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

CRM-M-12041-2013

Date of decision: 17.10.2018

1. Maninder Singh

.....Petitioner

Versus

State of Punjab & Another

.....Respondents

CRM-M-13618-2013

2. Amrinder Singh @ Bunty

.....Petitioner

Versus

State of Punjab & Another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Vivek K. Thakur, Advocate
for the petitioner.

Mr. Sidakameet Sandhu, Additional A.G. Punjab
for respondent No. 1.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for quashing of the F.I.R. No. 68 dated 30.06.2009, under Sections 452, 323, 341, 34 I.P.C., registered at Police Station, Kapurthala, as well as the subsequent proceedings including the order dated 16.11.2011 (Annexure P-4), passed by the Chief Judicial Magistrate, Kapurthala, whereby the non-bailable warrants have been issued against the petitioners and later on they were declared proclaimed offender.

2. On 24th July 2018, the following order was passed:

***“Learned counsel for the petitioners submits that after
registration of the FIR, the police, during
investigation, submitted a cancellation report and,***

thereafter, the petitioner travelled abroad since they then are living in Australia. It is further submitted that the trial Court instead of accepting the cancellation report, without passing a reasoned order, summoned the petitioners, vide impugned order. Learned counsel for the petitioners submits that two of the co-accused of the petitioners, namely Kulwant Singh and Dharminder Singh, who faced full length trial before the trial Court, have been acquitted, vide judgment dated 03.08.2015 (Annexure P-5) and the case of the petitioners are on a similar footing as the complainant did not appear in the witness box because he has died during the course of trial. It is further submitted that the petitioners are ready to come back to India and surrender before the trial Court and face the trial.

List again on 24.09.2018.

In the meantime, the petitioners are directed to appear before the trial Court on or before 31.08.2018 and the trial Court will release them on interim bail subject to their furnishing bail/surety bonds to its satisfaction.

However, this will be subject to payment of Rs. 50,000/- each, to be deposited in the Government Treasury under a head to be nominated by the trial Court.”

3. Thereafter, on 24.09.2018, learned counsel for the petitioners had placed on record the order dated 31.08.2018 passed by the trial Court,

deposited the cost of Rs. 50,000/- each in the Government Treasury.

4. The brief facts of the case are that the petitioners along with 2 other co-accused namely Kulwant Singh and Dharminder Singh were named in the aforesaid FIR and later on the report under Section 173 Cr.P.C. was submitted. Thereafter, the police submitted another report under Section 173(8) of the Code of Criminal Procedure praying for cancellation of the FIR, qua the petitioners.

5. The learned counsel for the petitioner submits that at that time, both the petitioners had travelled abroad and since then, they are living in Australia. Learned counsel further submits that on presentation of the supplementary report, the trial Court vide impugned order dated 16.11.2011, held that the supplementary challan submitted against the petitioner praying for cancellation be separated from the report under Section 173 Cr.P.C. submitted against the aforesaid two persons. It was further observed that it is not possible to ascertain until and unless some evidence has come on record, whether the cancellation report is to be accepted or not.

6. The learned counsel for the petitioner submits that thereafter the petitioners were declared proclaimed offenders and in the meantime, the trial Court, vide judgment dated 03.08.2015, Annexure P-5, acquitted two of the co-accused namely Kulwant Singh and Dharminder Singh who faced the full length trial.

7. The operative part of the judgment read as under:-

“9. I have heard the respective contentions of learned APP for the State, learned defence counsel and perused the material on record with their able assistance.

10. The point for determination in this case before the Court is whether on 29.06.2009 at about 11.00/12.00

A.M. In the area of village Bahui, accused Dharminder Singh along with his co-accused having common intention and in furtherance of common intention accused Dharminder Singh voluntarily caused grievous hurt on the person of Jagdish Singh, thereby committing an offence punishable under Section 325/34 of the I.P.C.

AND

11. Whether on the same date, time and place in the furtherance of common intention accused Kulwant Singh voluntarily caused simple hurt on the person of Jagdish Singh, thereby committing an offence punishable under Section 323/34 of the IPC.

AND

Whether on the same date, time and place in furtherance of common intention both accused wrongfully restrained Jagdish Singh complainant, thereby committing an offence punishable u/s 341/34 IPC.

12. PW Jagdish Singh, the complainant could not be cross-examined as he died during the trial. Hence, his evidence can't be read into evidence.

13. PW Dr. Moninder Kaur, Dental Surgeon legally proved the medical report and X-ray as Ex. PW3/A and Ex.PW3/1.

14. PW Retired Inspector Nirmal Singh being Investigating Officer received an intimation that the

complainant Jagdish Singh was admitted at Civil Hospital in an assault towards which he recorded the statement of PW Jagdish Singh as Ex.PW4/A and beneath the said statement, endorsement Ex.PW4/B were got prepared on which FIR Ex.PW4/C was got registered against the accused. He also proved the rough site plan of the place of occurrence as Ex.PW4/D. He also arrested accused vide memo Ex.PW4/E, Ex.PW4/F and Ex.PW4/G attested by HC Gian Singh.

15. PW Dr. Guriqbal Singh proved the MLR and pictorial diagram of injured Jagdish Singh as Ex.PW6/A and Ex.PW/B along-with injury report towards injury No. 3 declared as grievous as Ex.PW6/C.

16. PW Kuldeep Singh, the eye witness deposed that there was scuffle between Kulwant Singh and Jagdish Singh and in the said scuffle Jagdish Singh fell down and sustained injuries on his face.

17. PW Gurbachan Kaur, the another eye witness deposed against accused they they assaulted Jagdish Singh with deadly weapon and in the said attack Jagdish Singh sustained multiple injuries.

