

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

CRM-M-26957-2021

Date of decision-16.07.2021

Sarabjit Singh

...Petitioner

Vs.

State of Punjab and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Gaurav Kalsi, Advocate for
Mr. H.S.Batth, Advocate for the petitioner.

MANOJ BAJAJ, J.

Petitioner-Sarabjit Singh (proclaimed offender) has filed this petition to challenge the orders dated 10.02.2011 and 09.03.2012 (Annexures P-2 and P-3, respectively), whereby the trial Court proceeded to issue non-bailable warrants against him to secure his presence and later on declared him proclaimed offender in case FIR No.172 dated 19.04.2010 under Sections 420 and 34 Indian Penal Code, 1860 registered at Police Station Civil Lines, Amritsar, District Amritsar City.

The facts in brief leading to the petition are that on the basis of application of Harbhajan Singh (respondent No.2), the above FIR was registered. The allegations as noticed by the learned Judicial

Magistrate First Class, Amritsar in the order dated 08.05.2017 are as under:

“Criminal law was set into motion on the application bearing 389/PC/SSP dated 28.12.2009 moved to SSP, District Amritsar by complainant Harbhajan Singh to the effect that he is resident of Village Chanan Ke, Tehsil Baba Bakala, District Amritsar and working as employee in Telephone Exchange Department. Accused Sukhwinder Kaur w/o Late Sh. Bakshish Singh came to his office in order to correct the St Vs. Sukhwinder Kaur Pg no. 2 telephone bill 2-3 times due to which they got in contact with each other. Accused Sukhwinder Kaur told him that if somebody want to go abroad then she can sent him abroad with minimum cost. In the month of January 2002, accused told him that she can send complainant son abroad and the deal for sending abroad was struck for a sum of Rs.10 Lac. Complainant got induced from the wordings of accused and agreed to send his son abroad. On 06.02.2002, complainant handed over a sum of Rs. 1 Lac to Sukhwinder Kaur and his son Sarabjit Singh in his office. As an assurance, accused Sukhwinder Kaur issued a post dated cheque bearing no.20717 and on 12.06.2002, Sarabjit Singh also gave affidavit to that effect. Complainant later on came to know that Sarabjit Singh forged the signature of his mother on the affidavit. On 03.11.2002, Sarabjit Singh came to his office and complainant handed over a sum of Rs.2,500,00/- in the presence of witnesses and as security, accused give two cheques bearing no.1227921 and 1227923. In the month of December 2003, both the accused came to the office of complainant and asked him that papers works have been done and demanded more Rs.2 Lac. On 08.01.2004 after arranged the money, complainant called accused to his office and handed over Rs.2 Lac. Accused as assurance have given one more cheque bearing no.20718 and 20719 as security. On 27.09.2005, accused also taken more Rs.1,70,000/- from the complainant more and gave him an assurance that they will arrange a visa for England for complainant son. Thereafter both the accused kept on prolonging the matter on one pretext or other. Thereafter accused demanded security cheques from the complainant

and asked the complainant that she will return the whole amount to the St Vs. Sukhwinder Kaur Pg no. 3 complainant upon which complainant returned the security cheques. Accused in return had given a cheque bearing no.20720 of Rs.7,20,000/- to the complainant. Accused did not sent his son abroad nor she returned the money. Thereafter complainant lodged a complaint filed u/s 138 of N.I. Act against accused Sukhwinder Kaur due to which a compromise was effected between complainant and accused in the presence of witnesses. As per compromise, accused gave a cheque of Rs.50,000/- of Bank of Baroda and assured the complainant that remaining payment will be made in installments. Thereafter when complainant asked the accused to return the money then accused assured the complainant that they will send the son of complainant and his daughter-in-law abroad on couple visa. Thereafter complainant withdraw his complaint. However accused neither sent his son and daughter-in-law abroad nor returned the money to the complainant.”

