IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-48769 of 2019
Date of Decision: 19.11.2019

Rohit Sareen and others ....Petitioners

Versus

State of Punjab ....Respondent

CORAM:HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Sahil Puri, Advocate for the petitioners.

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MAHABIR SINGH SINDHU, J.

Present petition has been filed under Section 482 of Code of Criminal Procedure, (for short 'Cr.P.C.') for quashing of FIR No. 76 dated 20.04.2018, under Sections 283, 160 and 188 of the Indian Penal Code, (for short 'IPC') registered at Police station City, District Kapurthala and order dated 30.07.2019 passed by the learned Chief Judicial Magistrate Kapurthala, (for short 'CJM',) along with all consequential proceedings arising therefrom.

The above FIR was lodged by ASI Satnam Singh on the basis of a secret information with the allegations that 35/40 persons were staging sit-in protest at Purani Dana Mandi (Old Grain Market), Kapurthala in front of house of Rohit Aggarwal and causing inconvenience to the general public. Out of them, one person was delivering speech that if Rohit Aggarwal does not come out, then attack his house. Names of the persons were stated to be Balwinder Singh, Surjit Singh, Amit Lal, Kulwinder Singh, Rohit Verma, Amit Bansal, Satish Kumar and some unknown. Inspector Gabbar Singh, SHO, Police Station City Kapurthala

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and Incharge PCR were apprised about the secret information. As above persons were violating the orders dated 04.04.2018 of the Deputy Commissioner and causing inconvenience to general public by blocking traffic, therefore, offence under Sections 283, 160, 188 IPC was made out against them and consequently, a ruqa was sent to Police Station through HC Lakhwinderpal Singh, 908 for registration of an FIR and which was ultimately registered.

It is contended by learned counsel for the petitioners that offence alleged in the present case entailing the maximum imprisonment not exceeding one year, therefore, in view of the provisions of Section 468 (2)(b) Cr.P.C., the period of limitation for taking cognizance could be within one year. Further contends that FIR in question was registered on 20.04.2018, challan presented on 30.07.2019 and notice to the petitioners were issued for 20.08.2019, thus, the same is not legally sustainable being barred by limitation. Also contends that from bare reading of FIR no offence is made out, hence the same is liable to be quashed along with all consequential proceedings.

Heard learned counsel for the petitioners and perused the paper-book.

During the course of hearing, learned counsel for the petitioners was asked to show the complete zimni orders right from 30.07.2019 uptill date and in response thereto, he has supplied the complete photocopies of the same which are taken on record and marked as Annexure P-4 (Colly). Registry will tag the same at the appropriate place.

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Order dated 30.07.2019, passed by learned CJM reads as under:-

> *"Challan presented today in absence of accused. Report of Ahlmad seen. It be registered. Now, notice to all the accused be issued for 20.08.2019."*

It transpires that on 20.08.2019, despite service three accused did not appear, thus, they were summoned through bailable warrants for 29.08.2019 and notices to unserved respondents were also issued for that date.

On 29.08.2019, after receipt of challan, six co-accused, namely, Satpal, Kuldeep Kumar, Nachhatar Singh, Tilak Raj, Vijay Bindra and Satish Kumar were charge-sheeted by learned CJM under Sections 283, 188, 166 IPC, but they pleaded guilty and did not claim trial, thus, convicted for the offences charged. Learned CJM, after hearing on quantum of sentence, declined probation and imposed fine of Rs.200/- (each) as punishment with default clause to undergo RI for 5 days. Simultaneously, notices were issued to the remaining accused for 12.09.2019 and thereafter, again the matter was taken up on 13.09.2019.

On 13.09.2019, a plea was raised by the defence side that Court cannot take cognizance in view of the bar contained under Section 468 Cr.P.C., but the same was rejected by learned CJM while passing the reasoned order and that is not the subject matter of challenge. Thereafter, case was adjourned to 04.10.2019, for consideration of the charges and notices were issued to the remaining accused.

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On 04.10.2019, copies of challan were supplied to some of the accused and accordingly, charge-sheeted by learned CJM under Sections 283, 188, 166 IPC, to which they pleaded guilty and did not claim trial. Consequently, co-accused, namely, Surinder Pal son of Jalas Ram, Amrit, Raj Kumar, and Surinderpal son of Madan Gopal, were convicted under Sections 283, 188, 166 IPC. Learned CJM, after hearing on quantum of sentence, declined the benefit of probation and imposed fine of Rs.200/- (each) as punishment with default clause to undergo RI for 5 days. Thereafter, case was adjourned for securing the presence of remaining accused on 07.11.2019.

