

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

**CRM No.M-8964 of 2012 (O&M)
Date of Decision: 18.02.2015**

Gurpreet Kaur and others

.....Petitioners

Versus

Jalandhar Development Authority

.....Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. R.S.Bajaj, Advocate for the petitioners.

Mr. Ashish Grover, Advocate for the respondent.

JITENDRA CHAUHAN, J. (Oral)

This petition under Section 482 of the Code of Criminal Procedure has been filed for quashing of complaint No.162/2/09 dated 18.03.2009 (P-1), registered under Sections 3, 5, 8, 9, 14(2), 15, 18, 21 and 36 of Punjab Apartment & Property Regulation Act, 1995 and 120-B of the Indian Penal Code (for short 'the IPC'), summoning order dated 24.02.2011 and all consequential proceedings arising therefrom.

The above said complaint was filed by A.E. Officer, of Jalandhar Development Authority, Jalandhar i.e. a Public Servant against the petitioners and during trial petitioners No.2 to 5 were declared as proclaimed offenders.

Learned counsel for the petitioners contends that since petitioner No.1-Gurpreet Kaur and her two co-accused have been acquitted vide judgment dated 29.04.2014 passed by the Judicial

Magistrate Ist, Class, Jalandhar, so the arrest of petitioners No.2 to 5 and putting them on trial would be abuse of process of law. In support of this contention, reliance has been placed upon a Division Bench judgment of this Court in Criminal Appeal No. D-638-DB of 2007 **Sudo Mandal @ Diwarak Mandal Vs. State of Punjab** decided on March 17th, 2011.

On the other hand, learned counsel for the respondent has cited case law of this Court in the case of **Roku Sandhu Vs. State of Punjab 2012(4) AICLR 758**, it has been held that quashing of FIR on the ground that co-accused has been acquitted because the prosecution could not prove the charge against him. Petitioner who is a proclaimed offender cannot be given the benefit of said acquittal.

I have heard learned counsel for the parties and perused the record.

In **Sado Mandal's case (supra)**, the Division Bench of this Court, after re-appraising the evidence, acquitted the appellants and also quashed proceedings against their co-accused, who absconded themselves during the trial, primarily on the ground that there was no evidence against them. In paragraph 22, the Division Bench observed as under with regard to quashing of pending proceedings against other accused.

"22. While disposing of these two appeals, 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 succor 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 arm is not so crippled as to betray the vague hope of the hopeless."

Normally, persons who are declared proclaimed offender, have to be required to first move the Court which declared them proclaimed offender. The provisions of Section 482 of the Code makes it clear that the power exercisable under Section 482 of the Code is somewhat extraordinary in character and it is to be exercised only in exceptional cases where it appears to the Court that continuation of the proceedings is an abuse of process of law or that no case is made out against the petitioners. The petitioners seeking relief of exercising discretionary power of this Court, must come to the Court with clean hands. If any one is declared as an absconder or proclaimed offender

in terms of 82 of the Code, he/she/they are not entitled to discretionary relief under Section 482 of the Code.

In this case, petitioner No.1-Gurpret Kaur and her two co-accused were acquitted by the trial Court vide judgment dated 29.04.2014 passed by the Judicial Magistrate, Ist Class, Jalandhar and proceedings qua petitioners No.2 to 5 are still alive as they were declared as proclaimed offenders. The petitioners who are declared offenders cannot be given the benefit of said acquittal. In **Uma Shankar Gautam Vs. State of Madhya Pradesh 2015(1) R.C.R. (Criminal) 246**, the Hon'ble Supreme Court held that if an accused is acquitted, the co-accused cannot be acquitted on the ground of parity. It has been held in para No. 12 as under:-

12. *"We do not find any substance in the submission of the learned senior counsel appearing for the appellant that since accused nos.5 and 6 have been acquitted; on the ground parity the appellant herein also deserves to be acquitted. It is always open to the Court to differentiate the accused who had been acquitted from those who had been convicted. The power of the courts to distinguish the cases of one or more of the accused from the other(s) is far too well recognized to need reiteration. Still, we may notice the principle as stated in **Gangadhar Behera Vs. State of Orissa (2002) 8 SCC 381**, wherein this Court observed as follows :*

".....Even if a major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of a number of other co-accused persons, his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where chaff can be separated from the grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons."

Therefore, the present petitioners cannot claim acquittal on

the basis of judgment of acquittal in the trial of co-accused in the same complaint case.

The co-accused have suffered trial in accordance with law and earned acquittal, whereas, the petitioners, who are proclaimed offenders cannot be said to be at par with them. In the considered opinion of this Court the conduct of the petitioners in the instant case does not meet the test envisaged in Section 482 Cr.P.C. itself. The power being an extraordinary, ought to be exercised sparingly to prevent abuse of the process of any Court and in order to secure the ends of justice. Keeping in view the conduct of the petitioners and the above case law, this Court feels that no case for exercising its inherent jurisdiction under Section 482 of Cr.P.C. to quash the complaint is made out in favour of the petitioners.

Dismissed.

February 18, 2015

Manoj Bhutani

**(JITENDRA CHAUHAN)
JUDGE**