

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-41819-2021 (O&M)

Date of decision: 09.12.2021

Harpinder Singh

...Petitioner

Versus

Director, Central Bureau of Investigation and another

...Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present: Mr. H.S. Dhindsa, Advocate
for the petitioner.

Mr. Rajeev Anand, Advocate
for the respondents-CBI.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for quashing of FIR registered vide R.C. No.6(S)-SIU dated 16.07.2003 under Sections 420, 120-B of the Indian Penal Code ('IPC' for short), Section 30 of Arms Act and Section 13 (2) read with Section 13(1)(d) of the Prevention of Corruption Act, at Police Station SPE/CBI/SCR-1, New Delhi and all the subsequent proceedings arising therefrom, including the order dated 30.04.2009 passed by the Special Judge, CBI, Patiala, vide which the petitioner was declared as proclaimed offender.

Learned counsel for the petitioner submits that initially, FIR No.93 dated 24.10.2002 under Sections 420 & 120-B IPC was registered at Police Station Cantt. Ferozepur, District Ferozepur, however, later on, it was

transferred to CBI for conducting investigation relating to issuance of arms licences pertaining to the years 1998-2001. Thereafter, CBI registered the impugned FIR and started the investigation. It is further submitted that allegations in FIR No.93 are that co-accused Gurcharan Singh Ferurai, ex-SSP, Ferozepur, had got issued arms licences of 24 persons from the office of District Magistrate, Ferozepur. On inquiry, it was found that all these persons are family members or close relatives of Gurcharan Singh Ferurai and the licences were prepared by using illegal methods by giving his address, while he was posted as SSP, Ferozepur. It is also submitted that after the CBI was entrusted with the inquiry, challan was presented and the petitioner was also one of the accused in the said FIR and from 2001 onwards, he is residing abroad and at the time, when the challan was presented, the Special Judge, CBI, Patiala issued a proclamation under Section 82 Cr.P.C. and later on, declared him a proclaimed offender.

Learned counsel has further argued that as per the report dated 20.03.2009 (Annexure P-4), which was reported by the HC, who effected the process that the petitioner was not residing in the village for the last many years. It is also submitted that without following the proper procedure and effecting the service on the petitioner through the Embassy at a place, where he was residing in Canada, no effective service was made on the petitioner, therefore, proceedings declaring him proclaimed offender, are liable to be set aside.

Learned counsel has next argued that other accused including the main accused Gurcharan Singh Ferurai, retired SSP, against whom the allegations are that he had got prepared the arms licences of co-accused by

showing his address, as address of all the accused, stand acquitted by the Special Judge, CBI, Punjab, SAS Nagar (Mohali) vide judgment dated 01.05.2019 and while acquitting all other accused persons including Gurcharan Singh Ferurai, the trial Court recorded the following findings: -

“...Ld. PP for the CBI relied on judgment of the Hon’ble Supreme Court titled as “Neera Yadav Vs. CBI” reported as AIR 2017 Supreme Court Page 3791 and argued that arm licence is a valuable thing within the scope and meaning of valuable thing as mentioned in Section 13 (1) (d) of the Prevention of Corruption Act, 1988. However, the said judgment is not applicable to the facts and circumstances of the present case as in the case relied by Ld. PP for the CBI, the accused had misused her position as a public servant to benefit herself and her kith and kin and being the Chairman-cum-CEO of Noida, she was expected to ensure that the allotment of plots in Noida are effected as per rules and regulations but she herself bypassed the rules and regulations of Noida by submitting ante-dated half filled application for seeking allotments of plot and by not paying the total amount payable in view of the allotment and got allotted a plot. Thus, the allegations against Neera Yadav in the case relied by Ld. PP for the CBI were that she got plot allotted in her favour by misusing her official position. In the present case, as stated above, only arm licences were issued and it is not the case of prosecution that any arm or ammunition were also got issued in favour of the accused on concessional

rate or by misusing official position. In the present case, as admitted by the prosecution witness, all the accused were otherwise eligible for getting the arm licence issued from their permanent addresses and nothing has been brought on record to show that in case they had mentioned their permanent address in the application for grant of licence, then they would have been denied arm licence. These arm licences are still being extended from time to time and some of them also changed the address on the arm licences to their permanent address. Thus, it cannot be said that GS Ferurai abused his official position for getting the licences issued in favour of the accused. The prosecution even otherwise has not been able to prove that any wrong information was given by the accused while mentioning their temporary addresses. Though, Ld. PP for the CBI also pointed out that the Ration Card and Voter Card of the accused in whose favour the arm licences were issued, were prepared by giving their native permanent address and no document in favour of accused have been issued at the residence of SSP, Ferozepur and thus inference should be drawn that they were not residing at the address given by them in this case but the said submission does not carry any weight. It is not disputed that arm licence can be issued at the temporary address as well as at permanent address. In the present case, the prosecution miserably failed to prove that accused were not residing at the temporary address. Merely, because the Ration Card and Voter

