

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

**CRM-M-3019-2019**  
**Date of decision: 28.02.2019**

**Ashok Kumar @ Sabbi**

**...Petitioner**

**Versus**

**State of Punjab and others**

**...Respondents**

**CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN**

Present:- Mr. Jasraj Singh, Advocate  
for the petitioner.

Mr. M. S. Nagra, AAG, Punjab.

Mr. Abhishek Sharma, Advocate  
for respondent Nos. 2 and 3.

**ARVIND SINGH SANGWAN, J. (Oral)**

Prayer in this petition is for quashing of the FIR No. 158 dated 13.09.2006, registered under Sections 307, 326, 452, 324, 323, 148 and 149 of the IPC at Police Station Mahilpur, District Hoshiarpur as well as the order dated 23.01.2008, vide which, the petitioner was declared a proclaimed offender (Annexure P-3), in view of the fact that co-accused of the petitioner were acquitted by the trial Court vide judgment dated 22.03.2010 and the petitioner has even effected compromise with the complainant/inured victims.

Brief facts of the case are that complainant Raj Mohammad along with his brother Peer Mohammad was running a shop in the village Kalewal Bhagtan and on 13.09.2006, at about 3/3.15 PM, both brother were sitting inside their shop. Ashok Kumar @ Sabbi (petitioner herein), armed

with Kirpan, along with his companions, who were also armed with Kirpan and hocky entered into their shop forcibly. Petitioner/accused raised lalkara that both the brothers be finished and they be taught a lesson for watching their house. Thereafter, accused/petitioner gave a Kirpan blow to Peer Mohammad which hit his right hand and his companion also gave Kirpan blow to Peer Mohammad which hit his left hand. Then, accused/petitioner gave a Kirpan blow to Raj Mohammad which hit his right hand and his companion also gave Kirpan blow to Raj Mohammad which hit his left hand. Thereafter, complainant and his brother raised hue and cry and people gathered there and the occurrence was witnessed by Balwinder Kumar and Mintu. Thereafter, accused/petitioner and his companions ran away from the spot on their motorcycles along with their respective vehicle. It is on this background that the present FIR was registered.

Learned counsel for the petitioner submits that the petitioner was granted regular bail, however, he got opportunity to work abroad and travelled to Greece without taking prior permission of the Court and, therefore, he was declared a proclaimed offender, vide order dated 23.01.2008.

Learned counsel for the petitioner further submits that other co-accused, who faced full length trial, were acquitted by the trial Court as complainant Raj Mohammad and his brother/injured Peer Mohammad did not support the prosecution version and they were declared hostile. The operative part of the judgment reads as under:

**“7. Complainant Raj Mohammad was examined as PW-4, his brother Peer Mohammad was examined as PW-5 and Balwinder Kumar eye witness was examined as PW-6 to prove the ocular version of the**

occurrence. However, they did not support the prosecution case regarding identity of the accused and were thus got declared hostile. Thereafter, prosecution closed its evidence as no purpose was going to be served by examining official witnesses.

8. Examination of the accused under Section 313 Cr.P.C. was dispensed with as there was no incriminating evidence on the file to be put to the accused.

9. I have heard Sh. T. S. Grewal, learned APP for the State, learned defence counsel Shri Naveen Jerath, Advocate and have carefully and minutely gone through the judicial file.

10. Complainant Raj Mohammad, his brother Peer Mohammad and Balwinder Kumar alleged eye witness did not support the prosecution case regarding the identity of the accused. Both Raj Mohammad and Peer Mohammad stated that some un-identified persons came on three motorcycles and started giving injuries to them. The accused present in the Court were not those assailants, who came inside their shop and caused them injuries. Balwinder Kumar denied to have seen the occurrence. Rather, he stated that he heard that some un-identified persons caused injuries to Peer Mohammad and his brother Raj Mohammad. He further stated that accused present in the Court were not those persons, who had parked their motorcycles in front of shop of Peer Mohammad.

