

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

CRM-M-9864-2019
Date of decision: 21.11.2019

Harminster Singh @ Harjas Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Rakesh Kumar, Advocate
for the petitioner.

Mr. Jagmohan Ghuman, DAG, Punjab.

None for respondent No. 2.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for quashing of the FIR No. 131 dated 03.08.2007 (Annexure P-1), registered under Sections 420, 467, 468, 470, 471 and 120-B of the IPC at Police Station City Nawanshahar, District Nawanshahar (S.B.S. Nagar) along with all the subsequent proceedings arising therefrom including order dated 31.05.2008 (Annexure P-2), whereby the petitioner was declared a proclaimed offender.

Brief facts of the case are that the petitioner was working as a Computer Operator in Suvidha Centre in the office of Deputy Commissioner, Nawanshahar and thereafter, he shifted to USA for earning his livelihood. On the basis of the statement of complainant B. S. Rawat, the then Member of Parliament, Lok Sabha, the aforesaid FIR was registered against Manjit Singh, Shiv Kumar and the petitioner with the allegations that they were making illegal demand of money and were doing illegal

activities.

Learned counsel for the petitioner has submitted that the allegations were levelled primarily against co-accused Shiv Kumar and Manjit Singh, who were working as Constables in Punjab Police. The said accused persons faced full length trial and they were acquitted of the charge, vide judgment dated 22.11.2012, passed by the Additional Chief Judicial Magistrate, S.B.S. Nagar. The operative part of the order reads as under:

“19. If the evidence produced by the prosecution is seen, the same can not be relied upon as the complainant himself states that he has not written any letter and the police has conducted the investigation for the sake of investigation.

20. In this context, if the statement of SI Ranjit Singh (PW1) is seen, he in his cross-examination has stated that he has not seen the original passport in the Court. It would be known to the Investing Officer. Further if the statement of SI Bhag Singh (PW2) is seen, he in his cross-examination has admitted that he has not recorded the statement of the complainant in the present case.

21. Further if the cross examination of Jarnail Singh (PW4) is seen, he has stated in his cross-examination that he does not know in which document his signatures were obtained. He has not suffered any statement before the Investigating Officer in the present case. He has never met any police official in the present case, so he does not know that what were the proceedings initiated by the police in this case. No recovery was effected in his presence.

22. Learned defence counsel has further referred to the cross-examination of ASI Shaunki Ram (PW5), who has stated that it is correct that even as per the record of

destruction produced by him was available upto 2008. IO did not even demand or saw the original record of verification of all the passport mentioned by him in the examination-in-chief. It is correct that there is not allegation against the accused present in the Court in his statement made to the police nor there is any allegation against the accused specifically by name. The passport verification reports and other documents remain in his possession and they do not allow anyone to tamper with the same.

23. Now if the cross-examination of these witnesses are seen, firstly, the complainant of this case has not been examined. The Investigating Officer of this case has not even recorded the statement of the complainant in the present case, on the basis of which FIR was registered against the accused. Since the main witness, that is, complainant B. S. Rawat, Member Parliament has not been examined, rather he has written a letter (Ex.RA) that he has not written any letter against the accused and this is a forged document prepared by some wrong elements, as such, the prosecution has failed to connect the accused with the crime and the accused are liable to be acquitted. Accordingly accused Shiv Kumar and Manjit Singh are acquitted of the charge framed against them for the offence punishable under Sections 420, 468 and 471 of the Indian Penal Code, as stated therein. The file be consigned to the Judicial Record Room, SBS Nagar, subject to the being revived as and when accused Harminder Singh appears or is brought before the Court or whenever otherwise warranted as per the provisions of law.”

Learned counsel for the petitioner further submitted that a perusal of the aforesaid judgment would show that the prosecution has

miserably failed to prove its case beyond the shadow of reasonable doubt and, therefore, the trial Court, while relying upon the statement of witnesses, has recorded a finding that since the complainant has not been examined by the prosecution and even the Investigating Officer has not recorded the statement of the complainant during investigation, on whose instance, the present FIR was registered, there is no evidence on record to convict the accused persons and accordingly, they were acquitted.

Learned counsel for the petitioner further submitted that no purpose would be served by directing the petitioner to face trial as the evidence, if any, against the petitioner will be the same which has already come on record during the trial of aforesaid co-accused.

Learned counsel for the petitioner further submitted that while declaring the petitioner a proclaimed offender, mandatory provisions of Section 82 Cr.P.C. were not followed as he was never served with summons.

Learned counsel for the petitioner has relied upon a judgment rendered by a Division Bench of this Court in ***Sudo Mandal @ Diwarak Mandal Vs. State of Punjab, 2011 (2) RCR (Crl.) 453***, wherein it has been 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.

Learned counsel for the petitioner has lastly submitted that in pursuance to the order dated 08.11.2019, the petitioner has deposited the cost of Rs. 2 Lakh with the Punjab and Haryana High Court Advocates'

Welfare Funds and has also placed on record the original receipt in this regard.

Learned State counsel, on instructions from ASI Sohan Lal, has not disputed the factual position that two co-accused, as noticed above, stand acquitted by the trial Court.

After hearing learned counsel for the parties, I find merit in the present petition considering the fact that the co-accused of the petitioner, namely Shiv Kumar and Manjit Singh, who faced full length trial, have been acquitted by the trial Court, wherein the trial Court has recorded a finding that the prosecution has failed to connect the accused persons with the crime and even the Investigating Officer has failed to record the statement of the complainant, on whose instance the present FIR was registered. The trial Court has also recorded a finding that even the complainant was never examined in Court.

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, the 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. 131 dated 03.08.2007 (Annexure P-1), registered under Sections 420, 467, 468, 470, 471 and 120-B of the IPC at Police Station City Nawanshahar, District Nawanshahar (S.B.S. Nagar) as well as the order dated 31.05.2008, vide which, the petitioner was declared a proclaimed offender (Annexure P-2), are hereby quashed qua the petitioner herein.

As noticed in the order dated 08.11.2019, the name of the petitioner stands corrected from 'Harwinder Singh @ Harjas Singh' to 'Harminder Singh @ Harjas Singh'. The same be read accordingly.

21.11.2019

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No