

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-18981-2018 (O&M)

Date of decision: 06.08.2018

Jasvir Singh Shahi

....Petitioner

Versus

U.T. Chandigarh

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. G.S. Bedi, Advocate
for the petitioner.

Mr. Yashwant Singh Rathore, Addl. PP, U.T. Chandigarh.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for quashing of FIR No.182 dated 28.06.2004 under Sections 364, 365, 323, 383, 506, 120-B IPC, registered at Police Station Sector-11, Chandigarh and the subsequent proceedings arising therefrom as well as the order dated 26.02.2018 (Annexure P-6), vide which the Additional Sessions Judge, Chandigarh has directed the police to submit the supplementary challan against the petitioner.

On 04.05.2018, following order was passed: -

“Learned counsel for the petitioner submits that the FIR was registered at the instance of Dr. Deepak Singla with the allegation that six other co-accused, namely, Tarsem Singh, Gurdev Singh, Sukhdev Singh, Lakhwinder Singh, Arwinder

Singh and Harjinder Singh, have kidnapped one Lekh Raj. It has come in investigation that later on, Lekh Raj stated before the police that to pressurize the wife of the petitioner to withdraw some pending litigation in USA, he was kidnapped at the instance of petitioner.

Learned counsel for the petitioner further submits that at one point of time, the petitioner was declared a proclaimed offender as he was residing in USA and thereafter, he had filed CRM-M-36145 of 2017 in which, a direction was issued to the petitioner on 28.09.2017 to appear before the trial Court and the trial Court was directed to release the petitioner on interim bail on furnishing bail/surety bonds and on payment of cost of Rs.2 lacs to be deposited in the Government Treasury.

Learned counsel for the petitioner also submits that in pursuance thereof, the petitioner has already appeared before the trial Court and has been released on bail and is facing the trial and he has also deposited the cost of Rs.2 lacs in the Government Treasury.

Learned counsel for the petitioner has further submitted that co-accused of the petitioner, namely, Tarsem Singh and others, faced the full length trial and vide judgment dated 31.01.2018 (Annexure P-2) passed by the Additional Sessions Judge, Chandigarh, they were acquitted of the charges as the prosecution has failed to prove the case. Counsel for the

petitioner has drawn attention Para No.6 of this judgment, which reads as under:-

“In order to prove its case the prosecution examines as many as eight witnesses including the complainant, Deepak Kumar, victim Lekh Raj and his wife Inderjit Kaur, who all failed to support the case of the prosecution as far as the identity of the accused persons as the assailants, who had abducted the Lekh Raj. After that in view of the hostile testimony of material witnesses learned PP closed the evidence of prosecution after giving up all the remaining witnesses of the prosecution.”

*Counsel for the petitioner has also submitted that victim-Lekh Raj has since died and even in the earlier trial, he was declared a hostile witness along with other material prosecution witnesses, therefore, no purpose would be served for the petitioner to face the trial as no new evidence is to be brought on record and therefore, the impugned order dated 26.02.2018, directing the police to submit a supplementary challan will be a futile exercise. He further relied upon the Division Bench Judgment of **Sudo Mandal @ Diwarak Mandal Vs. State of Punjab, 2011(2) R.C.R. (CrI.) 453**, wherein this Court has held that in order to secure the ends of justice where the co-accused have already been acquitted by*

the Court, the proceeding against the absconding accused can be quashed as no useful purpose will be served, even if such accused is directed to face the trial.

Notice of motion for 06.08.2018.

Till the next date of hearing, operation of the impugned order dated 26.02.2018 (Annexure P-6) as well as further proceedings before the trial Court shall remain stayed.”

Learned counsel for the petitioner submits that a perusal of the FIR otherwise shows that there is no allegation against the petitioner that he was either present at the spot or had participated in any manner in the act of abduction of Lekh Raj. It is further submitted that as per statement of complainant Deepak Singla, his neighbour Lekh Raj was kidnapped by four unknown persons, identity of whom was not proved. Counsel for the petitioner further submits that the petitioner is involved in the present case on account of a matrimonial litigation with his wife Kiran Kaur, sister-in-law of victim, as he is husband of sister of Kiran Kaur.

Learned counsel for the petitioner has further submitted that the petitioner is a permanent resident of USA and the case was registered at his back and therefore, he was wrongly declared a proclaimed offender during the course of trial, as he was not served with the proclamation as per the procedure prescribed under Section 105-B Cr.P.C., therefore, the order declaring him a proclaimed offender was set aside vide order dated 28.09.2017, after the petitioner deposited the costs of Rs.2.00 lacs in the Govt. Treasury.

Learned counsel for the petitioner thus prayed for quashing of the impugned FIR and the subsequent proceedings in pursuance thereof, relying upon a Division Bench judgment of this Court in **Sudo Mandal @ Diwarak Mandal Vs. State of Punjab, 2011 (2) RCR (Crl.) 453.**

The operative part of the judgment of this Court in **Sudo Mandal @ Diwarak Mandal**'s case (supra) is reproduced as under: -

“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 effacing 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 recognize 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 1st 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.

Learned counsel for the petitioner has further argued that the order dated 26.02.2018 passed by the Additional Sessions Judge remanding the case back and issuing a direction to file the supplementary challan under Section 364 IPC is otherwise illegal as it is provided in Section 193 Cr.P.C. that the Sessions Court will take cognizance only after commitment of a case to the Court of Sessions and as such, the impugned order issuing a direction to this effect is illegal.

In reply, learned counsel for U.T. Chandigarh has not disputed

the factual position. It is also not disputed that the petitioner has paid the costs of Rs.2.00 lacs, which is deposited in the Govt. Treasury and the order dated 05.02.2005, declaring the petitioner a proclaimed offender, was set aside vide order dated 14.12.2017 passed in CRM-M-36145-2017. Learned counsel for U.T. Chandigarh has however submitted that the petitioner can raise all the pleas during the course of trial.

After hearing learned counsel for the parties, I find merit in the present petition.

In the judgment dated 31.01.2008 passed by the Additional Sessions Judge, Chandigarh, vide which 07 co-accused of the petitioner were acquitted, a categorical finding has been recorded that complainant Deepak Singla, victim Lekh Raj and his wife Inderjeet Kaur have failed to support the prosecution case and therefore, identity of the accused persons as assailants, who abducted Lekh Raj, is not proved. Even in case, the petitioner is directed to face the trial, no fresh evidence can come on record. The position would have been different in case the prosecution witnesses have supported the case or co-accused were convicted.

Learned counsel for U.T. Chandigarh could not dispute the fact that Lekh Raj is brother-in-law of the estranged wife of the petitioner and therefore, there was every possibility of involving the petitioner in a false case, he being an NRI.

In view of Division Bench judgment of this Court in **Sudo Mandal @ Diwarak Mandal's** case (supra), I find that no purpose will be served if the petitioner is directed to face the trial, as a categorical finding has

already been recorded by the Court that the complainant and the victim were declared hostile in the earlier trial and have failed to support the prosecution version and therefore, even in the event of directing the petitioner to face the fresh trial, the prosecution cannot lead any evidence, contrary to the evidence, which has already come on record.

In view of the above, present petition is allowed. FIR No.182 dated 28.06.2004 under Sections 364, 365, 323, 383, 506, 120-B IPC, registered at Police Station Sector-11, Chandigarh and the subsequent proceedings arising therefrom as well as the order dated 26.02.2018 (Annexure P-6) passed by the Additional Sessions Judge, Chandigarh, are quashed.

[ARVIND SINGH SANGWAN]
JUDGE

06.08.2018
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No