

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

**CRM-M-26158-2021(O&M)
Date of decision:-29.7.2021**

Jasbir Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.Rajinder Singla, Advocate
for the petitioner.

Mr.J.S. Ghuman, DAG, Punjab.

H.S. MADAAN, J.(ORAL)

Case taken up through video conferencing.

This petition under Section 482 Cr.P.C. has been filed by petitioner Jasbir Singh, aged about 30 years, resident of village Tehang, Tehsil Phillaur, District Jalandhar, presently residing at RIONA EUROPA 17, 89042 GIOIOSIA IONICA RC, Italy, an accused in FIR No.167 dated 31.10.2011, under Sections 406, 506, 120-B IPC, registered with Police Station Phillaur, District Jalandhar, seeking quashing of the said FIR and ancillary proceedings arising therefrom including the order dated 18.4.2013 declaring him as a proclaimed offender passed by SDJM, Phillaur. The reason for seeking quashing of the FIR and order declaring the him as proclaimed offender is that the principal accused has already been acquitted on merits vide judgment dated 3.8.2015 and continuation of the proceedings is abuse of process

of law.

On filing of this petition, a detailed order was passed on 12.7.2021 observing that the petition so filed did not appear to be maintainable. Since arguing counsel for the petitioner was not there before the Court on account of his being unwell, at the request of counsel appearing on his behalf, the case was adjourned.

Today learned counsel for the petitioner has put in appearance and had advanced arguments.

The FIR in question was registered on written complaint moved by complainant - Karnail Singh alias Nirmal Chand, Prop. M/s Chandad Shuttering and Building material Store, Nawanshehar Road, New Tehsil Phillaur, District Jalandhar. *Inter alia* in the complaint, he submitted that on 28.8.2011 at about 10:00 a.m., accused Sonu son of Ghogi, resident of village Tihang, Tehsil Phillaur had come to his shop and stated that he had taken a contract in DAV College, village Saifabad, Phillaur and since he required there girders, planks and wooden log for shuttering purposes, he wanted to take those from the complainant on rent. The complainant asked him to furnish guarantee of some person known to him, then Sonu brought Harvinder Kumar son of Banarasi Dass of village Rasoolpur, Tehsil Phillaur, who was acquainted with the complainant, as such the complainant gave shuttering articles to accused Sonu at different dates; though Sonu had returned certain articles but not all; rather he refused to return the same and pay rent charges of Rs.30,000/-. On 27.10.2011, he abused the complainant on phone and threatened to kill him. On the basis of such complaint, formal FIR was registered. Investigation in the case started. Accused were

arrested in the case. On completion of investigation, challan against the accused was prepared and filed in the Court and then trial started. The trial Court of SDJM, Phillaur had formulated the following points for determination:

- i) Whether on 28.8.2011 at about 8:00 a.m. in the area of village Nagar, accused Bhajan Lal and his co-accused Sonu @ Talwinder Singh and Jasbir Singh (since proclaimed persons) agreed with each other to do illegal act i.e. criminal breach of trust by not returning 105 girders which were taken by them on rent from the complainant and above said accused persons committed criminal breach of trust by not returning 105 girders taken by them on rent from the complainant or not?*
- ii) Whether the prosecution has been able to prove its case against the accused beyond shadow of reasonable doubt?*

Vide judgment dated 3.8.2015, accused Bhajan Lal was acquitted of the charge framed against him since according to learned SDJM, Phillaur, the prosecution had failed to prove its case beyond shadow of reasonable doubt against accused Bhajan Lal. A perusal of the judgment by SDJM, Phillaur, copy of which has been placed on record as Annexure P4 by the petitioner goes to show that vide this judgment accused Bhajan Lal has been acquitted giving him benefit of doubt, whereas as per statements of PWs and documents proved on record, which have been discussed in prosecution evidence in para No. 10 of the judgment, it comes out that the prosecution had led evidence in support of its version with regard to accused Sonu @ Talwinder Singh and Jasbir Singh (present petitioner). Bhajan Lal was acquitted giving

