

**105 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-4386-2021

Date of decision-17.03.2021

Lakhwinder Singh

...Petitioner

Vs.

State of Punjab

...Respondent

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Bhupinder Ghai, Advocate for the petitioner.

MANOJ BAJAJ, J. (Oral)

The petition under Section 482 Cr.P.C has been filed for quashing of the FIR No.3 dated 29.01.2007 registered under Sections 364, 323, 342, 511, 427, 148 and 149 Indian Penal Code, 1860 at Police Station Kot Bhai, District Sri Muktsar Sahib as well as quashing of order dated 17.11.2012, whereby petitioner was declared a proclaimed offender.

The facts in brief leading to the petition are as under:-

On the basis of the statement given by Harjit Singh son of Mukhtiar Singh (complainant) the above mentioned case was registered for the offences punishable under Sections 364, 323, 342, 511, 427, 148 and 149 IPC, and after completion of investigation, final report was filed under Section 173 Cr.P.C. The petitioner also participated in the said trial proceedings. It is the case of the petitioner that though the FIR was registered in January 2007, but till February 2012, the trial

proceedings did not conclude, and as the petitioner got a chance to settle abroad, therefore, he left India. The trial Court initiated steps to secure his presence and ultimately the proceedings under Section 82 Cr.P.C commenced against him, and finally the petitioner was declared as a proclaimed offender vide order dated 17.11.2012 (Annexure P-2).

Learned counsel for the petitioner has argued that the trial in respect of his co-accused concluded in their acquittal vide judgment dated 25.08.2014 (Annexure P-4), therefore, the proceedings qua the petitioner as well as the order dated 17.11.2012, declaring him proclaimed offender also deserve to be quashed. He has further contended that the trial proceedings qua the petitioner would be a futile exercise as the chances of conviction are extremely bleak. According to Mr. Ghai, learned counsel, there is no possibility that some new evidence would come during trial, as the witnesses already examined in respect of the other co-accused may not give a better evidence. In support of his prayer, he has relied upon the decision delivered by this Court in CRM-M-6640-2019, titled as “Rajesh Kumar @ Billa Vs. State of Punjab” decided on 19.03.2019 and judgment delivered by Hon'ble Supreme Court in “Varala Bharath Kumar and another Vs State of Telangana and another”, 2017 (4) R.C.R (Criminal) 113. He has further placed reliance upon judgment passed by this Court in “Sudo Mandal @ Diwarak Mandal Vs. State of Punjab, 2011 (2) R.C.R. (Criminal) 453”.

After hearing learned counsel for the petitioner, this Court finds that the petitioner had the knowledge of the trial proceedings, who admittedly appeared before the trial Court till 2012 and thereafter, left India without the permission of the Court. Merely because, the trial in respect of his co-accused concluded in their acquittal, so this circumstance alone cannot be a sufficient ground to set aside the order dated 17.11.2012 declaring him proclaimed offender.

Further, the judgment relied upon by the petitioner on Sudo Mandal's case (supra), is not helpful to the cause of the petitioner as the same has already been distinguished by this Court in in CRM-M-21911-2019 titled as “**Harpreet Singh Vs. State of Punjab and another**” and the relevant observations read as under:-

“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.”

Further, the other two judgments relied upon by the petitioner are also not helpful to the case of the petitioner, as the evidence against the petitioner in the present case is yet to be adduced by the prosecution, therefore, it would be unfair for this Court to presume that the witnesses already examined before the trial Court during trial of the other co-accused may not depose against the petitioner. Even otherwise, memo of parties reveals that the petitioner is still out of India and therefore, no case is made out for exercise of inherent powers under Section 482 Cr.P.C.

Dismissed.

(MANOJ BAJAJ)
JUDGE

17.03.2021

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No