

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

102-2 cases

1.

CRM-M-21911-2019 (O & M)
Date of Decision:15.07.2019

Harpreet Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

2.

CRM-M-27088-2019 (O & M)
Date of Decision:15.07.2019

Harpreet Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Animesh Sharma, Advocate
for the petitioner in CRM-M-21911-2019.

Mr. Mohit Garg, Advocate
for the petitioner in CRM-M-27088-2019.

MANOJ BAJAJ, J.

Petitioner-Harpreet Singh (Proclaimed Offender) has filed the above mentioned two petitions seeking quashing of FIR No.85 dated 06.05.2005, under Sections 447, 506, 148 and 149 IPC registered at Police Station Sadar Rajpura, District Patiala along with order dated 04.02.2009 (Annexure P-3) declaring him Proclaimed Offender and has sought anticipatory bail as well, respectively.

Since the petitions are arising from one FIR, therefore, these are being decided by this common order.

The facts in brief are noticed here below from CRM-M-21911-2019.

The prosecution case is that on 06.05.2005 ASI Aman Pal Singh along with other police officials was present near village Dharamgarh side, when Jaspreet Kaur wife of Hardavinder Singh resident of Dharamgarh came to him and stated that she was having 21 acres of land in village Dharamgarh for the last 13 years. They had been cultivating the same. At that time, they had sown wheat crop there. On 06.05.2005 accused persons along with other persons came there on tractors, make Ford International and Mohindra, who were armed with shoties and ploughed her standing crop. She tried to stop accused persons with the help of her servant Yamha Sharma and her neighbourer Sehjad Ali, but accused threatened them of dire consequences. She was afraid at that time and could not do anything. She further stated before SI Amanpal Singh that one Civil Suit was also pending between the parties at that time. Upon this statement the FIR was registered against the accused.

After registration of this FIR, the petitioner was granted bail by the trial Court and Balbir Singh stood surety on his behalf. During the pendency of the proceedings, petitioner absented which resulted into initiation of proclamation proceedings against the accused, and also proceedings under Section 446 Cr.P.C. against the surety. It was on 04.02.2009, the trial Court proceeded to declare the petitioner as Proclaimed Offender. It may be noticed here that the trial in respect of the accused, who

were before the Court ended in acquittal through judgment dated 07.12.2011 (Annexure P-4).

Learned counsel for the petitioner has invited the attention of the Court to the judgment of acquittal dated 07.02.2011 (Annexure P-4) to contend that the evidence adduced by prosecution during trial would be equally applicable to the case of the petitioner as well. He submits that since the prosecution miserably failed to establish the charges against the co-accused, therefore, the FIR qua the petitioner deserves to be quashed. In support of his arguments, learned counsel for the petitioner has placed reliance upon the judgments passed by this Court in *Sudo Mandal @ Diwarak Mandal Vs. State of Punjab, 2011 (2) R.C.R (Criminal) 453;* *Gurpreet Singh @ Khinder Vs. State of Punjab, 1995 (2) R.C.R.(Criminal) 127,* and another judgment passed by Hon'ble Delhi High Court in *Urmila Devi Vs. State (N.C.T of Delhi), 2007 (1) R.C.R.(Criminal) 246.*

After hearing the respective counsel for the petitioner, this Court does not find any merit in both the petitions.

In **Sudo Mandal's** case, the Hon'ble Division Bench was examining the judgment of conviction delivered by the trial Court against the two appellants, who were in appeal. After considering the evidence, this Court proceeded to hold that the prosecution had failed to establish the charges and, therefore, reversed the conviction and ordered acquittal of convicts. At the same time, this Court proceeded to quash the FIR in respect of three proclaimed offenders, who had neither filed any petition nor made any prayer for quashing of the FIR, but the Court suo motu exercised the

inherent powers under Section 482 Cr.P.C. without even referring any case law on the subject. Therefore, with respect, but without hesitation, it is observed that the judgment in **Sudo Mandal's case**, apparently is deviation from other consistent law, on exercise of powers under Section 482 Cr.P.C. laid down by Hon'ble Supreme Court, and, therefore, the same cannot be treated as a precedent. Similarly, the other two judgments relied upon by learned counsel for the petitioner are of no help. Time and again, this Court as well the Hon'ble Supreme Court have laid down that the inherent powers under Section 482 Cr.P.C. should be exercised with care and circumspection considering the facts and circumstances of the case. It will be useful to refer the decision of Hon'ble Supreme Court in the case of **State of Haryana and others vs. Ch. Bhajan Lal and others, 1992 Supp(1) Supreme Court Cases 335**, the Apex Court has held as under:-