During the pendency of the case, the petitioner went abroad and the efforts of the trial Court to secure his presence proved futile as it was reported that he has left India. Subsequently, the petitioner was declared as proclaimed offender vide impugned order dated 29.02.2012, but the copy of the order is not on record. After completion of investigation in the subject FIR, the final report was presented before the trial Court against co-accused and during their trial, prosecution had examined five witnesses. The trial Court vide its judgment dated 08.05.2017 (Annexure P-5) acquitted all the accused persons and the judgment of acquittal was further upheld by the appellate Court on 02.11.2019 (Annexure P-6) as appeal bearing No.CRA-5615-2017 filed

by State was dismissed.

According to the petitioner since his co-accused have been acquitted, therefore, continuation of trial qua him would be nothing but wastage of precious time of the Court and on these grounds, the petitioner had filed CRM-M-30524-2020 seeking quashing of the FIR, however, the same was not entertained because the petitioner is proclaimed offender. Faced with this situation, the said petition was withdrawn, therefore, petitioner has filed this petition seeking quashing of the above mentioned impugned orders.

Learned counsel for the petitioner has argued that once the prosecution had set up a common case against the petitioner and his co-accused, the judgment of acquittal rendered by the trial Court would equally benefit him. He submits that as the judgment of acquittal has been further upheld by the appellate Court, the trial qua the petitioner at this stage would be an empty formality as the chances of conviction are bleak. He submits that while declaring the petitioner as proclaimed offender, no proper procedure was adopted by the trial Court, therefore, the said order declaring him proclaimed offender is bad in law. He prays that the impugned orders may kindly be quashed.

During the course of hearing, it is not disputed by learned counsel that the petitioner is still residing abroad and the petition has

been filed through his mother, namely, Sukhwinder Kaur (Special power of attorney).

When confronted with the maintainability of the petition, learned counsel has submitted that since the mother of the petitioner was also an accused, therefore, she is competent to represent him as his special power of attorney to pursue his case relating to the same FIR.

After hearing learned counsel for the petitioner, this Court finds that the petition is not maintainable in the present form, as the impugned order dated 09.03.2012 declaring the petitioner as proclaimed offender is not on record, and besides, the other impugned order dated 10.02.2011, whereby non-bailable warrants were issued against the petitioner has no significance, after passing of the order dated 09.03.2012.

Apart from it, admittedly the petitioner never associated himself with the trial proceedings, therefore, evidence adduced by the prosecution qua his co-accused cannot be read in respect of the petitioner. Further, the argument of learned counsel that petitioner's mother Sukhwinder Kaur, being mother Special power of attorney holder is competent to maintain this petition is also without any merit as in criminal proceedings the presence of the accused is necessary. Needless to observe that no proceedings in a criminal trial can take

place in the absence of the accused, except where the permission has been granted by the Court to the said accused and ordinarily such prayers like exemption from personal appearance or even recording of evidence in the absence of accused are made by the concerned accused only. There is no provision in Code of Criminal Procedure, 1973 enabling the accused to appoint a power of attorney to represent him in criminal proceedings. The power of attorney executed under the Power of Attorneys Act, 1882 is normally meant for entrusting the power to some other person to manage, buy or sell property; to borrow money; to execute lease deed or to contest the civil litigation etc. In every criminal trial, the intention to commit crime, followed by execution by the accused or negligent act or omission constituting the penal offence are most important aspects which are ascertained by the trial Court to find involvement of the said accused in the crime, therefore, such proceedings, if permitted to be conducted in absence of accused would be violative of cardinal principles of criminal jurisprudence.

The issue regarding maintainability of the petition by an accused through general power of attorney holder has been considered by this Court in “**Amit Ahuja Vs. Gian Parkash Bhambri**”, 2010 (3) **R.C.R. (Criminal) 586**, wherein it has been held that such a petition can be maintained only if the accused is suffering from any disability

being minor, insane or any other disability recognized as sufficient to permit any other person to file a petition on his behalf. But, in **“Kuldeep Singh Jaswal Vs. Jaspal Singh”, 2016 (2) AICLR 703**, the conflicting view was adopted by this Court, wherein it was held that any petition before the Court should be filed by the accused, but there cannot be or should not be laid down a straight jacket formula in this regard and the issue was left upon at the discretion of the concerned court to be decided upon the facts and circumstances of the case.

