

Sr. No.256

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

**CRM-30418-2018 in/and
CRM-M-30278-2018(O&M)
Date of decision:31.08.2018**

Sandip Kaur

.....Petitioner

versus

State of Punjab

.....Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Ravinder Singh Bains, Advocate
for the petitioner.

Mr. K.S.Aulakh, DAG, Punjab.

Rajbir Sehrawat, J(Oral)

This petition under Section 482 of the Code of Criminal Procedure has been filed for quashing of FIR No.139 dated 19.08.2008 registered under Sections 420/465/467/471/120-B of the Indian Penal Code (for short 'the IPC'), at Police Station Noormahal, District Jalandhar and the Order dated 03.07.2009(Annexure P-5); vide which the petitioner was declared as proclaimed offender, and all the consequential proceedings arising therefrom.

Before proceeding further it deserves to be noted that vide interim Order dated 19.07.2018, the interim protection was granted to the petitioner and the petitioner was directed to appear before the Trial Court on 10.08.2018. Learned counsel for the petitioner has pointed out that the petitioner has duly appeared before the Trial Court on 26.07.2018 and has been released on bail. This fact is not denied even by the learned State

counsel, being instructed by ASI, Dinesh Kumar.

The present FIR was registered on the statement of Gurdev Singh on the allegation that the dates of birth of the present petitioner, as given in birth certificate and as given in the passport of the petitioner were different. Therefore, the prayer was made that the passport of the petitioner be got cancelled so that she could not go abroad. On these allegations the petitioner and her adoptive father and mother were arrayed as an accused. However, in the mean time, the petitioner had already gone abroad even before presentation of challan before the Court. Resultantly, the Court passed the Order against the petitioner declaring her as a proclaimed person and the trial was conducted against the adoptive parents of the petitioner.

Another fact involved in the case is that after trial, the adoptive parents of the petitioner were acquitted of the charge on the ground that no evidence has been lead by the complainant to establish the offences alleged by him. It was held that the best evidence qua the Date of Birth of the petitioner could have been the natural parents of the petitioner. However, even those were not produced as witness before the Trial Court. Besides this no other evidence was lead to prove that the accused has committed any offence. More over, as per the record, the petitioner was of the age of 16 years and 03 months on the date of FIR. So by any means, she was not major.

Learned counsel for the petitioner has submitted that in fact this case was got lodged by the above said Gurdev Singh with oblique motive. In fact the marriage of the present petitioner was fixed with the son of the complainant earlier. However, that marriage could not materialise. Having

come to know that this marriage is not going to happen, just one day before the date fixed for marriage, the present FIR was got lodged.

It is contended by learned counsel that in any case, the petitioner was minor, even on the date of FIR, much less to speak of the date when the alleged date is stated to have been wrongly given. Therefore, all the documents and verifications qua the Date of Birth were signed by the adoptive parents of the petitioner. Hence no offence is made out against the petitioner. It is further contended that otherwise also there is no question of Section 420, or for that matter Section 465,467,471 IPC being made out against the petitioner. Neither has anybody been cheated in this case nor has any document been created by the petitioner as such.

On the other hand, learned State counsel submits that the petitioner has not appeared before the Trial Court. The challan has been filed against the petitioner. Therefore, she can face the trial; like the other accused. It is contended by learned counsel that the process of the trial should not be cut short.

However, it is not denied by learned State counsel that evidence sought to be adduced and relied upon against the petitioner is the same as was relied upon against the co-accused. No new evidence is claimed to have been collected by the prosecution qua any specific allegation against the present petitioner.

Having heard the learned counsel for the parties, this Court is of the considered opinion that the trial can not be permitted to go on for the sake of continuation of the trial only. It has come on record that on the basis of the same evidence, the co-accused of the petitioner, the adoptive parents of the petitioner, have already been acquitted by the Court after full

fladged trial. It is recorded by the Trial Court in the judgment of acquittal of the co-accused, that the prosecution have failed to produce any evidence to prove the offences against the accused. Since, admittedly, the evidence sought to be relied upon against the present petitioner, is also the same, therefore, the Trial Court can not be made to under go same process again, simply because the prosecution so desire, or even in a hope of any possible different appreciation for the same evidence by the Trial court. Hence it would not be appropriate to continue the prosecution against the present petitioner.

There is another aspect of the matter, as stated above, that the petitioner was minor even at the time when the FIR was got lodged. She has not created, for the first time, any document showing date of birth of the petitioner, which was used in obtaining the passport. The date mentioned in the passport is the same date as is recorded in the school records. In any case, the date of birth in the school records was not got entered by the petitioner, she being only a little child. There is no allegation against the school authorities that they are involved in fabrication of school records. Therefore, simply because the date of birth, as reflected in the school records of the petitioner, is used by her in getting passport, she can not be made liable for fraud or for creation of documents or for using the date of birth; which already exists in the public records.

So far as the order declaring the petitioner as proclaimed person is concerned, as admitted even by the learned State counsel, the petitioner has already appeared before the Trial Court pursuant to the Order passed by this Court. Therefore, the Order declaring the petitioner as proclaimed person has lost its significance. However, by way of abundant caution it is

also ordered that the order declaring the petitioner to be a proclaimed person is hereby quashed.

In view of the above, findings sufficient merits in the petition, the same is allowed. FIR No.139 dated 19.08.2008 registered under Sections 420/465/467/471/120-B of the Indian Penal Code at Police Station Noormahal, District Jalandhar and the Order dated 03.07.2009(Annexure P-5); vide which the petitioner was declared as proclaimed person; and all consequential proceedings arising therefrom, are hereby quashed.

31st August, 2018

Shivani Kaushik

**[RAJBIR SEHRAWAT]
JUDGE**

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*