

258A IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-1248-2019
Date of decision : 27.09.2022

LOVEJOT KAUR

... Petitioner

Versus

HARBHINDER SINGH

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Rahul Bhargava, Advocate for the petitioner.

Mr. Sanjeev Bawa, Advocate for the respondent.

JASJIT SINGH BEDI, J. (ORAL)

The prayer in the present under Section 482 Cr.P.C. is for quashing of the complaint No.COMI8/2015 dated 24.02.2015 (Annexure P-1) bearing CNR No.PBJLB1-000596-2015 for 13.09.2018 titled as 'Lakhvir Singh and others Versus Harbhinder Singh' under Sections 420, 465, 467, 468, 471, 120-B of IPC and Section 12 of the Passports Act, at Police Station Phillaur, District Jalandhar, the order of summoning dated 09.05.2017 (Annexure P-2) and all subsequent proceedings arising therefrom.

2. When this matter had come up for hearing on 15.01.2019, placing reliance on an order of 28.08.2018 passed in CRM-M-37169-2018, the following order was passed:-

“Reliance is placed upon order dated 28.8.2018 passed in CRM-M-37169-2018 (Annexure P14).

Notice of motion for 11.2.2019.

Interim order in the same terms.

To be heard alongwith CRM-M-37169-2018.”

3. Thereafter, the matter has been adjourned from time to time on one pretext or the other.

4. The learned counsel for the complainant states that the petitioner had in fact been declared a proclaimed offender on 01.05.2018. Despite that fact she moved an application seeking permission to go abroad which was declined vide order dated 22.01.2019. A copy of the said order is marked as 'X'. Pursuant thereto, she filed CRM-M-54367-2018 seeking quashing of the order dated 01.05.2018, whereby, she had been declared a proclaimed person. However, while observing that the petitioner had left the country, the said petition was disposed of with the following order:-

“This petition was filed seeking quashing of order dated 1.5.2018 whereby the petitioner was declared as Proclaimed person in complaint No.COMI 8/2015 dated 24.2.2015 titled as Lakhvir Singh and others Vs. Harbhinder Singh.

Learned counsel for respondent on instructions submits that during the pendency of this petition, the petitioner has left the country.

Learned counsel for the petitioner is having no instructions to rebut the contentions raised by learned counsel for respondent.

Since, the petitioner is not in a position to appear before the trial Court, no interference is called for at this stage and the petition is disposed of at this stage.

It is clarified that the disposal of this petition shall not be construed as an interim protection in favour of petitioner.

Since the main case has been disposed of, the pending application, if any is rendered infructuous.”

5. The question which requires consideration is whether an absconding accused can invoke the inherent powers of this Court to seek quashing of criminal proceedings pending against such accused.

The Hon'ble Supreme Court in the case of **Virender Prasad Singh Versus Rajesh Bhardwaj, (2010) 9 SCC 171**, held as under:-

“18. The High Court should have seen through the incessant efforts on the part of the respondent No. 1/accused to stall the proceedings one way or the other and to avoid arrest. It was way back in 2008 that the anticipatory bail application was rejected by this Court and yet the accused has remained outside without being arrested. Again the investigation against him is complete, the charge sheet has been filed for offence committed by him, and still he has managed to remain out. In fact, the lack of bona fides on the part of the accused should have put the High Court on guard. A [Section 482](#) application on the plea that the investigation is not proper at the instance of the accused who does not choose to even appear before the Sessions Judge before whom the matter is pending, should immediately have put the High Court on guard before entertaining the petition which has no bona fides whatsoever. Be that as it may, we desist from saying anything about the quality of investigation, necessity of further investigation or the necessity of the further investigation at the hands of some other agency, particularly, in view of the fact that the charge sheet has already been filed in this matter and at least nothing was shown before us or before the High Court suggesting that there was a necessity of any further investigation, additional investigation or investigation by some other agency. Merely, because there appeared to be no supervision of the DIG level or IG level officer, the High court could not have simply called for the opinion of DGP without recording any finding on any justification. We do

not see any justification whatsoever nor was anything shown to us. We will, therefore, not go into that question, but the stance of the High Court in issuing direction not to take any further step in the proceedings arising out of Arrah Rail G.R.P. Case No. 73/2007 till 21.6.2010 is wholly unwarranted.

23. We are not at all impressed by the [Section 482](#) application firstly filed by the mother of the respondent No. 1/accused and then by the respondent No. 1/accused himself. We do not see any reason why the High Court should have entertained such application at all, particularly, in view of the complete lack of bona fides on the part of the respondent No. 1/accused. That application was, therefore, liable to be dismissed straightaway. Since technically the matter is still pending before the High Court, we only issue a direction to the High Court to dismiss the same. The impugned order of the High Court is set aside and, therefore, this appeal succeeds. The Sessions Judge before whom the matter is pending shall proceed with it in accordance with law.”

