

CRM-M-26907-2020

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

**CRM-M-26907-2020
Pronounced on: 11.02.2021**

Sukhmander Singh

...Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Rajesh Bhatheja, Advocate,
for the petitioner.

Mr. Sukhbeer Singh, AAG, Punjab.

HARNARESH SINGH GILL, J.

Case was taken up for hearing through video conferencing.

This is a petition under Section 482 Cr.P.C. for quashing of FIR No.75 dated 18.09.2013, registered at Police Station Ajitwal, District Moga, under Section 22 NDPS Act, 1985, and all the consequential proceedings arising therefrom, including the order dated 09.10.2018 (Annexure P-2), declaring the petitioner as a proclaimed offender.

The above noted FIR was registered with the allegations that when the police party was present at bus stand, village Dhudi Ke, in connection with patrolling and checking of suspects, two persons had been seen coming on motor-cycle bearing Registration No.PB-29F(T) 9122; that on seeing the police party, the driver of the motor-cycle fled from the spot, but the pillion-rider had been nabbed, who disclosed his identity as Sukhmander Singh (present petitioner), and had further disclosed the name of driver as Julfi

CRM-M-26907-2020

Khan; that after preparing consent memo signed by the accused, the Investigating Officer had conducted the search of a polythene bag carried by the petitioner, following which recovery of 100 pouches of Microlit tablets each containing 100 tablets, had been effected; that one pouch of 100 tablets of Microlit was separated out as a sample and its parcel was prepared and the residue had been put in the same plastic bag; that both the parcels had been sealed by the Investigating Officer with the seal bearing impression 'GS'; that thereafter, all the necessary formalities had been completed; that on 26.09.2013, accused-Julfi Khan surrendered in the Court and was arrested in the above-noted FIR; that during inquiry, accused-Sukhmander Singh (petitioner) had been declared as innocent, and that after completion of necessary investigation, challan had been prepared and presented in the Court against co-accused, Julfi Khan only.

While poring the record, it is axiomatic that during the pendency of trial against the above-named co-accused, the prosecution had moved an application under Section 319 Cr.P.C., wherein the trial Court, vide order dated 25.09.2017, had summoned the petitioner as an additional accused to face the trial alongwith the above-named co-accused under Section 22 NDPS Act.

Charge was framed against the petitioner under the aforesaid section, to which he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined as many as five witnesses.

When the case was fixed for defence evidence, the

CRM-M-26907-2020

petitioner had failed to appear before the trial Court and accordingly, he had been declared a proclaimed offender by the trial Court, vide order dated 09.10.2018.

After appreciating the evidence led by the parties, vide judgment dated 17.11.2018, the trial Court had acquitted the above-named co-accused of the charge framed against him.

Learned counsel for the petitioner made two-fold submissions. The first and the foremost submission of the learned counsel was that at one stage during an inquiry conducted by DSP(H) Moga, finding no evidence against the petitioner, the police had found him innocent. The aforesaid co-accused charged for the similar offence, had been acquitted by the trial Court and the evidence being the same, no useful purpose would be served by continuing with the criminal proceedings as against the petitioner. In this regard, he has placed reliance upon a Division Bench judgment of this Court in **Sudo Mandal @ Diwarak Mandal Vs State of Punjab**, 2011(4) RCR (Criminal) 453, and a Single Bench judgment of this Court in **Rajesh Kumar @ Billa Vs. State of Punjab**, 2019(3) RCR (Criminal) 351.

The learned counsel further contended that the trial Court, vide order dated 05.09.2018, had issued proclamation notice against the petitioner for 20.09.2018, which had been received back executed with the report dated 16.09.2018. Since the statutory period of 30 days had not elapsed, therefore, presence of accused had been awaited for 01.10.2018. However, no fresh proclamation was ordered to be issued.

The petitioner had not been afforded the requisite period of 30

CRM-M-26907-2020

days for causing his appearance, after publication of the proclamation notice. Therefore, declaring the petitioner as a proclaimed offender is against the spirit of Section 82 Cr.P.C. and the same is liable to be quashed. In support of his contentions, the learned counsel relied upon **Ashok Kumar** Vs. **State of Haryana and another** 2013 (4) R.C.R. (Criminal) 550. Otherwise, the petitioner had no intention to abscond the trial.

