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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M No.33466 of 2014 (O&M)

Date of Decision: 01.04.2015

DEEPAK AND ANOTHER

.....Petitioners

Vs

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sandeep Sharma, Advocate
for H.C. Tewari, Advocate
for the petitioner.

Mr. Varun Sharma, A.A.G., Punjab.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

RAJ MOHAN SINGH, J.

CRM No.7855 of 2015

Dismissed as not pressed.

CRM-M No.33466 of 2014

[1]. Prayer in this petition under Section 482 Cr.P.C., is for quashing of FIR No.43 dated 19.04.2014 under Sections 376 and 506 IPC, Police Station Division No.7, Jalandhar, District Jalandhar.

[2]. FIR was registered in respect of alleged allegation of rape by maternal uncle of the prosecutrix as well by the petitioners.

[3]. During course of evidence, statement of prosecutrix was recorded as PW-4, who did not support the prosecution version in

any manner and resultantly Om Parkash maternal uncle of the prosecutrix was acquitted vide judgment dated 05.09.2014 passed by Additional Sessions Judge, Jalandhar. The prosecutrix refuted the allegation of rape.

[4]. Gursharan Kaur-PW-2 has also not supported the prosecution version and specifically deposed that she does not know the prosecutrix nor she has ever taught her. The cross-examination of the witnesses so declared hostile, could not yield any incriminating evidence against the accused.

[5]. At the time of alleged occurrence petitioners were minors. They are cousin brothers of the complainant. There was some controversy with regard to landed property between the father of the petitioners and the prosecutrix.

[6]. The petitioners were declared proclaimed offenders despite the fact that petitioners were school going children and were not involved in the aforesaid activity.

[7]. With the acquittal of Om Parkash father of the petitioners, prayer has been made for quashing the FIR along with all subsequent proceedings by placing reliance upon decision rendered by Division Bench of this Court in **Sudo Mandal @ Diwarak Mandal v. State of Punjab 2011(2) RCR (Criminal) 453** wherein the Hon'ble Division Bench held in the following manner:-

“22. While disposing of these two appeal, we are very much concerned about the absconding village rustic accused namely Radha Mandal, Rajiya Mandal and

Sambodh Mandal, who had successfully evaded the dragnet of the police. The Investigating Agency has put up a case implanting eye witnesses as against all the accused. Both the eye witnesses projected by the prosecution had not passed the test of trustworthiness. Their own showing would go to establish without any pale of doubt that they could not have witnessed the occurrence. The other materials produced by the prosecution also did not advance the case of the prosecution any further. The above facts and circumstances have persuaded us to come to a definite conclusion that the accused in this case were not the perpetrators of crime of murder as alleged by the prosecution. The same set of materials would be produced before the Sessions Court on production of the remaining three accused namely Radha Mandal, Rajiya Mandal and Sambodh Mandal. After all the poor innocent labourers had migrated to other places to eke out their livelihood. The appellants herein had in fact suffered imprisonment for such a long time leaving behind their kith and kin, who might have been in dire need of financial support and help from them. Such an unpleasant situation shall not be created for the other three accused against whom also there is no material on record to fasten them with the charge of murder. We seriously pondered over rendering judicial succour to those faceless and voiceless accused who had taken to heels and hidden themselves apprehending the wrath of criminal proceedings for the heinous crime of murder. We are convinced that our judicial aim is not so crippled as to betray of vague hope of the hopeless.

23. *We are conscious of the fact situation that those three accused namely Radha Mandal, Rajiya Mandal and Sambodh Mandal had absconded and were declared as proclaimed offenders. They had not faced the*

trial, but when we find that no case could be made out as against them also with the very same rickety materials, those accused also will have to be relieved of the impending pain of facing the prosecution for murder. Section 482 of the Code of Criminal Procedure reads as follows:-

*“Saving of inherent powers of High Court.
Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”*

24. *The above provisions recognize the inherent powers of the Court to do real and substantial justice, preventing the abuse of the process of the Court. The statutory recognition of the inherent jurisdiction of the criminal Court indicates that there is a power for the criminal Courts to make such an order as may be necessary to meet the ends of justice. We are conscious of the fact that the powers under Section 482 of the Code of Criminal Procedure are to be exercised very sparingly and in exceptional cases where abuse of the process of the Court would result in serious miscarriage of justice. The inherent powers of the Court should not be exercised to stifle legitimate prosecution. But at any rate the settled position is that this Court has the jurisdiction to quash the entire criminal proceedings to prevent the abuse of the process of the Court in order to secure the ends of justice. In our considered view the same inherent powers can be exercised when this Court finds that the innocent accused, who had absconded would simply face the empty formality of trial with the very same unbelievable and untrustworthy*

evidence, which would ultimately lead to their acquittal. Bringing the absconding accused to face the trial in this case in the above facts and circumstances would amount to abuse of the process of the Court. To secure the ends of justice, we hereby quash the entire proceedings as against the absconding accused namely Radha Mandal, Rajiya Mandal and Sambodh Mandal pending before Judicial Magistrate Ist Class, Bathinda/Sessions Judge, Bathinda, as no useful purpose would be served even if they are procured and ordered to face the trial in this case.”

[8]. Since the prosecutrix and other prosecution witnesses have not supported the prosecution case, therefore, even if the petitioners who were declared proclaimed offenders are tried separately, the trial would result in futility as it would be an empty formality to put the petitioners on trial.

[9]. Learned State counsel however opposed the aforesaid prayer by arguing that acquittal of the co-accused after full trial is not sufficient to drop the proceedings against the co-accused as the acquittal of co-accused is not admissible under Sections 40 to 43 of the Evidence Act.

[10]. Looking to the nature of controversy involved in the present case more particularly the relationship between the parties. Om Parkash is maternal uncle of prosecutrix and petitioners being sons of Om Parkash were minors at the time of alleged accusation. Since there was a property dispute after the death of parents of prosecutrix and she was living with maternal uncle i.e. father of the petitioners at the relevant time. The *mausi* shunted her out and asked her to live in

the house of maternal uncle who had allegedly swallowed the property of parents of the prosecutrix.

[10]. In view of such a factual position, prosecutrix raised allegations of rape and thereafter on re-conciliation of fact thought it appropriate not to support prosecution version against her *mama* and cousins. In such a scenario there is no dearth in saying that the acquittal of maternal uncle of the prosecutrix would not be a piece of evidence applicable to the innocence of the petitioners.

[11]. This Court is of the opinion that it is a fit case where the inherent powers of the High Court under Section 482 Cr.P.C. should be exercised so as to meet ends of justice to prevent petitioners from vagaries of unnecessary trial and for securing ends of justice to them. Though the powers under Section 482 Cr.P.C. are to be exercised sparingly and in exceptional circumstances where the abuse of process law would result in mis-carriage of justice.

[12]. In order to secure ends of justice, this Court feels that the power should be exercised to quash the entire proceedings against the absconding petitioners whose trial after the acquittal of main accused would result in vacuum and the same would be an empty formality in sending the petitioners for trial for totally unbelievable and untrustworthy evidence. The trial in such an eventuality would ultimately lead to the acquittal of the petitioners.

[13]. Hence the FIR No.43 dated 19.04.2014 under Sections 376 and 506 IPC, Police Station Division No.7, Jalandhar, District

Jalandhar along with entire subsequent proceedings undertaken in pursuance thereof including the order declaring petitioners as proclaimed offenders stand quashed.

[14]. Disposed of.

April 01, 2015
Atik

(RAJ MOHAN SINGH)
JUDGE