11. As aforesaid witnesses did not support the prosecution version regarding identity of the accused, they were got declared hostile and were subjected to lengthy cross-examination, but Additional Public Prosecutor failed to get anything from their mouth to link the accused with the commission of crime. There is no other evidence on the file to prove the fact that accused were the persons who gave injuries on the person of Raj Mohammad and Peer Mohammad. In such circumstances, when Raj Mohammad as well as Peer Mohammad have specifically stated that the accused were not the assailants, who gave injuries to them, I have no other option but to acquit them. Accordingly, accused stands acquitted from the charges framed against them. Their bail bonds and surety bonds stand discharged. File be consigned to the record room.

Pronounced in open Court.

Dated 22.03.2010

(Manju Rana)  
Additional Sessions Judge,  
Hoshiarpur.”

Learned counsel for the petitioner has further submitted that thereafter, the petitioner has returned back to India and has compromised with the complainant/injured and is relying upon the affidavits of Raj Mohammad and Peer Mohammad (Annexure P-4 *Colly*).

In view of the above facts and circumstances, on 24.01.2019, the petitioner was directed to deposit a sum of ₹2 Lakh in the Govt. Treasury under a head to be nominated by the Illaqua Magistrate within a period of one month from today and produce the receipt of the same before this Court.

In pursuance to the aforesaid direction, learned counsel has placed on record a challan receipt dated 16.02.2019, vide which, the petitioner has deposited the cost of ₹2 Lakh with the trial Court. The receipt is taken on record as Annexure X.

Notice of motion.

Mr. M. S. Nagra, AAG, Punjab and Mr. Abhishek Sharma, who are present in Court, accept notice on behalf of the respondent No. 1-State and respondent Nos. 2 and 3, respectively.

Learned counsel for respondent Nos. 2 and 3/complainant/injured has acknowledged that there is compromise between the parties and has produced the original affidavits of complainant Raj Mohammad and injured Peer Mohammad, which are taken on record as Annexures Y and Z.

Learned State counsel, on instructions from ASI Chhatwinder Singh, has no serious objection to the prayer of the petitioner in view of the

fact that the matter stands compromised between the parties.

I have heard learned counsel for the parties and have also gone through the judgment dated 22.03.2010 as well as the affidavits of the complainant/injured.

A Division Bench of this Court in ***Sudo Mandal @ Diwarak Mandal Vs. State of Punjab, 2011 (2) RCR (Crl.) 453***, has held that even if an accused has been declared a proclaimed offender and the other accused, who faced full length trial, have been acquitted of the charge, the FIR can be quashed against the accused who has not faced trial if the prosecution witnesses have not supported the case.

Admittedly, Additional Sessions Judge, vide judgment dated 22.03.2010, by holding that there is no evidence on record to prove the guilt of the accused, has acquitted other four co-accused as the complainant/injured/victim have not supported the prosecution version and failed to identify any of the accused and have rather stated that some unidentified persons have caused injuries to them.

The aforesaid Raj Mohammad and Peer Mohammad (complainant/injured) have entered into compromise with the petitioner and have given their affidavits to the effect that petitioner never participated in the occurrence nor he has caused any injury to both of them and they have no objection, if the FIR is quashed qua the petitioner.

In view of above, considering the above facts and circumstances, if the prosecution of the petitioner is allowed, it will be a futile exercise. Needless to say that petitioner has already deposited the cost of ₹2 Lakh for delaying the proceedings.

Accordingly, in the light of the judgment rendered in ***Sudo Mandal @ Diwarak Mandal's case (supra)***, this petition is allowed and FIR No. 158 dated 13.09.2006, registered under Sections 307, 326, 452, 324, 323, 148 and 149 of the IPC at Police Station Mahilpur, District Hoshiarpur as well as the order dated 23.01.2008, vide which, the petitioner was declared a proclaimed offender (Annexure P-3), are quashed qua the petitioner herein.

**February 28, 2019**

*Waseem Ansari*

**(ARVIND SINGH SANGWAN)  
JUDGE**

*Whether speaking/reasoned*

*Yes/No*

*Whether reportable*

*Yes/No*