Card of the accused are of their native permanent address that by itself will not lead to the inference that accused were not residing at the temporary address given by them while getting the arm licence issued. It is normal practice of getting Ration Card and Voter Card issued by giving permanent address and the accused gave their permanent address correctly in the application form submitted by them for getting the licence issued.

Ld. PP for the CBI argued that the arm licence can be issued only at the place where a person ordinarily resides or have its occupation and thus the accused are liable to be held guilty. However, as stated above, in the present case, the accused were residing temporarily at the house of SSP, Ferozepur and they have only mentioned their temporary address as such in the application form. The arm licences have not been cancelled or revoked so far. Thus, it cannot be said that licences could not have been issued at the temporary address given by the accused. Similarly, the another argument of Ld. PP for the CBI that the witnesses in the cross-examination have taken contradictory stand regarding the purpose for which the accused were residing at the house of SSP, Ferozepur and thus it should be held that the defence is an afterthought, is also devoid of any merit. It is well settled proposition of law that prosecution has to prove its case against the accused beyond shadow of reasonable doubt and cannot

rely upon the contradictory defence of the accused. Even otherwise, the defence of the accused is consistent as almost all the witnesses deposed that accused were residing at the house of SSP, Ferozepur for the purpose of providing security to him. The star witnesses of the prosecution i.e. PW1 and PW2 did not support the prosecution version and rather supported the defence of the accused that the accused were residing in the house of SSP, Ferozepur. No doubt, in the application form, none of the accused mentioned the purpose of issuance of arm licence as “providing security” to SSP but almost all the accused have mentioned that the arm licence is required for safety purpose as well as selfprotection and this include protecting one’s relative also. Ld. PP for the CBI also pointed out that application of Ranjit Singh Ex.PW49/10 does not bear his signatures but the said Ranjit Singh is not the accused in this case and neither the person who issued arm licence in his favour is accused. As discussed above, Investigating Officer PW58 Sh. Naresh Talwar, DSP, admitted in the cross-examination that all the licences referred by him in examination-in-chief were not suspended and rather were renewed from time to time and their area was also extended to all India by the competent authorities and arms were purchased. He further admitted that the licences were issued by DM/ADM and other competent authorities of Ferozepur and he further admitted that he visited the place of residence of all the accused

and found nothing which would debar them from holding arm licences as per their antecedents. Thus, it is held that prosecution has not been able to prove the charges levelled against all the accused.

As a sequel to my above discussion, accused Gurcharan Singh Ferurai, HC Jarnail Singh are acquitted under Section 420, 13 (1) (d) read with Section 13(2) of Prevention of Corruption Act, 1988, 120-B IPC and accused Udham Singh, Daljit Singh, Jarnail Singh S/o Teja Singh, Gurdeep Singh, Darshan Singh, Maghar Singh, Manminder Singh, Sukhdev Singh, Harpreet Singh are acquitted under Section 120-B IPC, 420 IPC, Section 30 of the Arms Act by giving them benefit of doubt. The case property qua accused Gurcharan Singh Ferurai, Udham Singh, Jarnail Singh, Maghar Singh, Sukhdev Singh, Harpreet Singh, HC Jarnail Singh, Daljit Singh, Manminder Singh, Darshan Singh and Gurdeep Singh be disposed of after the expiry of period of limitation of filing appeal/ revision in accordance with rules. Case property pertaining to the accused Harpinder Singh and Balraj Singh is ordered to be retained intact. File be consigned to the record room be put up again as and when accused Harpinder Singh and Balraj Singh are apprehended or surrendered in the court.”

Learned counsel for the petitioner submits that this judgment dated 01.05.2019, acquitting all other accused, has attained finality, as no appeal has been filed, though it was observed that the case will again start

against accused Harpinder Singh and Balraj Singh, who were declared proclaimed offenders. In the aforesaid trial, the prosecution has produced as many as 60 witnesses and on appreciation of the evidence, the trial Court recorded a finding that the prosecution/CBI has failed to prove the guilt of any of the accused including the main accused Gurcharan Singh Ferurai. It is further submitted that some of the witnesses have not even deposed in terms of the charge sheet filed against the accused and this fact was also appreciated by the trial Court.

