

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

CRM-M-10431-2022 (O&M)

Date of decision: 23.05.2022

Arvinder @ Sunny and another

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Gursimran Singh Madaan, Advocate
for the petitioners.

Mr. Joginder Pal Ratra, DAG, Punjab.

Mr. Bhupinder Gupta, Advocate
for respondent No. 2/complainant.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for quashing of complaint titled as ***Pritam Singh vs Darshan Singh @ Darshi and others*** dated 16.09.2019, bearing complaint case No.3 under Sections 302, 201, 182, 34 IPC, Police Station Chabbewal, District Hoshiarpur along with all the other subsequent proceedings arising therefrom as well as for setting-aside the summoning order dated 17.11.2018.

On 11.03.2022, the following order was passed:

“...Counsel for the petitioners has argued that the petitioners were, at one point of time, were declared proclaimed offender on 02.09.2019 as they were abroad and in the meantime, their father, who faced the full length trial was acquitted by the trial Court. It is also submitted that the operation of the order dated 02.09.2019, has already been stayed by this Court, vide order dated 22.11.2021, passed in CRM-M No.48768 of 2021, with a direction to the petitioners

to appear before the trial Court on or before 30.06.2022, however, due to COVID-19 restrictions on international flights, they could not come to India. Counsel for the petitioners has, lastly, submitted that the

petitioners will appear before the trial Court well before the next date of hearing.

Notice of motion.

Mr. Joginder Pal Ratra, DAG, Punjab who is present in the Court accepts notice on behalf of the respondent – State while Mr. Bhupinder Gupta, Advocate has appeared on behalf of respondent No.2.

List again on 23.05.2022.

To be shown in the Urgent List.

In the meantime, the petitioners are directed to appear before the trial Court well before the next date of hearing, fixed before this Court, and the trial Court will release the petitioners on bail subject to their furnishing fresh bail/surety bonds and on payment of costs of Rs.1,00,000/- to be deposited with the High Court Advocates Welfare Fund.

The payment of costs shall be a pre-condition before accepting the bail/surety bonds of the petitioners.”

Learned counsel for the petitioners has placed on record a copy of order dated 18.05.2022 passed by the Additional Sessions Judge, Hoshiarpur, wherein the petitioners have been granted the concession of bail. He has also placed on record a copy of the receipt to show that the petitioners have deposited the costs of Rs. 1 Lakh with the High Court Lawyers Welfare Fund, as imposed by this Court.

Brief facts of the case are that respondent No. 2/complainant Pritam Singh has filed a complaint before the trial Court against four persons, namely Darshan Singh @ Darshi (father of the present petitioners), petitioner No. 2 Amandeep @ Ricky, petitioner No. 1 Arvinder @ Sunny,

Paramjit @ Happy and five/six unknown persons. The trial Court summoned accused Nos. 1 to 3, however, accused No. 4, Paramjit Singh @ Happy was not summoned. The father of the petitioners, accused No. 1, faced full length trial and vide judgment dated 21.09.2021, he was acquitted by the trial Court. The operative part of the judgment reads as under:

“14. I have heard the arguments advanced by Learned Counsel for complainant, Learned Additional Public Prosecutor for the State and Learned Defence counsel and have also gone through the file carefully.

15. Learned Additional PP for the State and Learned Counsel for the complainant have argued that the prosecution has proved beyond shadow of reasonable doubt that on 13.10.2013, accused persons after following Dharminder Kaur, son of complainant attacked him and murdered him with deadly weapons and further caused disappearance of dead-body with an intention to screening the offender from legal punishment. They further argued that in connivance of the accused party, no FIR was got registered by the police. As such, accused be punished as per law.

16. On the contrary, Learned Defence Counsel has argued that there are major discrepancies/infirmities in the prosecution evidence. Complainant Pritam Singh who is the star witness has not come present for his further examination-in-chief, as such his statement cannot be read into. The accused have been falsely implicated in this case as Dharminder Kumar son of complainant had died in a roadside accident. No independent witness has been examined by the complainant except his family members. The chain of events is not established against the accused. The prosecution-complainant have badly failed to prove its case against the accused and accused should be acquitted of the charges framed against them.

