

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

**CRM-M-2778 of 2014
DECIDED ON: MARCH 01, 2016**

MAHANT GURDARSHAN DASS

....PETITIONER

VERSUS

STATE OF PUNJAB

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. P.S. Brar, Advocate
 for the petitioner.

Mr. J.S. Sekhon, AAG, Punjab.

JASPAL SINGH, J

Instant petition has been preferred by Mahant Gurdarshan Dass seeking quashing of FIR No. 41 dated March 26, 2013 under Sections 364, 302, 201 and 120-B IPC registered at Police Station Shahkot, District Jalandhar (Annexure P-1).

2. The facts giving rise to the instant petition are that FIR in question was registered at the instance of Sukhwinder Kaur-complainant with the allegations that his son Manjinder Singh got engaged with Kamaljit Kaur. In the evening of March 13, 2013 when his son Manjinder Singh was present in his house then Kanwaljit Kaur called his son many times and asked him to come to Bara Pind but Manjinder Singh told her that he will come next day. Thereafter, she kept on putting pressure on him to come, his son Manjinder Singh went

there on his motorcycle bearing registration No. PB-67-A-9146 but did not come back. On the very next day i.e. March 14, 2013 Kanwaljit Kaur called her and asked about Manjinder Singh on which she told that neither she received any call from Manjinder Singh nor she know his whereabouts. She further alleged that she is sure that his son Manjinder Singh has been kidnapped by Kanwaljit Kaur and her brother Dapinder Dass @ Lovely son of Gurdarshan Dass in order to kill him. Accordingly, initially the case was registered under Section 364/34 IPC but later on after investigation offences under Sections 302, 201, 120-B and 482 IPC were added and the accused Kamaljit Kaur, Dapinder Dass, Avinash Kumar and Ramu were arrested on May 30, 2013. After completion of investigation and other formalities, report under Section 173(2) Cr.P.C was presented against Kamaljit Kaur, Dapinder Dass, Avinash Kaur and Ramu.

3. After complying with the provisions of Section 207 Cr.P.C, the learned lower Court scrutinized the final report to find that the accused Kamaljit Kaur @ Gurvinder Kaur, Dapinder Dass @ Lovely, Avinash Kaur and Ramu appeared to have committed an offence punishable under Sections 302, 364, 482, 201, 120-B read with Section 34 IPC whereas, the present petitioner was declared proclaimed offender vide order dated September 07, 2014.

4. Since, neither the complainant nor prosecution witnesses i.e. Baldev Singh, Major Singh, Lehmbur Singh and Narayani did not support the case of prosecution and were declared hostile, the co-accused of the petitioner namely Kamaljit Kaur @ Gurvinder Kaur, Dapinder Dass @ Lovely, Avinash Kaur and Ramu were acquitted of the charge vide judgment dated November 11, 2013.

No appeal has been preferred against their acquittal and judgment dated

November 11, 2013 has become final and conclusive.

5. The contention of learned counsel for the petitioner is that the co-accused of the petitioner were admittedly tried and acquitted by learned Additional Sessions Judge, Jalandhar vide judgment dated November 11, 2013 on the ground that there was no *iota* of evidence. The trial of the petitioner would be nothing but an abuse of process of law as well as that of Court, as except Baldev Singh, Major Singh, Lehmbur Singh and Narayani including complainant-Sukhwinder Kaur which have been examined by the prosecution in Sessions trial in which they have been acquitted there is no additional evidence even against the present petitioner. Relying upon the pronouncement of Hon'ble Apex Court delivered in the case of **Madhavrao Jiwaji Rao Scindia and another v. Sambhajirao Chandojirao Angre and others; 1988(1) Recent CR 565** and following observation was made:

“The local position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilised for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction are weak and, therefore, no useful purpose is likely to be served by allowing criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.”

6. This judgment was also relied upon by this Court in the case of **Gurpreet Singh @ Khinder v. State of Punjab; 1995(2) RCR (Criminal) 127.**

In the said case also petitioner was reported to be absconding and was declared proclaimed offender. The co-accused of the petitioner was tried and was acquitted.

7. The instant case is also squarely covered by the guidelines laid down in the above-said judgment(s). In this case also, the co-accused of the petitioner were prosecuted by presentation of report under Section 173(2) Cr.P.C., under Sections 302, 364, 482, 201, 120-B read with 34 IPC but since neither the complainant nor the other prosecution witnesses namely Baldev Singh, Major Singh, Lehmbur Singh and Narayani did not toe the line of prosecution and were declared hostile at the instance of learned Addl. PP, they were acquitted of the charge for want of evidence. Since, except the witnesses who have already been examined qua the co-accused of the petitioner but have not supported the case of prosecution there is no additional evidence and in view of the observation made in the cases referred to above, the trial against petitioner would be nothing but an abuse of process of law.

8. Thus, the present petition is allowed. Consequently, FIR No. 41 dated March 26, 2013 under Sections 364, 302, 201 and 120-B IPC registered at Police Station Shahkot, District Jalandhar (Annexure P-1) as well as subsequent proceedings arising therefrom, are quashed qua petitioner.

MARCH 01, 2016
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(JASPAL SINGH)
JUDGE