him benefit of doubt. In para No.14, there is reference to cross-examination of PW5 complainant – Karnail Singh by the defence counsel, wherein he had stated that he had no concern with accused Bhajan Lal and neither he known him nor he gave the shuttering material to him on rent. Though he had stated that he had given the girders on rent to accused Sonu @ Talwinder Singh and Jasbir Singh (present petitioner). In para No.16, there is reference to the statement of PW1 Retd. ASI Sarwan Dass, who had deposed against all the accused in his examination-in-chief. There is also reference to the statement of PW2 Rajan Kumar that accused had come to his shop to sell the scrap. There is is also reference to the statement of PW4 Harvinder Singh that accused Sonu @ Talwinder Singh and Jasbir Singh took the wooden planks, girders and ballies from Karnail Singh on his surety but they did not give back the same. Thus there was incriminating evidence against the present petitioner Jasbir Singh and Sonu alias Talwinder Singh. However, the Court found that there was not enough incriminating evidence available on record against accused Bhajan Lal, as such giving him benefit of doubt, he was acquitted of the charge framed against him.

The petitioner had jumped bail during the trial. His bonds were cancelled and forfeited to the State and he was ordered to be summoned warrants of arrest, which could not be executed. Thereafter, proclamation under Section 82 Cr.P.C. was published against him. He failed to put in appearance within the stipulated period, as such was declared a proclaimed offender. The conduct of the petitioner in jumping bail during the proceedings was highly inappropriate and improper. He having absented from the Court without any reason and convincing

explanation cannot now come up with a straight face finding faults with the order declaring him a proclaimed offender and asking for quashing of the FIR. Now he had started finding faults with the procedure adopted for declaring him as a proclaimed offender without looking into his own conduct of absenting from the Court without intimation. In para No.6 of the present petition, it is pleaded that on 16.10.2012, petitioner requested his counsel Chaudhary Chuni Lal and associates that he was working, it was very difficult for him to come on each and every date of hearing and his counsel told him that they would move appropriate application seeking permanent exemption of the petitioner from appearance and they would cross-examine the PWs in his absence. They asked him not to come on the next date of hearing i.e. on 10.12.2012 but his counsel had not moved such application. This explanation rendered is least convincing. The petitioner, accused of committing criminal offences facing trial in the Court was not doing any favour to anybody by putting in appearance in the Court stating that it was inconvenient for him to attend the dates of hearing. It is very strange that his counsel had given him any such assurance but then they did not move any application for exemption for personal appearance of the petitioner. There was no convincing reason for moving such type of application and Court allowing the same. However, if the petitioner was misled and wrongly informed by his counsel, he could have initiated proceedings for professional misconduct against them by lodging complaint against them with Local Bar Association or Bar Council of the State but admittedly he has not done so. This comes out to be a fabricated and concocted story. Nothing comes out to be wrong with the procedure

adopted for declaring the petitioner as a proclaimed offender. The petitioner has now given his address of Italy, which means that he had gone abroad. Under what circumstances, he has done so with a criminal case registered against him has not been explained properly.

Section 482 Cr.P.C. deals with saving of inherent powers of the High Court providing that nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

If the present case is examined by the touchstone of this provision, then no ground for exercise of such power is made out. After registration of the FIR, the matter was investigated; the petitioner along with his co-accused was found to have committed criminal offences. As such he was challaned and sent up to face trial, though during the trial, he jumped bail and absconded. The law is taking its own course and it is certainly not a case of abuse of process of the Court. The ends of justice demand that petitioner, who is accused of having committed offences should be made to stand trial so as to determine his criminal liability. In case the criminal trial against the petitioner is not completed and is abruptly terminated that would rather result in defeating the ends of justice. Therefore, the case of the petitioner does not fall within four corners of Section 482 Cr.P.C.

It may be mentioned here that the latest trend of the Courts is to encourage the parties to settle their disputes regarding which criminal cases have been registered in an amicable manner if the dispute

is of personal nature not effecting the society at large. The Apex Court in *Gian Singh Versus State of Punjab and others, 2012(4)RCR(Crl.), 543* had observed that the guiding factors for exercising of inherent powers under Section 482 Cr.P.C. are (i) to secure ends of justice (ii) to prevent abuse of the process of any Court.

