

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

**CRM-1442-2017 in/and
CRM-M-20710-2016 (O&M)
Date of decision: - 23.01.2018**

Jashandeep Singh @ Jossan

....Petitioner

Versus

State of Punjab

..Respondent

CORAM : HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU

Present: Mr. J.S. Gill, Advocate,
for the petitioner.

Mr. Harbir Sandhu, AAG, Punjab.

MAHABIR SINGH SINDHU, J. (ORAL)

Present petition has been filed for setting aside of impugned order dated 29.07.2015 (Annexure P-6), passed by learned Addl. Chief Judicial Magistrate, Sri Muktsar Sahib, vide which the present petitioner has been summoned to face the trial on the basis of an application filed under Section 190 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'). Further challenge is to the order dated 06.06.2016 (Annexure P-11) whereby the petitioner stands declared as proclaimed offender.

It is contended that neither the petitioner was present at the time of the occurrence; nor he had played any role in the matter. It is further contended that report under Section 173 Cr.P.C. was submitted

against the other accused in the year 2012 and the petitioner was placed in Column No.2, but without recording of any evidence or any material on record, the petitioner has wrongly been summoned by the learned trial Court to face the trial under Sections 326, 324, 506, 148 and 149 IPC vide impugned order dated 29.07.2015 and thereafter declared Proclaimed Offender despite the fact that he was pursuing his studies in Canada.

On the other hand, learned State counsel has opposed the contentions vehemently and submitted that impugned order is perfectly valid.

Heard both sides and perused the paper book.

There is no dispute that during investigation the petitioner was found innocent and even the same has been admitted by the complainant before this Court in their affidavit dated 12.02.2016 in paragraph No.3 and which reads as under: -

“That later on, during the further investigation of the above referred FIR, ASI Pritam Singh, Investigating Officer alongwith the accompanying officials of police, after taking Gurwinder Singh, spot witness along conducted the spot inspection of the place of occurrence and prepared visual site plan and made inquiries from the persons present at the spot. During investigation, ASI Pritam Singh declared the petitioner to be innocent, who was not found to be present at the spot. Later on SI Jasbir Snigh, SHO P.S. City Sri Muktsar Sahib also agreed with the investigation of ASI Pritam Singh

and declared Jashandeep Singh petitioner as innocent. Later on the complainant Yadwinder Singh also made statement before the DSP Sub-Division, Sri Muktsar Sahib and got declared the petitioner as innocent. DSP Sub-Division, Sri Muktsar Sahib also declared Jashandeep Singh petitioner as innocent in his verification.”

Perusal of the para No.3 reproduced here-in-above apparently makes it clear that during investigation ASI Pritam Singh has declared the petitioner innocent as he was not found at the spot and SI Jasbir Singh, SHO P.S. City Sri Muktsar Sahib, also agreed with the investigation of ASI Pritam Singh and declared Jashandeep Singh as innocent. Later on, complainant Yadwinder Singh also made a statement before the DSP, Sub-Division, Sri Muktsar Sahib and got declared the petitioner as innocent. Consequently, he had been declared innocent by all the above police officials/officers.

Even learned trial Court accepted the report under Section 173 Cr.P.C. vide order dated 2.11.2012 (P-4) and observed as under:-

“Whereas accused Jashandeep Singh @ Jashan has been placed in Column No.2 and is innocent.”

Thereafter the petitioner shifted to Canada for higher studies and since then he is pursuing his studies there. Subsequently, after more than two and half years, application under Section 190 Cr.P.C. was filed by the prosecution on 13.7.2015 and paras 2 & 3 of which read as under:-

“2. That in this accused Hardeep Singh and Soni Aulakh

have been declared PO whereas accused Jashandeep Singh @ Jossan have been kept under column No.2 in the challan.

3. *That sufficient evidence is on record against the above named Jashandeep Singh @ Jossan but he has been kept in column No.2.”*

A perusal of paras 2 & 3 reveal that there is neither any specific allegation nor any material disclosed in the application against the petitioner, but despite that learned trial Court summoned the petitioner while passing the impugned order dated 29.7.2015 as well as subsequent order dated 28.4.2016 declaring the petitioner as proclaimed offender.

A perusal of the impugned order reveals that there is no material on record to summon the petitioner and that the impugned order is the result of non-application of mind, as Yadvinder Singh, complainant had already exonerated the petitioner. The petitioner has been summoned only on the ground that statement of complainant Yadvinder Singh under Section 161 Cr.P.C. is supported by the statement of Balkaran Singh son of Azad Singh and Gurwinder Singh @ Ladi son of Jaswinder Singh; but, as discussed above, complainant Yadvinder Singh himself had declared the petitioner as innocent.

Despite the fact that there was neither any evidence; nor other material available on record, the learned trial Magistrate has summoned the petitioner to face the trial under Sections 326, 324, 506, 148 and 149 IPC vide impugned order dated 29.07.2015 (Annexure P-1) on the basis of an application under Section 190 Cr.P.C. in routine who

was earlier declared innocent and pursuing his study in Canada.

Consequently, the present petition is allowed and impugned order dated 29.07.2015 (Annexure P-6) as well as order dated 06.06.2016 (Annexure P-11) are hereby set aside.

Needless to say that if there is sufficient material available against the petitioner during trial at appropriate stage(s), the present order may not be treated as an absolute bar for proceeding against him.

January 23, 2018
naresh.k

**(MAHABIR SINGH SINDHU)
JUDGE**

Whether reportable?	Yes
Whether reasoned/speaking?	Yes