

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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Criminal Misc.M-10359 of 2020
Date of Decision: March 13, 2020.

Amarjot @ Nandi

.....Appellant

versus

State of Punjab and another

.....Respondent

CORAM: HON'BLE MR.JUSTICE VIVEK PURI.

Present: Mr.Narinder S.Lucky, Advocate, for the petitioner.

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Vivek Puri, J.

[1] Through the present petition under Section 482 Cr.P.C., the petitioner is seeking the quashing of FIR No.92 dated 30.10.1999, registered under Sections 323, 324, 452, 506, 148 & 149 IPC, Police Station City, Phagwara, District Kapurthala and the order dated 21.01.2003 passed by the learned Sub Divisional Judicial Magistrate, Phagwara, vide which the petitioner was declared as proclaimed offender, on the basis of the compromise dated 1.10.2018.

[2] It has been alleged that on the basis of statement of Jagjit Singh respondent No.2, the aforesaid FIR was lodged against the petitioner and the co-accused. The petitioner was not present at the spot and has been falsely implicated as he was friend of the co-accused. The petitioner was granted bail and during the trial, the matter was settled between the parties. The complainant gave assurance to the petitioner that he will compound the offence before the Court. During the course of trial, the complainant had not supported the prosecution case and all the accused were acquitted vide judgment dated 5.5.2004. The petitioner had gone abroad to earn livelihood on the assurance of the complainant that he will withdraw the case in view of the settlement, but for the reasons best known to the complainant, the

offences were not compounded as per assurance. Ultimately, the petitioner was declared proclaimed offender by the learned trial Court vide order dated 21.1.2003. The petitioner has been wrongly declared proclaimed offender as summons/bailable warrants or non-bailable warrants were not issued at the address where he was residing. Moreover the matter has been compromised between the parties.

[3] Learned counsel for the petitioner has mainly relied upon a Division Bench decision of this Court in **Sudo Mandal @ Diwarak Mandal versus State of Punjab, 2011(2) R.C.R. (Criminal), 453**, to argue that the proceedings against a person who has been declared proclaimed offender can also be quashed.

[4] It is significant to note that the ratio of the aforesaid decision is distinguishable from the facts of the present case. In the aforesaid case five persons were involved in a murder case. Two persons were arrested and three were declared proclaimed offenders. The learned trial court had recorded the conviction of the accused and on appeal, the same was accepted and it was concluded that the innocent accused who have absconded cannot be convicted on the basis of unbelievable and untrustworthy evidence, which would ultimately lead to their acquittal. Consequently, the proceedings against the persons who were absconding were also quashed. The said case was decided on merits on the basis of evaluation of evidence as recorded before trial Court and it was not on the basis of a compromise.

[5] On advertent to the present case, it may be mentioned here that the complainant had not identified the persons who were facing the trial during the course of his deposition and consequently the accused who were

facing the trial were acquitted. Significantly, the petitioner was proclaimed offender and was never before the trial Court when the statements of the complainant and the eye witnesses were recorded. There was no occasion for them to identify the petitioner as he was not before the trial Court.

[6] Moreover, in the aforesaid decision of **Sudo Mandal's case (supra)**, it has also been observed that the powers under Section 482 of the Code of Criminal Procedure are to be exercised very sparingly and in exceptional cases where abuse of process of Court would result in serious miscarriage of justice.

[7] Furthermore, the FIR can be quashed, where the ends of justice would justify the exercise of inherent powers. The inherent powers conferred on the Court can be exercised to secure the ends of justice or to prevent an abuse of the process of the Court. Moreover, merely because a settlement has been effected cannot constitute a valid ground to quash an FIR.

[8] It is not a case where the petitioner was never served or appeared before the trial Court. There is a specific averment in the petition that the petitioner was granted bail and during the trial the matter was settled between the parties. The complainant has assured to compound the offence but the petitioner had gone abroad to earn livelihood. In such circumstances, it is amply clear that the petitioner was having the knowledge about the pendency of the case, but went abroad without getting any amicable settlement having been effected and getting the seal of approval of the Court over any such settlement. Moreover the version with regard to amicable settlement having been effected during trial cannot be accepted as the quashing has been sought on the basis of compromise which

has been allegedly recorded on 1.10.2018, i.e., much after the decision of case and the date when the petitioner was declared proclaimed offender.

[9] The FIR was lodged as back as on 30.10.1999 and the petitioner was declared proclaimed offender on 21.01.2003. He has successfully evaded the process of law for a long period of about eighteen years. No justified reason is made out which prevented the petitioner from appearing in the Court and face trail. No effort was made to get the FIR quashed or the offences compounded in pursuance of the settlement which was effected during the pendency of the trail. It has also not been disputed that at the earlier instance, petition under Section 482 Cr.P.C. for quashing the order vide which he was declared proclaimed offender was filed and the same was dismissed as withdrawn vide order dated December 10, 2018.

[10] In the peculiar circumstances of the case, merely because compromise has been effected, no justified ground is made out to quash the FIR and the order vide which the petitioner has been declared proclaimed offender, particularly because the order vide which he was declared proclaimed offender was passed as back as on 21.01.2003 and he never bothered to put appearance and surrender before the trial Court. The contumacious default in evading the process of law for a period of about 18 years, does not make it a fit case to exercise the inherent powers under Section 482 Cr.P.C. and quash the criminal proceedings qua the petitioner.

[11] For the aforesaid reasons, the petition being de-void of merit, is dismissed.

March 13, 2020

mohinder

(VIVEK PURI)

JUDGE