Further, the Division Bench of this Court in **“Mangal Dass Gautam Vs. State of Haryana”, 2020 (2) R.C.R. (Criminal) 382**, examined the above issue and held that a petition under Section 482 Cr.P.C is an exception to general rule of criminal law and any such petition filed by accused through power of attorney must contain special reasons. It was further held that the maintainability of such petition would certainly be dependant upon various factors including facts and circumstances of that particular case to be decided by the said Court. The relevant part of the judgment is extracted below:-

“38. In the light of the above observations, it is held that a petition under section 482 of Cr.P.C., 1973 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., 1973 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., 1973.”

Notably, the maintainability of the petition on behalf of accused through power of attorney holder has also been discussed by the Hon'ble Supreme Court in “**T.C.Mathai Vs. The District & Sessions Judge, Thiruvananthapuram**”, AIR 1999 SC 1385, wherein the Apex Court refused to entertain such petition on the ground of maintainability and observed as under:-

“Section 2 of the Power of Attorney Act cannot override the specific provision of a statute which requires that a particular act should be done by a party in person. When the Code requires the appearance of an accused in a court it is no compliance with it if a power of attorney holder appears for him. It is a different thing that a party can be permitted to appear through counsel. Chapter XVI of the Code empowers the Magistrate to issue

summons or warrant for the appearance of the accused. Section 205 of the Code empowers the Magistrate to dispense with the personal attendance of accused, and permit him to appear by his pleader if he sees reasons to do so. Section 273 of the Code speaks of the powers of the court to record evidence in the presence of the pleader of the accused, in cases when personal attendance of the accused is dispensed with. But in no case can the appearance of the accused be made through a power of attorney holder. So the contention of the appellant based on the instrument of power of attorney is of no avail in this case”.

Though the above decision of the Hon'ble Supreme Court was not brought to the notice of this Court in Mangal Dass Gautam's case (supra), however, the above view was further followed by Bombay High Court in “**Pravin Niwritti Sawant Vs. Nisha Pravin Sawant and another**”, 2007(4) R.C.R. (Criminal) 841, and by Kerala High Court in “**Naveed Akhthar Vs. State of Kerala, 2016 SCC Online Kerala 13587**”.

At this juncture, the analysis of the facts of this case reveal that the petitioner voluntarily disengaged himself with the trial proceedings, who left the country without seeking any permission from the trial Court, therefore, this petition filed through the Special power of attorney holder is not maintainable. If such a procedure is introduced, then it would not only encourage the accused persons to seek this kind of permissions to avoid their personal presence before

the trial Courts or any other Court, as required by law but would also put extra burden upon the Courts and it may further cause delay in conclusion of the criminal proceedings, thereby defeating the aim and object of the penal laws.

This Court is cognizant of the scope of Section 482 Cr.P.C and in numerous judicial pronouncements, it has been held by various High Courts as well as the Hon'ble Supreme Court that the inherent powers are to be used sparingly and with circumspection and cannot be exercised in a routine manner, much less for the convenience of the accused. For the sake of arguments, even if it is assumed that in a given case such a permission needs to be given to the accused, in that eventuality also the conduct of the accused applicant would acquire importance, and this Court is of the opinion that a proclaimed offender who failed to associate with the trial proceedings despite knowledge is not entitled to invoke the inherent powers of this Court to seek quashing of criminal proceedings.

Resultantly, in view of the above discussion, this Court does not find any merit in this petition and the same is dismissed.

July 16, 2021

vanita

Whether speaking/reasoned :

Whether Reportable :

(MANOJ BAJAJ)
JUDGE

Yes No

Yes No