“The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers under Section 482, Cr.P.C. can be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:-

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police

officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a Police Officer without an order of Magistrate as contemplated under Section 155(2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of aggrieved party.
- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint

and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

Further in S.W. Palanitkar vs. State of Bihar 2001(4) RCR (Criminal) 572, the proceedings under challenge pertained to a complaint case brought under Chapter XV of the Code of Criminal Procedure and the Hon'ble Supreme Court while dealing with the powers under Section 482 Cr.P.C., made the following observations :-

“27.The approach and considerations while exercising power and jurisdiction by a Magistrate at the time of issuing process are to be in terms of Sections 200 to 203 under Chapter XV of Criminal Procedure Code, having due regard to the position of law explained in various decisions of this Court, and whereas while exercising power under Section 482 of Criminal Procedure Code the High Court has to look at the object and purpose for which such power is conferred on it under the said provision. Exercise of inherent power is available to the High Court to give effect to any order under the Criminal Procedure Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. This being the position, exercise of power under Section 482 Criminal Procedure Code should be consistent with the scope and ambit of the same in the light of the decisions aforementioned. In appropriate cases, to prevent judicial process from being an instrument of oppression or harassment in the hands of frustrated or vindictive litigants, exercise of inherent power is not only desirable but necessary also, so that the judicial forum of the Court may not be allowed to be utilised for any oblique motive. When a person approaches the High Court under Section 482 Criminal

Procedure Code to quash the very issue of process, the High court on the facts and circumstances of a case has to exercise the powers with circumspection as stated above to really serve the purpose and object for which they are conferred.”

It needs to be noticed here that the petitioner absented from the trial proceedings and never made any attempt to join the proceedings and, therefore, the evidence recorded by the trial Court in respect of the other accused who were facing trial, could not be read in respect of the petitioner.

Considering the conduct of the petitioner as well as the facts and circumstances of this case, this Court does not find any reason to invoke the inherent powers under Section 482 Cr.P.C. for quashing of the FIR as well as the order dated 04.02.2009 whereby the petitioner was declared proclaimed offender.

At this stage, Mr. Mohit Garg, Advocate has again intervened to contend that the petitioner be granted anticipatory bail, who is willing to participate in the proceedings before the trial Court. However, he is unable to justify the delay in approaching the Court for seeking the concession of anticipatory bail under Section 438 Cr.P.C. Apart from it, this petition for anticipatory bail is not maintainable as the petitioner was already on regular bail before being declared as Proclaimed Offender. In this regard the reliance can be placed upon the judgment of this Court in the case of **Balwant Singh @ Banta versus State of Punjab** passed in CRM-M-15464-2019 decided on 04.04.2019 wherein following observations were made by this Court:-

“The two provisions as contained in the Code of

Criminal Procedure, which govern the grant of pre-

arrest bail and post arrest bail are distinct and operate in distinct spheres and that too at different stages. A petition for pre-arrest bail is maintainable if the requisite condition under Section 438 Cr.P.C. is fulfilled by the applicant. Whenever a person approaches the High Court or the Court of Sessions for issuance of a direction under Section 438 Cr.P.C. then it is incumbent for him to establish the first and foremost condition of apprehension or likelihood of his arrest on the accusation of having committed a non-bailable offence.

Once such an apprehension exists, the person has a valid reason to approach the competent Court for grant of pre-arrest bail but in case a person is already in custody, the provisions of Section 438 Cr.P.C. has no application.

On the contrary, the provisions governing the concession of regular bail (post arrest) are enshrined in Sections 437 and 439 Cr.P.C.. Section 437 Cr.P.C. confers power upon the Court other than the High Court or the Court of Sessions to grant bail where a person is brought before it, who being an accused or suspected of the commission of any nonbailable offence. It is further required that the said person/accused stands arrested or is under detention. Section 439 Cr.P.C. confers the special powers for grant of regular bail upon the High

Court or the Court of Sessions. One of the essentials to seek the benefit of regular bail is that the person applying for bail is in custody.

It is absolutely clear that these provisions are not over-lapping as they are meant for different purposes and this distinction already stands noticed by Hon'ble Supreme Court in Gurbaksh Singh Sibbia etc. vs. The State of Punjab 1980 AIR (SC) 1632.

Turning to the facts of the present case, admittedly, the petitioner was on regular bail, but subsequently absented himself and was declared Proclaimed Offender. It was well within his knowledge that he evaded his appearance from the Court of Law and deliberately kept himself away from the Court proceedings. The only course available for him is to submit himself before the trial Court and seek concession of regular bail.

In view of the above, both the petitions are dismissed.

15.07.2019

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(MANOJ BAJAJ)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No