

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

**CRM-M No.46218 of 2016 (O&M)
Decided on: 06.10.2017**

Gurpreet Singh Malhi

....Petitioner

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. R.S. Ghuman, Advocate
for the petitioner.

Ms. Rajni Gupta, Sr. DAG, Punjab.

Mr. S.K. Bokolia, Advocate
for respondent No.2.

ARVIND SINGH SANGWAN J.

CRM Nos.32091 and 32092 of 2017

Heard.

Allowed as prayed for.

Annexures P5 to P10 are taken on record subject to just
exceptions.

MAIN CASE

Counsel for the petitioner, at the very outset, submits that
inadvertently due to some typographical mistake Section 452 has been
left out in the prayer clause as well as in the petition and the same may
be added.

Allowed as prayed for.

Section 452 is ordered to be added in the prayer clause as
well as in the petition.

The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') seeking quashing of FIR No.120 dated 22.10.2012 (Annexure P1) registered under Sections 323, 324, 452 148 and 149 of the Indian Penal Code (in short 'IPC') at Police Station Mehna, District Moga and all subsequent proceedings arising therefrom.

Counsel for the petitioner has submitted that a bare perusal of the FIR shows that the petitioner was shown to be empty handed at the time of alleged incident and no injury has been attributed to the petitioner. During the course of investigation, the petitioner along with co-accused – Gurbhej Singh and Amandeep Singh were found to be innocent and were kept in Column No.2. Later on, the petitioner went to USA and in the meantime, the trial Court on an application filed by the prosecution under Section 319 Cr.P.C. summoned the petitioner along with aforesaid co-accused namely Gurbhej Singh and Amandeep Singh. Since, the petitioner was not in India, he was proceeded under Sections 82 and 83 of the Cr.P.C. and was declared as a proclaimed person. It is further submitted by counsel for the petitioner that the petitioner is in advance stage of acquiring his P.R. status and cannot come back to India as he will lose his P.R. status in that eventuality.

Counsel for the petitioner has further submitted that later on, the accused persons including the aforesaid two persons who were summoned as additional accused under Section 319 Cr.P.C, faced the full length trial and vide judgment dated 04.10.2016, they were acquitted. It is further submitted that, thereafter, the complainant party as well as the aforesaid accused persons filed an appeal before the

Court of Sessions Judge at Moga and during the pendency of both the appeals, a compromise was arrived at between the parties and after recording the statement of the complainant party as well as the accused persons, the appeals were withdrawn. The operative part of the order dated 18.07.2017 passed by the Sessions Judge, Moga is reproduced as under:-

“CRA 67/2017

Present: Appellant with Sh. K.K. Mittal, Advocate.

Respondents with Sh. G.S. Hayer, Advocate.

A compromise has been effected between the parties and statements of both the parties have been recorded. The parties shall remain bound by their statements. In view of the statement of the appellant, the present appeal is dismissed as withdrawn. Lower Court record be returned and appeal filed be consigned to the record room.

Dated: 18.07.2017

*(S.K. Garg)
Sessions Judge, Moga”*

Similar order was passed in the connected appeal, which reads as follows:-

“CRA 240/2016

Present: Appellant with Sh. G.S. Hayer, Advocate.

Respondents with Sh. K.K. Mittal, Advocate.

A compromise has been effected between the parties and statements of both the parties have been recorded. The parties shall remain bound by their statements. In view of the statement of the appellant, the present appeal is dismissed as withdrawn. Lower Court record be returned and appeal filed be consigned to the

record room.

Dated: 18.07.2017

*(S.K. Garg)
Sessions Judge, Moga”*

Counsel for the petitioner has submitted that since the matter has already been compromised between the parties, in view of the judgment “**Sudo Mandal @ Diwarak Mandal vs State of Punjab**”, 2011(2) RCR (Criminal) 453, the Hon'ble Division Bench of this Court has held as under:-

“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 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 arm is not so crippled as to betray the 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 recognise 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 will be served even if they are procured and ordered to face the trial in this case.”

Counsel for the petitioner has further relied upon the judgment of this Court **“Harpal Singh @ Soni vs State of Haryana and others”**, 2008(4) RCR (Criminal) 459, wherein this Court in similar circumstances has quashed the FIR. The operative part of the judgment reads as follows:-

“5. Compromise in modern society is the sine qua non of harmony and orderly behaviour. As observed by Krishna Iyer J., the finest hour of justice arrives propitiously when parties despite falling apart, bury the hatchet and weave a sense of fellowship of reunion. Inherent power of the Court under Section 482 Criminal Procedure Code is not limited to matrimonial cases alone. The Court has wide powers to quash the proceedings even

in non-compoundable offences in order to prevent abuse of process of law and to secure ends of justice, notwithstanding bar under Section 320 Criminal Procedure Code Exercise of power in a given situation will depend on facts of each case. The duty of the Court is not only to decide a lis between the parties after a protracted litigation but it is a vital and extra-ordinary instrument to maintain and control social order. Resolution of dispute by way of compromise between two warring groups should be encouraged unless such compromise is abhorrent to lawful composition of society or would promote savagery, as held in Kulwinder Singh's case (supra).

6. Keeping in view the enunciation of law as referred to above and applying the same to the facts and circumstances of the present case where the parties have settled the dispute among themselves and further keeping in view the fact that the other two co-accused in the same FIR with identical allegations have already been acquitted by the trial Court vide judgment dated 10.11.2006, in my opinion, no useful purpose will be served 29.5.2006 registered under Sections 363/366A/376/342/506 and 34 Indian Penal Code at Police Station Taraori, District Karnal and all subsequent proceedings arising therefrom are quashed.”

In view of the above, counsel for the petitioner has submitted that the petitioner who has travelled abroad at the time when the order under Section 319 Cr.P.C. was passed, the proceedings initiated against him for declaring him proclaimed person should be set-aside and the FIR be also quashed.

On the other hand, counsel for the State assisted with counsel for respondent No.2 has opposed the submission made by

counsel for the petitioners only on the ground that the petitioner is a proclaimed offender, so costs be imposed upon him for delaying the proceedings for 04 years.

After hearing counsel for the parties, I find merit in the submissions made by counsel for the petitioner. Since, it is not disputed that both the co-accused namely Gurbhej Singh and Amandeep Singh who were summoned under Section 319 Cr.P.C. along with petitioner and the main accused persons have already been acquitted by the trial Court vide judgment dated 04.10.2016 and thereafter, in the appeals filed by the accused persons as well as the complainant, the matter has been amicably compromised between the parties and both the appeals stand dismissed as withdrawn coupled with the fact that in the FIR, there is no direct allegations against the petitioner, the present petition is allowed and the FIR No.120 dated 22.10.2012 (Annexure P1) registered under Sections 323, 324, 452, 148 and 149 IPC at Police Station Mehna, District Moga and all subsequent proceedings arising therefrom are ordered to be quashed subject to payment of costs of Rs.2,00,000/- (Two lacs rupees) to be deposited on or before 10.11.2017 in the Government Treasury, in a head to be informed by the trial Court. The payment of costs shall be a pre-condition and in default, this order shall stand revived. The trial Court is directed to consign the file to the Record Room, only after the costs have been deposited by the petitioner.

06.10.2017
yakub

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No