On that date i.e. 07.11.2019, two more accused, namely, Balwinder Singh and Rohit Verma, were convicted by learned CJM, under Sections 283, 188, 166 IPC on the similar terms as mentioned above i.e. fine of Rs.200/- (each) with a default clause to further undergo RI for 5 days.

Undisputedly, in this case, the point of limitation was raised before learned trial Court, but the same has already been rejected vide order dated 13.09.2019 and the operative part of the same reads as under:-

> *"After hearing the arguments and considering the material on record, this Court has observed that in the presence case, FIR was registered on 20.4.2018 and report under Section 173 Cr.P.C. was presented in the Court on 30.7.2019 which is, of course after the lapse of one year from the filing of FIR. But, as per record, report under Section 173*

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> *Cr.P.C. had been prepared on 28.10.2018 and due to the reasons that there are thirty seven number of accused persons, notices to whom were given to appear for the presentation of report under Section 173 Cr.P.C. Thus, the delay caused in presentation of report under Section 173 Cr.P.C. was due to the fact that presence of accused persons could not be procured. Therefore, it cannot said that cognizance of the present case cannot be taken as per provisions of Section 468 Cr.P.C. Moreover, cognizance in the matter has already been taken and accused namely, Satpal, Kuldeep Kumar, Nachattar Singh, Tilak Raj, Vijay Bindra and Satish Kumar already convicted vide judgment dated 29.08.2019."*

Perusal of the extracted portion of the order dated 13.09.2019 reveals that point of limitation stands already rejected by learned CJM while passing the reasoned order and the same is not the subject matter of challenge before this Court, rather concealed by the petitioner while filing the present petition. Even the conviction suffered by the other co-accused of the petitioners have also not been disclosed, thus, the petitioners have not come to the Court with clean hands and the present petition was liable to be dismissed for concealment of the material facts from this Court.

Even otherwise, the law is well settled that in view of Section 190 Cr.P.C., cognizance is to be taken regarding an offence and not against the offender (s). Since in the present case, cognizance had already been taken by Court of learned CJM, and some of the co-accused stand

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convicted and sentenced, therefore, the plea of limitation is tenable on that count.

Moreover, in the present case, FIR was registered on 18.04.2018, report under Section 173 Cr.P.C. was prepared by the police on 28.10.2018 and ultimately submitted before the Court of competent jurisdiction on 30.07.2019, thus, the necessary exercise has been completed within the period of limitation and there is no merit in the submission raised on behalf of the petitioners qua the point of delay.

Undisputedly, the judgment of conviction and order of sentence passed on 29.08.2019, 04.10.2019 and 07.11.2019 against the co-accused have already become final and there is no challenge to the same.

So far as the point raised by learned counsel for the petitioners that no offence from the bare reading of the FIR is made out, the same is not tenable for the simple reason that challan against the petitioners has already been submitted before the Court of competent jurisdiction and the matter is pending for the consideration of charges, therefore, this Court will not hold the parallel trial while entertaining the present petition under Section 482 Cr.P.C. At best, the point raised on behalf of the petitioners could be considered at the time of consideration of the charges, if so advised or during trial, but in the opinion of this Court, it cannot be said that from bare reading of the FIR, no offence is made out against the petitioners when challan has already been presented after collecting the material during investigation. Thus, plea raised on behalf of the petitioners is negated.

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The judgment-***Ganga Sah and another Vs. The State of Bihar and another***, 1982 PLJR 164, relied upon by learned counsel for the petitioners is not applicable to the facts of this case as in that case, a prohibitory order under Section 144 Cr.P.C. was violated by the accused on 22.11.1978 and the complaint was filed before the Court of Chief Judicial Magistrate on 18.12.1979 i.e. beyond one year. However, as discussed above, in the present case, the situation is entirely different as some of the co-accused have already been convicted way-back on 29.08.2019 and cognizance is taken within one year from the presentation of the challan, therefore, the case cited by learned counsel for the petitioners is not helpful.

In view of the above, no ground is made out to entertain the present petition and the same is liable to be dismissed.

Although this Court was inclined to dismiss the petition with exemplary costs in view of the active concealment of material facts, but taking a lenient view, this Court simply dismiss the same.

Ordered accordingly.

However, the observations made above may be construed as an expression of opinion on the merits of the case.

[MAHABIR SINGH SINDHU]
JUDGE

November 19, 2019
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Whether speaking/reasoned yes/no
Whether reportable? yes/no

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