18. Pws Ashwani Kumar Ajit Singh and Lakhwinder Kaur being eye witnesses have turned hostile during the trial and did not support the prosecution version in any manner.

19. The complainant in the present case could not be cross-examined as he during during the course of trial.

20. The only witness on whose testimony the prosecution has tried to rest its case is the testimony of PW Gurbachan Kaur, who is wife of complainant and she has been summoned u/s 311 Cr.P.C. She has contended that she has witnessed the alleged occurrence. The most important contradiction which has altogether away entire prosecution version came out in the cross-examination of which PW Gurbachan Kaur, who has stated very specifically in her cross-examination that no body was injured on the day of alleged occurrence and she has further stated that on “next day of occurrence” Jagdish Singh was injured. This omission on the part of prosecution has not been answered beyond all realms of doubt that could have enabled the Court to attach any importance to the version of the complainant. This contradiction in the version of PW Gurbachan Kaur has made the prosecution version altogether unbelievable. The motive behind the alleged occurrence in the present case is that accused wanted to teach a lesson to complainant for throwing stones/bricks. But this alleged motive in causing injuries to complainant has no where been touched by the prosecution witness. The motive behind the alleged occurrence remained unproved. The complainant was the best person who could have proved the offence alleged against the accused as the injuries inflicted to complainant could have been best proved by

the complainant himself and the other eye witnesses of the said occurrence have turned hostile and could not play any effective role in proving the prosecution version.

21. Hence, for the aforesaid reasons, the charge framed against the accused has not been successfully proved by the prosecution. As such, I acquit both the accused namely Kulwant singh and Dharminder Singh on the charge framed against them. Case property, if any be dealt with under the rules after expiry of period of the appeal/revision. File be consigned to the Judicial Record Room and be put up as and when accused Amrinder Singh and Maninder Singh appear in the Court or are arrested by the police and produced in the Court.”

8. Counsel for the petitioner further submits that since the complainant has expired and the two the co-accused have been acquitted, no purpose will be served in directing the petitioner to face the trial as no fresh evidence will come on record to prove the guilt of the petitioner, even otherwise, as per the inquiry report dated 19.10.2010 (Annexure P-2), it has been concluded that the petitioners are found innocent.

The operative para of the report read as under:

“ On having come to know about departure of accused Maninder Singh to Abroad, proclaimed offender proceeding was initiated against him and challan of remaining accused i.e. Kulwant Singh, Amrinder Singh and Dharminder Singh was prepared and produced in

the court on 28.07.2010. Kulwant Singh son of Gian Singh resident of Sheikhpur, accused of instant case, while disagreeing to the enquiry report of Sh. Bahadur Singh D.S.P. Sub Division, submitted an application before the S.S.P. for re-conducting enquiry, on which the S.S.P. again marked the enquiry to D.S.P. Sub-Division Kapurthala. The enquiry was conducted by Sh. Kulwant Singh Heer, D.S.P. Out of the accused entered in the case, Maninder Singh alias Jaggu son of Kulwant Singh, Kulwant Singh son of Gian Singh and Amrinder Singh son of Gurmit Singh residents of Sheikhpur, Police Station City, Kapurthala are declared innocent, which report is approved by the S.S.P. Kapurthala. The enquiry report has arrived at the S.H.O., Police Station Kotwali, Kapurthala, for conducting appropriate action. According to the report, supplementary challan U/s 173 Cr.P.C. As per column No. 8 and is being submitted for sake of trial. Trial proceeding may be conducted on the basis of witnesses, as mentioned in column No. 2 may be discharged.”

9. Learned counsel further submitted that once the police has submitted a report for cancellation by way of presenting a supplementary challan under Section 173(8) of Cr.P.C., on the basis of the aforesaid enquiry report, there was no occasion for the trial Court to pass the impugned order dated 16.11.2011 that till the evidence is led, report cannot be accepted.

10. It is further submitted that since the co-accused against whom the challan were presented, have been acquitted, therefore, there is no

evidence against the petitioner.

11. Learned State counsel on the basis of affidavit filed by D.S.P. Sub-Division, Kapurthala has opposed the petition.

12. In the reply filed by respondent No. 2, Jagdish Singh, it is submitted that on 19.11.2013, the challan stands presented against the other 2 co-accused and the enquiry was not conducted properly.

13. Having heard counsels for the parties, I find merit in the present petition.

14. It is not disputed that as per the enquiry report dated 09.10.2010, petitioners were found innocent and on the basis of the same, the supplementary challan under Section 173(8) of Cr.P.C. was presented, praying for cancellation of FIR against the present petitioner which was deferred by the trial Court awaiting the outcome of the trial in which challan was presented against the two co-accused by passing the impugned order dated 16.11.2011

15. It is also not disputed that the aforesaid two co-accused after having faced the full length trial stands acquitted vide judgment dated 03.08.2015 and, therefore, no purpose will be served in directing the petitioners to face trial as no fresh evidence can come on record, especially in view of the fact that the complainant has died. In view of the judgment of Hon'ble Division Bench of this Court in ***"Sudo Mandal @ Diwarak Mandal Vs. State of Punjab"*** 2011(2) R.C.R. (Criminal) 453, it is held that no purpose will be served by directing an accused who was a P.O., to face the trial on the same allegations, when the other co-accused stand acquitted.

16. In view of the same, the present petition is allowed. The impugned order dated 16.11.2011 is set aside. The F.I.R. No. 68 dated

CRM-M-12041-2013 and connected case

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30.06.2009, under Sections 452, 323, 341, 34 I.P.C. registered at Police Station, Kapurthala, and all consequential proceedings are hereby quashed.

Ordered accordingly.

October 17, 2018

Ajay Goswami

(ARVIND SINGH SANGWAN)

JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No