Such amicable resolution of the disputes in matrimonial cases is mostly encouraged but in garb of that, the criminals and persons accused of heinous crime cannot be allowed to go scot free by making the complainant/victims give their consent for quashing of the FIR and other proceedings by giving threat and inducement etc. This Court may intervene and quash the FIR if it is found to have been registered as a result of abuse of process of Court or if no cognizable offence is disclosed or otherwise in the interest of justice. Here none of the conditions is found to be there to justify the quashing of FIR and subsequent proceedings.

In judgment *State of Haryana and others Versus Ch.Bhajan Lal ors., 1991(1) RCR(Criminal) 383*, the Apex Court in para No.107 had given guidelines for quashing of the FIR. For ready reference, the said para is being reproduced as under:

In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised 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 channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kind 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 F.I.R. 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 F.I.R. 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 a Magistrate as contemplated under Section 155 (2) of the Code.*
- 5. Where the allegations made in the F.I.R. 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 a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the 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.*

In *Kulwinder Singh and others Versus State of Punjab and another, 2007(3) RCR(Criminal) 1052*, a judgment by larger Bench of five Judges, power of the Court under Section 482 Cr.P.C. in quashing of the cases on the basis of compromise and otherwise was examined and it had observed that there can never be any hard and fast category, which can be prescribed to enable the Court to exercise its power under Section 482 Cr.P.C. and the only principle that can be laid down is the one, which has been incorporated in the section itself i.e. to prevent abuse of the process of any Court or to secure the ends of justice. It was further observed that this power has no limits, however the High Court will exercise it sparingly and with utmost care and caution.

The petitioner wants to get benefit of the judgment *Sudo Mandal @ Diwarak Mandal Versus State of Punjab, 2011(2) RCR(Criminal) 453* by a Division Bench of this Court, wherein five accused were involved in a murder case, out of them two had been arrested, whereas the other three had been declared proclaimed offenders; two accused were tried and acquitted and other proceedings against the absconding accused were quashed as evidence produced in the case was untrustworthy.

This judgment does not come to rescue of the petitioner in any manner. Here Bhajan Lal accused was acquitted by giving him benefit of doubt on account of lack of enough incriminating evidence available on record. Furthermore, the allegations against Bhajan Lal and Jasbir Singh (present petitioner) were different. Bhajan Lal cannot be

termed to be the main accused because as per prosecution witnesses particularly PW5 complainant – Karnail Singh and PW4 Harvinder Singh, the shuttering material had been taken by Sonu @ Talwinder Singh and Jasbir Singh, who had failed to return the same completely and had not paid the hiring charges also. Whereas allegations against accused Bhajan Lal were that he had purchased the girders belonging to the complainant taken by Sonu @ Talwinder Singh and Jasbir Singh on rent from Sonu further selling it to Gurdev Lal, Scrap Dealer and he had made confession in that regard before the Investigating Officer, thereafter getting those articles recovered from the shop of Gurdev Lal. The petitioner cannot take advantage of that judgment, a perusal of which goes to show that lot of incriminating evidence both documentary and oral was led by the prosecution against him and Sonu, whereas it was not so against Bhajan Lal. As such, the petitioner cannot take advantage of judgment of acquittal passed in favour of Bhajan Lal by SDJM, Phillaur and seek quashing of the FIR and order declaring him as a proclaimed offender.

Learned counsel for the petitioner has referred to various other judgments, second being **Satish Sarin and others Versus Union Territory, Chandigarh and another, 2014(7) RCR(Criminal) 2657** passed by Division Bench of this Court. That judgment also had different facts and related to resolution of a matrimonial dispute. It was observed that the dispute in case, arises from matrimonial differences of parties, has been settled inasmuch as their marriage had been dissolved by grant of divorce decree by mutual consent, then FIR, subsequent proceedings and consequent orders passed thereon, including the order

declaring Sanjay Sarin as a proclaimed offender/person were quashed. This judgment again does not help the petitioner. The petitioner is an accused in a case containing allegations of criminal breach of trust, criminal intimidation etc. and the quashing of the FIR is not being sought on the basis of some compromise, whereas as per the facts of the judgment, the matter had been compromised between the parties. Therefore, the ratio of that authority does not help the petitioner.

