

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-5866-2016

Date of Decision: 25.10.2017

Pooja Kumari

...Petitioner

VERSUS

State of Punjab

....Respondent

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present:- Mr. Vijay Lath, Advocate with
Mr. Naveen Sharma and Mr. Vishal Sharma, Advocates
for the Petitioner.

Mr. Hittan Nehra, Addl. A.G., Punjab for the State.

SUDIP AHLUWALIA, J.

In this application, the petitioner has prayed for quashing of FIR No.46 dated 02.04.2004 under Sections 148, 323 & 324 read with Section 149 of the Indian Penal Code, Police Station Sri Hargobindpur, Tehsil Batala, District Gurdaspur (Annexure P-1), as well as the Summoning Order dated 3.8.2012 (Annexure P-2) and the Order dated 10.04.2013 (Annexure P-6) vide which, she has been declared a Proclaimed Offender.

2. Background of the case is that originally, the aforesaid FIR was lodged against 10 accused and after completion of investigation, however, challan was presented against was 7 out of 10 persons while remaining three were kept in Column No.2.

3. Thereafter, the complainant namely Daljit Kaur while deposing as PW1 in the trial Court gave statements about involvement of the same

three female accused persons who had been left out in the challan. Consequently, an application under Section 319 Cr.P.C. was moved and allowed vide order dated 03.08.2012. All the three persons who were lateron, including the present petitioner were summoned as additional accused.

4. Now case of the Petitioner is that her name was not sent up as an accused in the challan and long before the above order was passed by the Trial Court, she had got married to Mr. Raman Datt, a permanent resident of England on 22.8.2011. A copy of her Marriage Card has been placed on record as Annexure P-3. She claims that after such marriage she shifted to England with her husband shortly before the above Summoning Order was passed on 3.8.2012. The relevant entry dated 22.7.2012 on the Petitioner's Passport goes to show that she had reached England on that day which was about 11 days before the aforesaid order was passed. She therefore, had no knowledge of the same and continues to reside in England. In her absence, the subsequent order dated 10.4.2013 was passed.

5. Her further case is that in any event the other two ladies accused who had been ordered to be summoned along with her namely Veena and Neeta were subsequently acquitted by the Trial Court and therefore, she would also be entitled to the same acquittal, as the evidence led against all three of them is identical.

6. This Court has gone through the common order dated 3.8.2012 vide which, the Petitioner along with other two lady accused Veena and Neeta had been summoned u/s 319 Cr.PC, as also the final judgment of the Trial Court whereby those two lady accused were acquitted. Summoning of the three ladies including the petitioner was based on the following

observations of the Trial Court in its order dated 3.8.2012 -

".....That Ram Lal gave injury with sharp edged weapon in her head and she fell unconscious and fell down. Veena, Pooja gave dang blows to her, which hit on her back and shoulder.

Daljit Kaur (complainant), while appearing as PW1 deposed the entire above stated story in verbatim and deposed about specific role played by Veena, Pooja and Neeta.

From the above referred statement, it is clear that PW1 Daljit Kaur has specifically deposed about specific role played by Veena, Pooja and Neeta during occurrence. Thus, this Court is of the view that prima facie there are sufficient grounds to summon Veena, Pooja and Neeta, as an additional accused to face trial, who were earlier kept in column no.2 of challan and it is ordered accordingly."

7. Thereafter, the remaining two accused, namely, Veena and Neeta who had been ordered to be summoned along with the present petitioner were ultimately acquitted by the Ld. Trial Court with the following observations -

".....However, the complainant has failed to prove on record the role attributed by her to Amandeep @ Soni, Jeewan Kumar, Surinder Pal, Veena and Neeta. She has named these accused in very casual manner and has not speak anything that out of these accused, which accused has given which particular injury on her body and to Inderjit Kaur. Even there is no mark of injury on the person of Inderjit Kaur and only complaint regarding pain has been made by her to the doctor concerned. Thus, prosecution failed to prove direct participation of these accused in the incident. Mere deposing about their presence at the spot, does not makes them liable to be criminally prosecuted. It is general tendency to rope away all the family members and near relative at the time of registration of case in order to put pressure on the opposite party."

8. In the given facts and circumstances considering that the Petitioner who was not originally sent up to face prosecution and had

already left for England after marriage before summoning order against her was passed, has been able to justify her absence from the Trial Court proceedings on account of which the subsequent order dated 10.4.2013 declaring her a Proclaimed Offender is unsustainable, particularly considering that in any event the other two ladies summoned along with her have been acquitted on merits.

9. Various Coordinate Benches of this Court have quashed the proceedings in similar circumstances where the trial ended in acquittal of the co-accused persons in the absence of the concerned Petitioner who had been declared a Proclaimed Offender. Attention of this Court in this regard has been drawn to the following decisions -

- i) *Kulwant Singh Vs. State of Punjab and another* 2011 (3) R.C.R. (Criminal) 266,
- ii) *Jasvinder Singh Vs. State of Punjab and another* 2013 (1) R.C.R. (Criminal) 310,
- iii) *Gurwinder Singh @ Mintu Vs. State of Punjab* 2012 (3) R.C.R. (Criminal) 360,
- iv) *Inderjit Singh Vs. State of Punjab and another* 2015(7) R.C.R. (Criminal) 1028.

10. In “***Sudo Mandal @ Diwarak Mandal Vs. State of Punjab***” 2011 (2) R.C.R. (Criminal) 453 a Division Bench of this Court in a some what identical situation had also observed inter-alia -

“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." (Emphasis Added)

11. The ratio of the aforesaid decisions of Coordinate Benches as well as Division Bench are fully applicable to the facts and circumstances of the case, since it is undeniable that not only the evidence on which the
- Positoner was summoned along with two other lady accused, but even the

entire evidence led in the Trial, in which those very two ladies were acquitted, is identical. As such continuation of the proceedings against the present Petitioner would certainly be an abuse of the process of Court.

12. For the aforesaid reasons, the instant application is allowed after setting aside the impugned orders and further proceedings in FIR No.46 dated 02.04.2004 under Sections 148, 323 & 324 read with Section 149 of the Indian Penal Code, Police Station Sri Hargobindpur, Tehsil Batala, District Gurdaspur (Annexure P-1) are ordered to be quashed against the Petitioner.

(Sudip Ahluwalia)
Judge

25.10.2017

AS

Whether speaking/reasoned : ***Yes/No***

Whether Reportable : ***Yes/No***