E.converso, the learned State counsel has vehemently contended that the entire case of the prosecution is based on the judgment of **Sudo Mandal's** (supra). However, the judgment in the said case based on the re-appreciation of evidence in appeal, is distinguishable. He further contended that the trial Court had rightly declared the petitioner as a proclaimed offender, and thus, keeping in view the act and conduct of the petitioner, he is not entitled to any equitable relief from this Court.

I have heard the learned counsel for the parties and with their able assistance, have also gone through the case file.

Incontrovertibly, at one stage of the investigation, finding no evidence against the petitioner, the police had declared him innocent. It was, however, at a subsequent stage on an application under Section 319 Cr.P.C., filed by the prosecution, the petitioner had been summoned to face the trial alongwith the co-accused. Still further, as noticed above, vide order dated 09.10.2018, the petitioner was declared as a proclaimed offender, and that too without following the mandatory provisions in this regard.

Vide judgment dated 17.11.2018 passed by the learned

CRM-M-26907-2020

trial Court, the above-named co-accused stands acquitted. The evidence being one and the same, the vehement contention of the learned counsel for the petitioner that no useful purpose would be served by continuing the criminal proceedings against the petitioner, merits acceptance. It is so being observed because there is no other evidence on record to sustain the prosecution of the petitioner. While acquitting the co-accused, the trial Court has recorded the detailed reasons and a perusal of the said judgment would show that there is no adverse inference against the petitioner except him being declared as proclaimed offender by the trial Court.

In normal circumstances, this Court being conscious of the fact that an accused when declared a proclaimed offender must face the consequential proceedings. However, the fact remains that the petitioner had been declared as proclaimed offender without following the mandatory provisions contained in Section 82 Cr.P.C., and doing away with such mandatory provisions, does not stand the judicial scrutiny in view of the law laid down by a Single Bench of this Court in **Ashok Kumar's** (supra), followed by this Court in CRM-M-1056-2020, titled as '**Sachin Sharma** Vs. **Suraj Mal**, decided on 06.10.2020.

Thus, mere fact that the petitioner stands declared as proclaimed offender, would not be a hindrance in quashing the proceedings against him, particularly when the co-accused already stands acquitted by the trial Court.

The Division Bench, in the case of **Sudo Mandal** (supra), held that when on the same set of evidence, the accused

CRM-M-26907-2020

tried earned acquittal, the same benefit deserves to be given to the absconding accused. It was held as under:-

“24. The above provisions recognize the inherent powers of the Court to do real and substantial justice, preventing the abuse of the process of the Court. The statutory recognition of the inherent jurisdiction of the criminal Court indicates that there is a power for the criminal Courts to make such an order as may be necessary to meet the ends of justice. We are conscious of the fact 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 the process of the Court would result in serious miscarriage of justice. The inherent powers of the Court should not be exercised to stifle legitimate prosecution. But at any rate the settled position is that this Court has the jurisdiction to quash the entire criminal proceedings to prevent the abuse of the process of the Court in order to secure the ends of justice. In our considered view the same inherent powers can be exercised when this Court finds that the innocent accused, who had absconded would simply face the empty formality of trial with the very same unbelievable and untrustworthy evidence, which would ultimately lead to their acquittal. Bringing the absconding accused to face the trial in this case in the above facts and circumstances would amount to abuse of the process of the Court. To secure the ends of justice, we hereby quash the entire proceedings as against the absconding accused namely Radha Mandal, Rajiya Mandal and Sambodh Mandal pending before Judicial Magistrate Ist Class, Bathinda/ Sessions Judge, Bathinda, as no useful purpose will be served even if they are procured and ordered to face the trial in this case.”

CRM-M-26907-2020

In the above backdrop, continuation of the criminal proceedings against the petitioner is nothing but a futile exercise and an empty formality. Hence, the FIR and all other consequential proceedings arising therefrom, are liable to be quashed qua the present petitioner as well.

Accordingly, the present petition is allowed. FIR No.75 dated 18.09.2013, registered at Police Station Ajitwal, District Moga, under Section 22 NDPS Act, 1985, and all the consequential proceedings arising therefrom, including the order dated 09.10.2018 (Annexure P-2), are hereby quashed.

11.02.2021
parveen kumar

(HARNARESH SINGH GILL)
JUDGE

Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No