Coming to the next judgment **Deepak Versus State of Punjab, 2015(2) PLJ(Criminal)50** by a Single Bench of this Court. As per the facts of that judgment, the FIR related to offence of rape and criminal intimidation, where main accused had already been acquitted of the charge for the reason that prosecutrix and prosecution witnesses had not supported the prosecution case. It was observed that even if the petitioners, who had declared proclaimed offenders are tried separately, the trial would result in futility as it would be an empty formality to put the petitioners on trial. Therefore, looking into controversy involved and relationship between the parties, the entire criminal proceedings were quashed. Here even at the cost of repetition, it may be stated that prosecution witnesses have supported the prosecution story as against the present petitioner Jasbir Singh and Sonu @ Talwinder Singh. The role of the co-accused of the petitioner was distinct and different. The petitioner along with Sonu @ Talwinder Singh coming out to be the main accused and not Bhajan Lal. It cannot be said that if petitioner is tried separately, he would earn acquittal therein. As such this judgment also does not help the petitioner.

Coming to next judgment referred to by learned counsel for

the petitioner i.e. *Jasvinder Singh Versus State of Punjab, 2013(1) RCR(Criminal) 310* by a Single Bench of this Court, again this judgment is distinguishable since there cannot be any parity between the present petitioner Jasbir Singh and Bhajan Lal as discussed above and trial against the petitioner can certainly be not termed as exercise in futility.

The next judgment pressed into service by learned counsel for the petitioner happened to be *Kuldip Singh Jaswal and others Versus Jaspal Singh and another, 2015(45) RCR(Criminal)99*, wherein a Single Judge of this Court has observed that there was no statutory bar in filing petition under Section 482 Cr.P.C. seeking quashing of the FIR or complaint and consequential proceedings. This matter was examined by a Division Bench of this Court in case bearing CRM-M-6890 of 2013 titled *'Mangal Dass Gautam & another Versus State of Haryana & another'*, wherein it was observed that petition under Section 482 Cr.P.C. can be filed by power of attorney holder, however its maintainability would depend upon the facts and circumstances of each case as also with regard to validity of said power of attorney and powers conferred therein. The relevant paras i.e. para No.38 to 41 of this judgement for ready reference are being reproduced as under:

38. *In the light of the above observations, it is held that a petition under Section 482 of Cr.P.C. can be filed by a Power of Attorney holder. As regards the maintainability thereof, it would dependent upon the facts and circumstances of each case as also with regard to the validity of the said Power of Attorney and the*

powers conferred therein. It requires to be mentioned here that there is no statutory bar provided by the legislature in the Cr.P.C. relating to filing or continuing of a criminal matter through a Power of Attorney holder. The Court would generally insist that the petition under Section 482 of Cr.P.C. for quashing of the FIR or a criminal complaint as also the consequential proceedings arising therefrom be filed through the accused person himself but this cannot be and should not be laid down as a hard and fast rule keeping in view the statutory mandate which by nomenclature, description and discretionary nature of powers conferred on the High Court requires it to be kept flexible. This is better left to be considered and decided by the Court dealing with the particular case in the facts and circumstances of each case as it would be impossible to envisage and think of all the circumstances in which the Court may require and like to exercise its extraordinary jurisdiction and powers as conferred under Section 482 of Cr.P.C.

39. *We would also like to point out that filing of petition under Section 482 of Cr.P.C. is an exception to general rule of criminal law that in criminal proceedings, either the accused should be available before the Court in custody or on bail, unless granted exemption. We hold that any petition under Section 482 of Cr.P.C. through Power of Attorney should contain special reason for non-filing of petition by accused himself or herself to enable the High Court to consider and allow the same. But if, at any stage, the High Court finds that the petition has been filed by accused through Power of Attorney with some oblique motive or*

the same is violative of any statute or law or is an act of abuse of process of the Court, the Court would have wide discretion to dismiss the petition filed through Power of Attorney. The High Court will have inherent power to give an opportunity to the accused to personally file the petition.

40. *The view taken in the case of Amit Ahuja's case (supra) cannot be said to be correct for the reasons detailed above.*

41. *The questions in Reference are, thus, answered as follows:-*

i) Criminal proceedings under Section 482 of Cr.P.C. can be filed by an accused through an Attorney but the circumstances under which it can be so filed and would be maintainable would be dependent upon various factors including facts and circumstances of that particular case, which is better left at the wisdom and discretion of the Court.

ii) In the light of the answer to Question No.1 mentioned above, Question No.2 does not survive to be answered as it was dependent upon the answer of Question No.1 and an offshoot of the question in a particular eventuality.

