

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

CRM-M-14946-2015 (O&M)
Date of decision : 05.12.2016

MANPREET SINGH

...Petitioner(s)

Versus

STATE OF PUNJAB AND ANR

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present : Mr. Gursimran Singh, Advocate for the petitioner (s).

Mr. Luvinder Sofat, AAG, Punjab

JITENDRA CHAUHAN, J. (Oral)

This petition has been filed under Section 482 of the Code of Criminal Procedure for quashing of FIR No.102 dated 02.10.2014, registered under Sections 302 and 148 of the Indian Penal Code (for short 'the IPC') read with Section 149 IPC at Police Station Mahilpur, Distt. Hoshiarpur and all consequential proceedings arising therefrom.

It is contended that the petitioner had already moved to England much prior to the registration of the present FIR. Co-accused, who suffered trial stand acquitted by the trial Court vide judgment dated 17.11.2015. The complainant did not support the case of the prosecution and was declared hostile. Though, the factual submission made by learned

counsel for the petitioner is acknowledged and accepted by the learned State counsel, however, this fact remains that after the registration of the FIR petitioner has always evaded the process of law. This Court cannot lose sight of this fact that during the trial, petitioner was declared proclaimed offender after following the proper procedure.

I have heard the learned counsel for the parties and carefully perused the entire record on file.

The only argument of the counsel for the petitioner that the FIR is liable to be quashed since co-accused of the petitioner have been acquitted while the petitioner himself remained proclaimed offender is not tenable in law. The law with regard to quashing of FIR was laid down by Hon'ble the Supreme Court in '**State of Haryana VS. Bhajan Lal and others**', AIR 1992 SC 604 and the following principles were formulated:-

“(a) 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;

(b) 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;

(c) 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;

(d) where the allegations in the FIR 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;

(e) where the allegations made in the FIR 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;

(f) 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;

(g) 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.”

Furthermore, in a Full Bench judgment of Kerala High Court in the case of '**T. Moosa VS. Sub Inspector of Police, Vadakara Police Station, Ernakularm**', 2006(3) RCR (criminal) 221, the following observations with regard to scope of inherent jurisdiction under Section 482 Cr.P.C. were made:-

“(1) The inherent powers of the High Court reserved and recognised under Section 482 of the Code of Criminal Procedure are sweeping and awesome; but such powers can be invoked only-

(a) to give effect to any order passed under the Code of Criminal Procedure or

(b) to prevent abuse of process of any Court or

(c) otherwise to secure the ends of justice.

Such powers may have to be exercised in an appropriate case to render justice even beyond the law.

(ii) Considering the nature, width and amplitude of the powers, it would be unnecessary, inexpedient and imprudent

to prescribe or stipulate any straightjacket formula to identify cases where such powers can or need not be invoked.

(iii) But such powers can be invoked only in exceptional and rare cases and cannot be invoked as a matter of course. Where the Code provides methods and procedures to deal with the given situation, in the absence of exceptional and compelling reasons, invocation of the powers under Section 482 of the Code of Criminal Procedure is not necessary or permissible.

(iv) The fact that an accused can seek discharge/dropping of proceedings/acquittal under the relevant provisions of the Code in the normal course would certainly be a justifiable reason, in the absence of exceptional and compelling reasons, for the High Court not invoking its extraordinary powers under Section 482 Cr.P.C.

(v) In a trial against the co-accused the prosecution is not called upon, nor is it expected to adduce evidence against the absconding co-accused. In such trial the prosecution cannot be held to have the opportunity or obligation to adduce all evidence against the absconding co-accused. The fact that the testimony of a witness was not accepted or acted upon in the trial against the co-accused is no reason to assume that he shall not tender incriminating evidence or that his evidence will not be accepted in such later trial.

(vi) On the basis of materials placed before the High Court in proceedings under Section 482 of the Code of Criminal Procedure (which materials can be placed before the court in appropriate proceedings before the subordinate Courts) such extraordinary inherent powers under Section 482 of the Code of Criminal Procedure cannot normally be invoked, unless such materials are of an unimpeachable nature which can be translated into legal evidence in the course of trial.

(vii) The judgment of acquittal of co-accused in a criminal trial is not admissible under Sections 40 to 43 of the Evidence Act to bar the subsequent trial of the absconding co-accused and cannot, hence, be reckoned as a relevant document while considering the prayer to quash the proceedings under Section 482 Cr.P.C. Such judgments will be admissible only to show as to who were the parties in the earlier proceedings or the factum of acquittal.

(viii) While considering the prayer for invocation of the extraordinary inherent jurisdiction to serve the ends of justice, it is perfectly permissible for the Court to consider the bonafides - the cleanliness of the hands of the seeker. If he is a fugitive from justice having absconded or jumped bail without sufficient reason or having waited for manipulation of hostility of witnesses, such improper conduct would certainly be a justifiable reason for the Court to refuse to invoke its powers under Section 482 of the Code of Criminal Procedure.

(ix) The fact that the co-accused have secured acquittal in the trial against them in the absence of absconding co-accused cannot by itself be reckoned as a relevant circumstance while considering invocation of the powers under Section 482 of the Code of Criminal Procedure.

(x) A judgment not inter parties cannot justify the invocation of the doctrine of issue estoppel under the Indian law at present.

(xi) Conscious of the above general principles, the High court has to consider in each case whether the powers under Section 482 of the Code of Criminal Procedure deserve to be invoked. Judicial wisdom, sagacity, sobriety and circumspection have to be pressed into service to identify that rare and exceptional case where invocation of the extraordinary inherent jurisdiction is warranted to bring about premature termination of proceedings subject of course to the general principles narrated above.”

Reliance is also placed on a judgment passed by this Court in case of '**Kuldip Singh and others VS. State of Punjab**', 2012 SCC Online P&H 15284.

The benefit of judgment passed by the trial Court, whereby the co-accused who have suffered trial and have been acquitted, cannot be granted to the petitioner unless and until he joins the process of investigation.

In the present case, considering the fact that the petitioner was

declared proclaimed offender and has so far succeeded in deliberately avoiding the process of law, this Court feels that no case to invoke the inherent jurisdiction of this Court under Section 482 Cr.P.C. is made out.

The present petition being devoid of any merit is hereby dismissed.

05.12.2016

ashok

**(JITENDRA CHAUHAN)
JUDGE**

Whether speaking/reasoned: Yes / No

Whether reportable: Yes / No