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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-42343-2020

Date of Decision: 16.02.2021

Sarabjit Singh @ Baroga

.. Petitioner

Vs.

State of Punjab

..Respondent

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. L.S. Lakhanpal, Advocate for the petitioner.

...

Manoj Bajaj, J. (Oral)

Petitioner Sarabjit Singh @ Baroga (now in custody) has filed this petition under Section 482 Cr.P.C. for quashing of FIR No.154 dated 01.06.2014, under Section 22 NDPS Act, Police Station Phillaur, District Jalandhar (Annexure P-1) and all proceedings arising therefrom, in the interest of justice.

As per the prosecution, on 01.06.2014, 30 grams intoxicant powder was recovered from the possession of present petitioner Sarabjit Singh @ Baroga and 25 grams intoxicant powder was recovered from co-accused Naresh Kumar.

Learned counsel for the petitioner has argued that the case set up by the prosecution against the petitioner and his co-accused, namely, Naresh Kumar is similar and as the trial in respect of co-accused ended in his acquittal through judgment dated 08.12.2017 (Annexure P-3), therefore, the continuation of trial qua the petitioner is a futile exercise. In support of his arguments, learned counsel has placed reliance upon the Division

Bench judgment passed by this Court in Sudo Mandal @ Diwarak Mandal

Vs. State of Punjab, 2011 (2) R.C.R. (Criminal) 453. He prays that the impugned FIR (Annexure P-1) be quashed.

During the course of hearing, it is not disputed by the learned counsel that after registration of this FIR, the petitioner was granted bail by the trial Court vide order dated 10.03.2015, but during the pendency of the trial proceedings, he absented and was later on declared as proclaimed offender vide order dated 25.05.2017. Learned counsel further states that the petitioner was arrested on 26.01.2019 and is presently in custody.

After hearing learned counsel for the petitioner, this Court finds that the judgment in Sudo Mandal's case (supra) does not lend any strength to the case of the petitioner, as the same has already been distinguished in **Harpeet Singh Vs. State of Punjab and another (CRM-M-21911-2019 decided on 15.07.2019)**, wherein it was observed that the exercise of inherent powers under Section 482 Cr.P.C. in the said case was not in consonance with the other consistent law laid down by Hon'ble the Supreme Court. The said 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”.

Apart from the above, it is also evident that the petitioner, who was on bail, absented himself from the trial proceedings and was declared proclaimed offender in May, 2017, but the trial in respect of his co-accused Naresh Kumar continued, who was acquitted on 08.12.2017. The evidence adduced by the prosecution in respect of the co-accused is not admissible qua present petitioner and, therefore, he cannot derive any benefit from the judgment of acquittal passed in respect of the co-accused Naresh Kumar.

Since presently the trial against the petitioner is in progress, therefore, this Court does not find it to be a fit case for exercise of inherent powers under Section 482 Cr.P.C. for quashing of the FIR.

Dismissed.

16.02.2021
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes	No
Yes	No