Learned counsel has referred to a judgment of the Division Bench of this Court in **Sudo Mandal @ Diwarak Mandal Vs. State of Punjab, 2011(4) RCR (Criminal) 453**, wherein it is held that if an accused, who faced the full length trial, stands acquitted by the trial Court, the proceedings against other accused, who were declared proclaimed offenders, can be quashed, if no fresh evidence is led.

It is worth noticing that on 06.10.2021, while issuing notice of motion, it was observed that the FIR was registered against 14 persons, out of which one died and two persons i.e. petitioner Harpinder Singh and Balraj Singh were declared proclaimed offenders, whereas 11 accused including main accused, who faced full length trial, were acquitted by the Special Judge, CBI, Punjab, SAS Nagar (Mohali) vide judgment dated 01.05.2019, as the prosecution could not prove the charges levelled against the accused persons. It was also observed that the allegations against the petitioner are identical to the aforesaid co-accused that he had also procured an arms licence by giving fake address of then SSP, Ferozepur as his own address.

Vide order dated 06.10.2021, the petitioner was directed to

appear before the trial Court with a condition that he will deposit the costs of Rs.1.00 lac with the Punjab and Haryana High Court Lawyers' Welfare Association, considering the difficulty faced by the members due to COVID-19 situation.

Learned counsel further submits that the petitioner has already deposited the costs and has put in appearance before the trial Court and prayed for quashing of the FIR.

Reply on behalf of respondent-CBI is on record. In para No.4 of this reply, it is stated that petitioner Harpinder Singh was in relation of then SSP, Ferozepur Gurcharan Singh Ferurai, who was uncle of petitioner, as he is real brother-in-law of his father and therefore, the petitioner has wrongly given the address C/o SSP, Ferozepur Cantt. in the application form submitted for obtaining an arms licence and in that process, the petitioner got a licence for .12 bore DBBL for Punjab State, whereas the petitioner is resident of Village Burj Hakima, Tehsil Raikot, District Ludhiana. It is further stated that the petitioner was rightly declared proclaimed offender on 30.04.2009, after following the procedure under Section 82 Cr.P.C., however, the accused persons were acquitted giving benefit of doubt. It is also stated in the reply that the process under Section 82 Cr.P.C. was issued on the address given by the petitioner and not on the actual place of residence i.e. Province of British Columbia in Canada.

On a Court query, whether any appeal is filed by the CBI against the judgment dated 01.05.2019, acquitting 11 co-accused, learned counsel for CBI submits that no such appeal was filed and the judgment has attained finality.

After hearing learned counsel for the parties, I find that once the petitioner has appeared before the trial Court and has been granted the concession of bail, impugned order dated 30.04.2009, declaring him a proclaimed offender, loses its significance.

In view of Division Bench judgment of this Court in **Sudo Mandal @ Diwarak Mandal's** case (supra) relied upon by learned counsel for the petitioner, I find that once the main accused Gurcharan Singh Ferurai and similarly situated 10 other co-accused, who had also applied for arms licences, giving the address of SSP, Ferozepur, stand acquitted by the Special Judge, CBI, Punjab, SAS Nagar (Mohali) vide judgment dated 01.05.2019 and the judgment attained finality, as no appeal has been filed.

I find that prosecution of the petitioner is nothing, but misuse of process of law, as the CBI has produced all the available evidence; both documentary and oral, during the trial and by not believing the same to be worth conviction, all the accused were acquitted. Therefore, no useful purpose will be served in directing the petitioner to face the trial, as it is not the case of CBI, as per reply filed in the Court that no fresh evidence is to be led against the petitioner.

In view of what has been discussed hereinabove, present petition is allowed and FIR No.93 dated 24.10.2002 under Sections 420 & 120-B IPC was registered at Police Station Cantt. Ferozepur, District Ferozepur, later on converted into FIR bearing R.C. No.6(S)-SIU dated 16.07.2003 under Sections 420, 120-B IPC, Section 30 of Arms Act and Section 13 (2) read with Section 13(1)(d) of the Prevention of Corruption Act, Police Station SPE/CBI/SCR-1, New Delhi and all the subsequent

proceedings arising therefrom, including the order dated 30.04.2009 passed by the Special Judge, CBI, Patiala, declaring the petitioner as proclaimed offender, are ordered to be quashed.

09.12.2021
vishnu

[ARVIND SINGH SANGWAN]
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No