

CRM-M-11942-2022

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

CRM-M-11942-2022

Date of decision: 25.03.2022

Balwinder Singh @ Bansi

...Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. R.S.Bajaj, Advocate,
for the petitioner.

HARNARESH SINGH GILL, J. (ORAL)

Challenge in the present petition is to the order dated 21.04.2018 (Annexure P-3) passed by learned Judicial Magistrate Ist Class, Jalandhar, whereby the petitioner has been declared a proclaimed offender in case bearing FIR No.145 dated 27.06.2017, registered at Police Station Adampur, District Jalandhar, under Sections 341, 323 and 34 IPC.

Learned counsel for the petitioner contends that the above-noted FIR was registered for the commission of offences, which are bailable in nature; that the petitioner went to Canada on study visa; that the impugned order has been passed in the absence of the petitioner; that during the pendency of trial, the matter was amicably settled between respondent No.2 and other co-accused and on the basis thereof, the

CRM-M-11942-2022

offences under Sections 323, 341 and 34 IPC were ordered to be compounded in view of Section 320(8) Cr.P.C., vide order dated 03.05.2018 passed by the learned Judicial Magistrate Ist Class, Jalandhar.

Learned counsel still further submits that after completion of study, the petitioner has come back to India and wants to face the trial; that non-appearance of the petitioner before the trial Court was not intentional, and that a compromise has also been effected between the petitioner and respondent No.2. In support of his contentions, the learned counsel relies upon the judgment rendered by a Division Bench of this Court in Sudo Mandal @ Diwarak Mandal Vs. State of Punjab, 2011 (2) R.C.R. (Criminal) 453.

Notice of motion.

On the asking of this Court, Mr. Ajay Pal Singh, DAG, Punjab, accepts notice on behalf of the respondent-State, and submits that the petitioner has rightly been declared a proclaimed offender.

At this stage, Mr. Tarun Sharma, Advocate, puts in appearance and files his power of attorney on behalf of respondent No.2. The same is taken on record. He does not dispute the factum of compromise effected between the petitioner and respondent No.2.

I have heard the learned counsel for the parties.

In the present case, the petitioner was declared a proclaimed offender, when he was not in India. While banking upon the compromise effected between respondent No.2 and the co-accused, the offences under Sections 323, 341 and 34 IPC were ordered to be compounded, vide order dated 03.05.2018 passed by the learned Judicial

CRM-M-11942-2022

Magistrate Ist Class, Jalandhar. As stated above, the compromise has also been effected between the petitioner and respondent No.2.

A Division Bench of this Court in Sudo Mandal @ Diwarak Mandal's case (supra) has held as under:

“23. We are conscious of the fact situation that those three accused namely Radha Mandal, Rajiya Mandal and Sambodh Mandal had absconded and were declared as proclaimed offenders. They had not faced the trial, but when we find that no case could be made out as against them also with the very same rickety materials, those accused also will have to be relieved of the impending pain of facing the prosecution for murder. Section 482 of the Code of Criminal Procedure reads as follows:-

“Saving of inherent powers of High Court. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

24. The above provisions recognize the inherent powers of the Court to do real and substantial justice, preventing the abuse of the process of the Court. The statutory recognition of the inherent jurisdiction of the criminal Court indicates that there is a power for the criminal Courts to make such an order as may be necessary to meet the ends of justice. We are conscious of the fact that the powers under Section 482 of the Code of Criminal Procedure are to be exercised very sparingly and in exceptional cases where abuse of the process of the Court would result in serious miscarriage of justice. The inherent powers of the Court should not be exercised to stifle legitimate prosecution. But at any rate the settled

CRM-M-11942-2022

position is that this Court has the jurisdiction to quash the entire criminal proceedings to prevent the abuse of the process of the Court in order to secure the ends of justice. In our considered view the same inherent powers can be exercised when this Court finds that the innocent accused, who had absconded would simply face the empty formality of trial with the very same unbelievable and untrustworthy evidence, which would ultimately lead to their acquittal. Bringing the absconding accused to face the trial in this case in the above facts and circumstances would amount to abuse of the process of the Court. To secure the ends of justice, we hereby quash the entire proceedings as against the absconding accused namely Radha Mandal, Rajiya Mandal and Sambodh Mandal pending before Judicial Magistrate Ist Class, Bathinda/Sessions Judge, Bathinda, as no useful purpose will be served even if they are procured and ordered to face the trial in this case.”

The objective of the coercive mechanism prescribed under the Code of Criminal Procedure is to ensure that the accused remains present before the Court to receive the orders and judgments as are passed qua him. The absence of the petitioner before the Court below appears to be non-intentional. If the accused shows his sincere intention and desire to appear before the Court, then it would be justified to protect him from being arrested.

Though the petitioner absented himself from the court proceedings, yet he is now not required for any investigation or interrogation purposes and rather, he is only to face the trial. Therefore, no useful purpose would be served by sending the petitioner to custody.

CRM-M-11942-2022

Keeping in view the above fact, but without expressing any opinion on the merits of the case, the present petition is disposed of with a direction to the petitioner to surrender before the trial Court/Duty Magistrate, within 15 days from today, subject to him depositing the costs of Rs.10,000/- with the Poor Patients' Welfare Fund of the Postgraduate Institute of Medical Education and Research (PGIMER), Chandigarh. On his doing so, the petitioner shall be released on anticipatory bail, subject to him furnishing the fresh bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate.

25.03.2022

parveen kumar

(HARNARESH SINGH GILL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No