In the present case the petitioner is residing in Italy and he has filed this petition through his mother and special attorney Charanjit Kaur. The petitioner has been smart enough to be a safe distance getting

the petition filed through his mother ruling out the possibility of he being taken into custody by the police for the reason of being declared as a proclaimed offender more than 8 years back. Though learned counsel for the petitioner has contended that the passport of the petitioner has been impounded by the Italian Government for the reason of his having been declared as a proclaimed offender but no such document in that regard has been placed on record. The petitioner/accused committing criminal offences is trying to control the proceedings through remote control as per his own convenience. Such type of tactics can certainly be not allowed to succeed as observed by a Division Bench of this Court in **Mangal Dass Gautam & another Versus State of Haryana & another** case (supra). The petition seems to have been filed by the petitioner through power of attorney with an oblique motive and in the facts and circumstances the same is not maintainable at all to avoid his arrest and trial in the case.

One more judgment referred to by learned counsel for the petitioner passed by Single Bench of this Court in CRM-M-8160-2015 titled **Sukhwinder Kaur and others Versus State of Punjab and another** that relates to quashing of FIR in a matrimonial case on the basis of compromise when some of the petitioners had been declared proclaimed offenders. It may be mentioned here that resolution of matrimonial disputes is given higher priority by the Courts. A matrimonial dispute cannot be equated with a case of cheating and criminal breach of trust. The dispute there is personal in nature, whereas it is not so in the instant case.

As regards the judgment passed by a Single Bench in CRM-

M-26714-2016 titled **Baldev Singh Versus State of Punjab and another** and authorities i.e. **Smt.Urmila Devi Versus The State (NCT of Delhi), 2007(1) RCR (Criminal) 246 and Gurpreet Singh alias Khinder Versus State of Punjab, 1995(2) RCR(Criminal) 127** referred to by learned counsel for the petitioner, those do not find application to the present case due to different facts and circumstances and the context in which such observations have been made.

It may be mentioned here that in every criminal case, the facts and circumstances are different and observations made by High Courts and Apex Court while deciding a particular case do not find ipso facto application to the other case having somewhat similar facts because while deciding a case, the Court has to keep into view the totality of the facts and circumstances.

As regards the quashing of order declaring the petitioner as proclaimed offender, this Court in this Court in judgment **Mehnga Singh Versus State of Punjab, 2002(2) R.C.R.(Criminal) 501**, has observed that when an accused has been declared as proclaimed offender, a petition against the order under Section 482 Cr.P.C. is not maintainable and that the accused should first move the Court which declared him proclaimed offender and even an objection against validity of proclamation is required to be raised in the first instance before the Court which issued the proclamation and that power under Section 482 Cr.P.C. is not to be exercised in favour of a person, who is absconding or avoiding service.

The law on the subject is very clear that a proclaimed offender is not entitled to grant of pre-arrest bail. In case titled **Jagtar**

Singh Versus Satendra Kaur @ Bhavana Gro ver & Ors, 2002 Cri. L.R.(SC) 807, it was observed by Hon'ble Apex Court that normally when accused are absconding, there is no question of granting anticipatory or regular bail. Further in **State of Madhya Pradesh Versus Pradeep Sharma, 2014(1) R.C.R.(Criminal) 269**, Hon'ble Apex Court has categorically observed that when an accused had absconded and declared as a proclaimed offender in terms of Section 82 Cr.P.C., he is not entitled to pre arrest bail.

This petition so moved by the petitioner while residing abroad through his mother and attorney is nothing but an attempt to misuse the process of law. There is no occasion to exercise the power under Section 482 Cr.P.C. so as to accept the petition. The petitioner has not submitted himself to jurisdiction of this Court. He instead of surrendering in the trial Court explaining the reasons for his absence from the Court during trial and praying for grant of regular bail has tried to bye-pass the said Court by way of filing the present petition.

The petition is bound to fail and is dismissed accordingly.

(H.S.MADAAN)
JUDGE

29.7.2021
Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No