

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

**Criminal Misc. No. M-34480 of 2015 (O&M)
Date of Decision: 9.10.2015**

Sanjay Bhardwaj

--Petitioner.

Vs.

State of U.T. Chandigarh and others

--Respondent.

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Petitioner in person.

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

RAMESHWAR SINGH MALIK J. (ORAL)

Petitioner, by way of instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), seeks quashing of the order dated 14.7.2015 (Annexure P-1) passed by the learned Additional Sessions Judge, Chandigarh, dismissing an application of the petitioner under Section 340 Cr.P.C.

Petitioner, while appearing in person, submits that impugned order was erroneous, being contrary to the true facts of the case and the same is liable to be set aside. He submits that learned court below has misdirected itself, while passing the impugned order, which has resulted in serious miscarriage of justice. He also submits that learned trial court has failed to appreciate true factual as well as legal aspects of the matter in the correct perspective, because of

which the impugned order suffers from patent illegality. He concluded by submitting that an application moved by the petitioner under Section 340 Cr.P.C., was worth acceptance and ought to have been accepted by the learned Additional Sessions Judge, but since the learned trial court has failed to apply its judicious mind, while passing the impugned order, the same cannot be sustained. He prays for quashing the impugned order, by allowing the present petition.

Having heard the petitioner at considerable length, after careful perusal of record of case and giving thoughtful consideration to the arguments advanced, this Court is of the considered opinion that in the given fact situation of the present 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. To say so, reasons are more than one, which are being recorded hereinafter.

It is a matter of record that petitioner was the complainant in FIR No. 586 dated 21.12.1999 under Section 307/34 of the Indian Penal Code ('IPC' for short), registered at Police Station Sector 17, Chandigarh. A criminal trial arising out of abovesaid FIR ended in acquittal of the accused-respondents vide a detailed and self contained judgment of acquittal dated 31.5.2011 (Annexure P-3), running from pages 46 to 121 of the paper book. As stated by the petitioner himself, his appeal against the judgment of acquittal is pending consideration before this Court.

The thrust of the argument raised by the petitioner was that respondents No. 2 to 4 misconducted themselves, while appearing

as witnesses before the court, during the course of the abovesaid criminal trial, which resulted in acquittal. He sought an enquiry to be conducted against them and also initiation of criminal action against the respondents. In fact, all the arguments raised by the petitioner have been found to be wholly misplaced and the same are only to be noted to be rejected.

The learned trial court has proceeded on a factually correct and legally justified approach, while passing the impugned order. The relevant observations made by learned Additional Sessions Judge in para 21 to 23 of the impugned order, which deserves to be referred here, read as under:-

“Simply because of the fact that the respondent No.1 has given the report regarding the handwriting on the application and without the finding of the court, whether the presumption can be drawn that the report submitted by respondent No.1 Devendra Prasad (DW-1 in the main trial) is a false report.

At the same time as held by the Hon'ble Apex Court, the main consideration to be weighed is as to whether it is expedient in the interests of justice to launch any criminal proceedings, which is a fundamental requirement to invoke the provisions of section 340 Criminal Procedure Code and which is the sine qua non of taking cognizance under Section 340 Criminal Procedure Code. However, in the present case, there is nothing on record to show that it is expedient in the interest of justice to proceed against the respondent. Thus, both the basic ingredients to invoke the section 340 Criminal Procedure Code, that there is a prima facie case

for a complaint and secondly that it is expedient in the interest of justice to permit the prosecution, are missing in this case.

There is another aspect of the matter, which refrains this court to take any action and this is provided under Sub-section (1) of Section 340 Criminal Procedure Code, which contemplates holding of a preliminary enquiry. But normally a direction for filing of a complaint is not made during the pendency of the proceedings before the court and this is done at the stage when the proceeding is concluded and the final judgment is rendered. However, in the present case, it is undisputed fact that no findings has been given by this court while deciding the criminal case got registered by the applicant as to the allegations of perjury or appeal has been filed against the order of acquittal of this court and the same is still pending. This fact further shows that there is no justification to initiate any criminal proceedings against the respondent when the appeal against the order of acquittal is pending before Hon'ble High Court. Thus, this fact further shows that the present prosecution is neither expedient in the interests of justice, which is a fundamental requirement to invoke the provisions of section 340 Criminal Procedure Code nor it is otherwise justified as there is no prima facie evidence to show that commission of any criminal offence. It is worthwhile to mention here that the applicant admitted during the course of arguments that the appeal preferred by him before the Hon'ble High Court is still pending, meaning thereby, the judgment of the trial court has not touched the finality and even otherwise, in the judgment of the

trial court, there is no finding regarding the submitting of false report by respondent No.1 regarding the Handwriting of Dr. Kuldeep Dhawan. Unless, there is no finding of the court in that regard, no proceedings under Section 340 Code of Criminal Procedure can be initiated.”

Petitioner has failed to bring on record any material which may justify initiation of criminal proceedings against the respondents, particularly when his appeal against the abovesaid judgment of acquittal is pending consideration before this Court. There is no finding recorded by any court against the respondents, so as to make out a case for initiation of any criminal proceedings against them. Having said that, this Court feels no hesitation to conclude that learned trial court committed no error of law, while passing the impugned order and the same deserves to be upheld, for this reason also.

During the course of hearing, petitioner could not point out any jurisdictional error or patent illegality apparent on record of the case, in the impugned order passed by the learned court below, which may justify interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C. No doubt, powers of this Court under Section 482 Cr.P.C. are wide enough but it is equally true that said powers are supposed to be exercised sparingly and with circumspection, so as to prevent any abuse of process of court and to secure the ends of justice. Petitioner could not show any prejudice caused to him by passing the impugned order and the same deserves to be upheld, for this reason

as well.

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 present petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for bail pending trial has been made out.

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

(RAMESHWAR SINGH MALIK)
JUDGE

9.10.2015
AK Sharma