17. At this juncture, Learned Defence Counsel has vehemently argued that complainant who filed this complaint has not dared to complete his evidence, as such prosecution is

not able to prove any offence against the accused. Complainant after receiving sum of Rs.4 Lakhs from accused party as compensation on sympathy ground, has filed wrong complaint just to grab more money from the accused party. Even witnesses examined by the complainant-prosecution have improved their version. Learned Defence Counsel has referred to the cross-examination of PW2 Priksha sister of deceased Dharminder Kumar who has admitted as correct that she have gone through whole contents of present complaint and there is no reference of her receiving back another call from her brother by saying that he had a quarrel with owner of D.S Dhaba namely Darshan Singh @Darshi. This witness has also gone through all the applications, documents given to police by her parents or co-villagers and it is nowhere mentioned regarding receiving back call from her brother regarding quarrel with Dhaba owner, even in the petitions filed before the Hon'ble High Court.

18. Learned Defence Counsel has further referred to the cross- examination of Dr. Sarbjit Singh, Medical Officer from Civil Hospital, Hoshiarpur who has stated that as per his opinion, the injuries on the person of deceased are possible in a roadside accident. He further deposed that on the application dated 23.10.2013 moved by the police, he has given same opinion. Mere ocular version is not sufficient to believe the complainant version as independent corroboration from any other corner is also missing. The complainant himself has not completed his examination-in-chief, hence his deposition cannot be read into. Substantive evidence of the main complainant is missing on the file. Priksha (PW2) had only called her brother when she came to know that there was quarrel with owner of D.S Dhaba. She has only deposed that she had heard. To substantiate that after that Dharminder Kumar son of complainant was murdered, no independent corroboration is there. PW4 Virender Singh is also cousin of Dharminder Kumar and he stated that they have come to knowledge that it was roadside accident He further sited that

on the next day when they had seen the dead-bod, according to them it was not a roadside accident. Simply by stating in such a manner, cannot be presumed that accused Darshan Singh @Darshi had murdered son of complainant. As such, simply on the medical evidence on the file, accused cannot be convicted. So it was incumbent for complainant to produced some cogent and concrete evidence in order to establish the version as alleged by him.

19. From the totality of facts and circumstances, this court arrives at conclusion that accused has failed to prove his version beyond one cavil of doubt. Scrutinizing of entire ocular and documentary evidence available on record leaves no pale of doubt that complainant has miserably failed to live up to the desired standard of proof in order to bring home any of the charges against accused, the benefit of doubt under these circumstances is ought to be given to him. Henceforth, the point of determination stands decided against the complainant and in favour of the accused.

20. As an offshoot of the above noted discussion and as a necessary corollary to findings on the points for determination supra, it is abundantly clear that complainant has failed to discharge the requisite onus beyond the shadow of reasonable doubt. Consequently, accused namely Darshan Singh @ Darshi is acquitted of the offence punishable under Sections 302, 201 of Indian Penal Code by giving him benefit of doubt. The bail and surety bonds of the accused are discharged. Case property, if any, be disposed of, as per law. File be consigned to the record room within time prescribed after due compilation as per rules and will be re-opened as and when accused Sunny and Ricky sons of Darshan Singh (proclaimed offenders) are re-arrested.”

Learned counsel for the petitioners further submits that the petitioners were residing abroad and, therefore, they could not appear before the trial Court and now the present petition has been filed praying for quashing of impugned complaint as well as the summoning order.

Learned counsel for the petitioners has made reference to an inquiry dated 24.01.2014, submitted by the Superintendent of Police (Detective), Hoshiarpur, in which the following conclusion was drawn:

“In the end the investigation done by the police of Police Station Chabewal, the report of post mortem and the statement of those who were present at the spot and enquiry done by them, I have concluded that Dharminder Kumar aged 24 years son of applicant Pritam Singh, who was working as Bar Vendor. On the day of occurrence on 13.10.2013 on day of Dushera at about 6.00 p.m. in the evening alongwith his friend Paramjit Singh @ Happy s/o Sodhi Lal r/o Village Kalian got together at Bhahuwal Bus Stop who purchased one bottle of liquor and meat from the shop near Village Bhuno and later consumed it. After this both of them returned home on their motorcycle. On way at about 7.00 p.m. near Handowal purchased some sweet from Halwa shop. Also purchased some cigarettes from cigarettes Kiosk nearby and here a small puppy dog came near them. The owner of the cigarettes Kiosk told them that this was a pet dog and does not go any one. Upon which Dharminder Kumar took the puppy dog with him after giving him some sweet made him walk behind his motorcycle. When the owner of the Darshan Singh Dhaba got to know about his dog being taken away, he got into his Innova vehicle and intercepted the motorcycle and Dharminder Kumar was stopped near Handowal bridge, near Dashmesh Technical College. On seeing this his accomplice Paramjit Singh @ Happy ran from the scene. Dharminder Kumar also got afraid from the owner Darshan Singh and he ran into a high speed Coca Cola truck which came from the front which was being driven by Santokh Singh s/o Bakshish Singh caste Ad. Adharmi police Station Mahilpur. The owner of the vehicle instead of helping him ran away in his vehicle due to which Dharminder Kumar who was fallen on the road was run over by another vehicle. Due to which he died on the spot. This has been authenticated by the statement of witness

Jaswant Singh Guard, Polytechnic Collage, passerby scooterist Kamal Singh. The panchayat of both the villages have got together regarding the said matter. In the entire incident though Darshan Singh has no role to play in the death of Dhaminder Singh but on saying of the elderly and the wise persons of the area, Rs. 4.00 lacs was given to the parents of the Dhaminder as monetary help. The same has been verified by the statements of Ex-Sarpanch Nirmal Singh Village Bhilowal, Balbir Singh r/o Village Bhilowal who was present there and the application dated 23.01.2014 given to National Human Rights Commission which is flaged as A and B. In this regard with the consent of the relatives of the deceased Report no. 21 dated 14.10.2013 P.S. Chabewal was recorded and proceeding under Section 174 Cr.P.C. was undertaken. In this regard Darshan Singh owner of D.S. Dhaba has no fault in the present case. Thus on the basis of aforementioned facts the application be accepted.”

Learned counsel further submits that in fact it was a case of accidental death and the complaint has been filed only to rope in the family members of the petitioners and in the trial, the fact was proved that no evidence has come against the father of the petitioners, who faced full length trial and was ultimately acquitted.

Learned counsel for the petitioners further submits that the petitioners have appeared before the trial Court and no purpose would be served in directing the petitioners to face trial as there is no possibility for respondent No. 2/complainant to lead any fresh or further evidence, which may result into conviction of the petitioners.

Learned counsel for respondent No. 2/complainant has accepted the version of the petitioners and submitted that the complainant does not intend to produce any further evidence other than the evidence,

which was produced by him in the trial resulting into acquittal of the father of the petitioners.

I have heard learned counsel for the parties and have also gone through the judgment dated 21.09.2021 as well as the aforesaid inquiry report dated 24.01.2014.

A Division Bench of this Court in ***Sudo Mandal @ Diwarak Mandal Vs. State of Punjab, 2011 (2) RCR (Crl.) 453***, has held that even if an accused has been declared a proclaimed offender and the other accused, who faced full length trial, have been acquitted of the charge, the FIR can be quashed against the accused who has not faced trial if the prosecution witnesses have not supported the case.

Admittedly, the trial Court, vide its judgment dated 21.09.2021, has acquitted the father of the petitioners, namely co-accused Darshan Singh @ Darshi, who faced full length trial and learned counsel for respondent No. 2/complainant has submitted that the complainant does not intend to lead any fresh or further evidence.

In view of above, considering the above facts and circumstances, if the prosecution of the petitioners is allowed, it will be a futile exercise. Needless to say that petitioner has already deposited the cost of Rs. 1 Lakh for delaying the proceedings.

Accordingly, in the light of the judgment rendered in ***Sudo Mandal @ Diwarak Mandal's case (supra)***, this petition is allowed and impugned complaint titled as ***Pritam Singh vs Darshan Singh @ Darshi and others*** dated 16.09.2019, bearing complaint case No.3 under Sections 302, 201, 182, 34 IPC, Police Station Chabbewal, District Hoshiarpur along

with all the other subsequent proceedings arising therefrom including
summoning order dated 17.11.2018 is quashed qua the petitioners herein.

23.05.2022

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No