

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-1569-2016

Date of decision: 07.12.2022

BALWINDER SINGH

....Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. R.S. Bains, Sr. Advocate with
Mr. Amarjeet Singh, Advocate for the petitioner.

Mr. Kamalpreet Bawa, AAG Punjab.

AMAN CHAUDHARY. J.

Present petition has been filed for quashing of FIR No.144 dated 24.06.1987 under Sections 302/34 of the IPC and Section 25 of the Arms Act and Sections 3 and 4 of the T.D. Act at Police Station Tanda, District Hoshiarpur and all consequential proceedings arising therefrom.

Briefly put, the facts are that complainant Surjit Singh made a statement that on 24.6.1987, he alongwith husband of his sister, namely, Swaran Singh, who was a constable were going towards Tanda on his scooter when they saw two young sikh persons standing near a scooter parked at a short distance, who signaled them to stop. One of them aimed his revolver towards Swaran Singh, who ran into the fields, upon which, the said Sikh youth fired 4/5 shots at his back from his revolver, resultantly, he

fell on the ground and died at the spot. Thereafter, both the persons fled away from the spot alongwith his scooter. On the said statement, FIR in question was lodged against unknown persons.

Learned Senior counsel would contend that in the aforesaid FIR pertaining to the year 1987, the petitioner who was aged 06 years at that time, having been born on 20.01.1981, who did not have even a remote connection with the incident, was falsely implicated in the aforesaid case on basis of the statement dated 12.06.1999, made by one Gurnam Singh and Dalip Singh. However, during the course of enquiry, the petitioner was rightly found to be innocent and accordingly, an application for discharge dated 30.6.1999, Annexure P-3/T, was filed by the Jaswant Singh, SHO, Police Station Tanda. It was thereupon that vide order dated 24.08.1999, Annexure P-2, passed by the learned Sessions Judge, Hoshiarpur, the petitioner was ordered to be released on bail. In this regard, it has been submitted that as a matter of fact, the discharge application filed by the SHO concerned was wrongly permitted to be withdrawn, based on statement of one SI Harjit Singh.

He would further contend that the petitioner filed an application dated 01.02.2000, Annexure P-6, for directing the SHO, PS Tanda, to present the challan. The learned trial Court vide order dated 10.05.2003, while recording the fact that accused-petitioner was coming present from last 04 years and FIR pertains to the year 1987, ordered the file to be consigned sine die, to be taken up as and when the prosecution will present the challan. In this regard, it is his submission that though the prayer made in the said application was not properly worded, however, in fact the

petitioner was seeking direction to finalise the matter, stating in para 3 therein that a false and baseless case was registered against him, as he was only 6 years old at the time of alleged occurrence, his date of birth being of the year 1981. He was being harassed by the police as challan was not being presented.

He further submits that the petitioner could not even apply for passport or any other certificate like character certificate in view of the pendency of the FIR in question.

Learned State counsel while making a reference to the reply filed by the State and also on instructions from ASI Rakesh Kumar submits that now untraced report has been presented before the Court on 01.12.2022. He however, also submits that the complainant in this case, as has been ascertained by the Investigating Officer, is residing in Dubai for the last many years.

Upon this, learned Senior counsel would submit that till such time the complainant does not present himself before the Court concerned, the proceedings cannot be finalized, on account of which, the petitioner would continue to suffer, despite he having been declared innocent in the FIR lodged in the year 1987. He would further submit that as per Section 82 IPC, no offence can be stated to have been committed by the petitioner he being less than 6 years on the date of alleged incident.

Heard.

It is apposite to refer to Section 82 IPC, which read thus:

“82. Act of a child under seven years of age.—
Nothing is an offence which is done by a child

under seven years of age.”

The factum of the petitioner being aged 6 years at the time of the alleged incident, has been affirmed by the learned State counsel on the basis of the school leaving certificate, available in the record produced by ASI Rakesh Kumar, during the course of hearing.

As is axiomatic, it was a case registered against unknown persons and undeniably the petitioner, who was aged 6 years in the year 1987, when the alleged incident is stated to have taken place, was sought to be implicated therein, after about 12 years in the year 1999. However, in the enquiry conducted by the DSP, he was found to be innocent, that led to filing of an application for his discharge.

By way of doctrine of *doli incapax*, a complete exemption by virtue of the aforesaid provision of Section 82 IPC, which falls under “General Exceptions” in chapter IV, is granted to a child under the age 7 years. Any act committed by a child would not constitute an offence, as a culpable state of mind is absent, as also being unable to understand the nature or comprehend the repercussion of such acts, not able to distinguish between what is right and what is wrong.

This Court in the case of **Kewal Singh vs. State of Punjab and another**, reported as 2011 SCC OnLine P&H 17350 held that the petitioner was less than seven years of age and as per Section 82 IPC, nothing is an offence which is done by a child under seven years of age. Even if the allegations as made in the complaint are treated to be correct, the continuation of the present proceedings against the petitioner would thus, be an abuse of process of law and is not permissible in law and therefore,

deserves to be quashed.

Adverting to the present case, the petitioner being less than 7 years as on date of the alleged incident, wherein though he was declared innocent, however, the proceedings against him have yet not culminated, thus, the continuation of the same against him in the present FIR, being not permissible in view of the provisions of Section 82 IPC would therefore, amount to be an abuse of process of law and as such deserve to be quashed.

In view of the above, the present petition is allowed and as a sequel thereto, the FIR No.144 dated 24.06.1987 under Sections 302/34 of the IPC and Section 25 of the Arms Act and Sections 3 and 4 of the T.D. Act at Police Station Tanda, District Hoshiarpur and consequential proceedings arising therefrom are hereby quashed.

7.12.2022
ss/gsv

(AMAN CHAUDHARY)
JUDGE

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