[emphasis supplied]

This Court in the case of **Sarabjit Singh Versus State of Punjab, 2021(4) R.C.R. (Criminal) 87**, held as under:-

“14. 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.

15. 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.”

[emphasis supplied]

The Kerala High Court in the case of Sunil Raj Versus Gopan

& Anr., 2020(4) KLT 313, held as under:-

“22. A Full Bench of this Court, in *Moosa v. Sub Inspector of Police*, 2006 KHC 184: 2006(1) KLT 552, after considering all the precedents referred to above concluded thus:

"In the light of the above discussions, we may summarise the legal position as follows:

(i) The inherent powers of the High Court reserved and recognised under S.482 of the Code of Criminal Procedure are sweeping and awesome; but such powers can be invoked only (a) to give effect to any order passed under the Code of Criminal Procedure or (b) to prevent abuse of process of any court or (c) otherwise to secure the ends of justice. Such powers may have to be exercised in an appropriate case to render justice even beyond the law.

(ii) *Considering the nature, width and amplitude of the powers, it would be unnecessary, inexpedient and imprudent to prescribe or stipulate any straight jacket formula to identify cases where such powers can or need not be invoked.*

(iii) *But such powers can be invoked only in exceptional and rare cases and cannot be invoked as a matter of course. Where the Code provides methods and procedures to deal with the given situation, in the absence of exceptional and compelling reasons, invocation of the powers under S.482 of the Code of Criminal Procedure is not necessary or permissible.*

(iv) *The fact that an accused can seek discharge/dropping of proceedings/acquittal under the relevant provisions of the Code in the normal course would certainly be a justifiable reason, in the absence of exceptional and compelling reasons, for the High Court not invoking its extraordinary powers under S.482 Cr.P.C.*

(v) *In a trial against the co accused the prosecution is not called upon, nor is it expected to adduce evidence against the absconding co accused. In such trial the prosecution cannot be held to have the opportunity or obligation to adduce all evidence against the absconding co accused. The fact that the testimony of a witness was not accepted or acted upon in the trial against the co accused is no reason to assume that he shall not tender incriminating evidence or that his evidence will not be accepted in such later trial.*

(vi) *On the basis of materials placed before the High Court in proceedings under S.482 of the Code of Criminal Procedure (which materials can be placed before the court in appropriate proceedings before the subordinate courts) such extraordinary inherent powers under S.482 of the Code of Criminal Procedure cannot normally be invoked, unless such materials are of an*

unimpeachable nature which can be translated into legal evidence in the course of trial.

(vii) The judgment of acquittal of a co accused in a criminal trial is not admissible under Ss.40 to 43 of the Evidence Act to bar the subsequent trial of the absconding co accused and cannot hence be reckoned as a relevant document while considering the prayer to quash the proceedings under S.482 Cr.P.C. Such judgments will be admissible only to show as to who were the parties in the earlier proceedings or the factum of acquittal.

(viii) While considering the prayer for invocation of the extraordinary inherent jurisdiction to serve the ends of justice, it is perfectly permissible for the court to consider the bona fides - the cleanliness of the hands of the seeker. If he is a fugitive from justice having absconded or jumped bail without sufficient reason or having waited for manipulation of hostility of witnesses, such improper conduct would certainly be a justifiable reason for the court to refuse to invoke its powers under S.482 of the Code of Criminal Procedure.

(ix) The fact that the co accused have secured acquittal in the trial against them in the absence of absconding co accused cannot by itself be reckoned as a relevant circumstance while considering invocation of the powers under S.482 of the Code of Criminal Procedure.

(x) A judgment not inter parties cannot justify the invocation of the doctrine of issue estoppel under the Indian law at present.

(xi) Conscious of the above general principles, the High Court has to consider in each case whether the powers under S.482 of the Code of Criminal Procedure deserve to be invoked. Judicial wisdom, sagacity, sobriety and circumspection have to be pressed into service to identify that rare and exceptional case where invocation of the extraordinary inherent jurisdiction is warranted

to bring about premature termination of proceedings subject of course to the general principles narrated above."

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"24. Relying on the precedent of the Full Bench of this Court in Moosa's case, I find that the appreciation of evidence in the case against the 1st accused cannot be considered favourably to quash the proceedings against the petitioner, who is a 2nd accused. It has to be borne in mind that the investigation is not yet complete against the petitioner and the final report has not yet been filed. There is possibility of further evidence being gathered against the petitioner. The absconding 2nd accused cannot take advantage of the acquittal of the 1st accused, who has faced a trial before the Court of the Magistrate and was also convicted in the first instance."

