 604, laid down the broad principles for quashing the criminal proceedings arising out of FIR. The broad principles laid down by the Hon'ble Supreme Court in **Bhajan Lal's case (supra)**, which can be gainfully followed in the present case, read as follows :-

1. Where the allegations made in the First Information Report 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.
2. Where the allegations in the First Information Report 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.
3. Where the uncontroverted allegations made in the FIR 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.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the F.I.R. or complaint are 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 in any 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.

7. Where a criminal proceeding is manifestly attended with mala fide 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.”

Reverting back to the facts of the case in hand and respectfully following the law laid down by the Hon'ble Supreme Court in **Bhajan Lal's case (supra)**, which has been consistently followed by the Hon'ble Supreme Court in its numerous later judgements as well as by this court, it is

unhesitatingly held that in view of the peculiar facts of the present case, neither the petitioners have been found entitled for invoking the inherent jurisdiction of this court under Section 482 Cr.P.C. nor any case for quashing of the impugned FIR and also the criminal proceedings arising therefrom, has been made out, therefore, the impugned FIR deserves to be upheld, for this reason as well.

Coming to the over all conduct of the petitioners, they have not been found entitled for any relief at the hands of this court, while exercising its inherent jurisdiction under Section 482 Cr.P.C. No doubt the powers of this court under Section 482 Cr.P.C are wide enough, yet it is equally true that such powers are to be exercised sparingly and with circumspection. Petitioners were declared proclaimed offenders, vide order Annexure P-3 passed as far back as on 10.6.2005.

Neither before passing the order Annexure P-3 nor thereafter, petitioners shown any respect to the law and the justice delivery system of the country, because of which they have rendered themselves to be disentitled for any kind of sympathy at the hands of this court, including the discretionary relief under Section 482 Cr.P.C. and the impugned FIR, as well as the criminal proceedings arising therefrom, including the order Annexure P-3 dated 10.6.2005 deserve to be upheld. Present case does not fall under any of the above said broad principles of law laid down by the Hon'ble Supreme Court in **Bhajan Lal's case (supra)**. In fact, keeping in view the seriousness of allegations against the petitioners, this court would be exceeding its jurisdiction, in case the instant legitimate prosecution is ordered to be quashed. The question posed herein above is answered accordingly.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this court is of the considered

view that the present petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out,.

Resultantly, with the above said observations made, present petition stands dismissed, however, with no order as to costs.

5.10.2015
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(RAMESHWAR SINGH MALIK)
JUDGE