[emphasis supplied]

The Gujarat High Court in the case of **Lalitkishore Omprakash Arya Versus State of Gujarat & Anr., 2005(10) R.C.R. (Criminal) 799,**

held as under:-

"23. I do not consider it necessary to deal with each of the judgment to substantiate the say that the Court may not intercept with the investigation at this stage. However, in view of what is stated above, in my view, even otherwise, considering the nature of the dispute involved and the nature of the fact, and in view of the fact that the petitioner is not co-operating with the investigation and is absconding, even though anticipatory bail application is withdrawn, it is not a case in which this Court would like to exercise its extra ordinary jurisdiction by way of quashing the complaint. Even otherwise also, at this stage, in view of the aforesaid discussion, the complaint is not required to be quashed."

24. It is required to be noted that looking to the complexity of the issue involved in the matter as well as considering

the fact that at present police is also investigating offences under section 379 read with section 114 of the Indian Penal Code, this is not a case in which the investigation is required to be quashed at the threshold. Considering the judgment of the Supreme Court State of M.P. v. Awadh Kishore Gupta, (2004) 1 SCC 691 normally this Court would not prevent the police from carrying out investigation subject to certain limitation. It is required to be noted that from the material produced on record, it prima facie appears that the petitioner tried to be smart and with the help of M.A. Steel Corporation, has tried to defraud the complainant, which is not concerned with the transaction in question or the so called agreement executed by M.A. Steel Corporation. Further, reading the complaint also, it is clear that the suit is filed in the year 2005 for a cause of action which occurred in 2001 and the same is decreed on 26.4.2005 on the basis of the so called compromise purshis jointly executed on 21.4.2005. Even in the cause of action, nothing is stated as to how the suit is brought after three years. The way in which the decree is passed itself reflects on the conduct of the parties. The learned trial Judge ought to have taken several vital aspects into consideration before passing such a decree. However, since the complaint is under investigation, it would not be proper to make any observation which might affect the case of the parties either way. Suffice it to say that this is not a case in which investigation is required to be quashed. Even otherwise, in spite of the order of this Court, the petitioner has not even appeared before this Court. Even though his anticipatory bail application is withdrawn, he has not appeared before the police, and according to Ms. M.L. Shah, learned Additional Public Prosecutor, since the petitioner is absconding, notification to that effect is published. Neither extra-ordinary powers under Article 226 of the Constitution nor inherent powers under section 482 of the Criminal Procedure Code, 1973

can be exercised in favour of a person who is absconding, who is not co-operating with the investigation and who has no regard for law of the land and judicial orders. It is also required to be noted that at present the police is investigating offence under section 379 as according to the complainant the accused have taken away more goods than what was mentioned in the so called decree and this is also required to be investigated by the police. Since the investigation is at large, and since the accused is absconding, which fact is not in dispute, the powers of this Court cannot be exercised in favour of such person even if some attractive arguments have been made on his behalf. Power to quash complaint can be exercised very sparingly and with circumspection and that too in the rarest of rare cases. This case cannot be at all termed as case coming within the four corners of rarest of rare cases??. At this stage, the Court cannot inquire about reliability or genuineness or otherwise of the allegations made in the FIR and the Court also has no power to inquire whether the allegations are likely to be established or not. Defence of the accused also cannot be considered at this stage. If, after investigation, no case is made out, appropriate report will naturally be filed before the concerned Magistrate. If a case is made out, the police will file charge sheet and thereafter, it will be open to the petitioner to either file an application for discharge or file a petition for quashing the case at an appropriate stage. Normally, this Court would not exercise its powers when a person is not coming with clean hands, absconding or flout the orders of the Court or do not remain present before the Court in spite of an order to that effect. I am of the view that neither extra-ordinary powers nor inherent powers of this Court is required to be exercised in favour of such a person. As observed by the Supreme Court in State of Gujarat v. Salimbhai Abdulgaffar Shaikh, (2003) 8 SCC 50, inherent powers of the High Court are to be exercised ex debito justitiae to do

real and substantial justice for the administration of which alone courts exist. The power has to be exercised to prevent abuse of the process of the court or to otherwise secure the ends of justice. Considering the aforesaid aspects, this is not a case in which FIR is required to be quashed, more particularly looking to the chequered history and complexity involved in the matter. Police is directed to expedite the investigation.

[emphasis supplied]

6. In view of the judgments (supra) and the conduct of the petitioner, I find no merit in the present petition as an absconding accused is not entitled to invoke the inherent powers of this Court under Section 482 Cr.P.C. seeking the relief of quashing of the criminal proceedings and therefore, the present petition is hereby dismissed.

(JASJIT SINGH BEDI)
JUDGE

27.09.2022
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No