

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****CRM-M-21573-2021 (O & M)****Date of decision: 23.11.2022**

Shingara Singh

.... Petitioner

V/s

State of Punjab and ors.

...Respondents

**CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present: Mr. Ajit Singh Sodhi, Advocate, for the petitioner.

Ms. Ramta Chaudhry, DAG, Punjab.

\*\*\*\*\*

**JASJIT SINGH BEDI, J. (Oral)**

The prayer in the present petition under Section 482 Cr.P.C. is for the quashing of the FIR No.120 dated 02.05.2005 (Annexure P-1) under Sections 420, 465, 467, 468, 471, 120-B IPC registered at Police Station City Moga, District Moga and for setting aside the impugned order dated 22.01.2016 (Annexure P-3) passed by the ACJM, Moga, vide which the petitioner was declared a proclaimed offender in the above-noted FIR.

2. The brief facts of the case are that the petitioner is stated to be a resident of England (U.K.) and the present petition has been filed through his General Power of Attorney holder Major Singh son of Sukhdev Singh. The present FIR came to be registered at the instance of Pritam Kaur wife of Gurnam Singh. As per the FIR, one Nihal Kaur, widow of Kartar Singh, the Power of Attorney of Pritam Kaur had illegally and fraudulently sold agricultural land measuring 52 Kanals 07 Marlas out of joint land vide two

different sale deeds bearing Vasika No.5381, 5382 both dated 11.11.2004 to the petitioner. Nihal Kaur, widow of Kartar Singh, the Power of Attorney holder of the complainant died during the pendency of the case and proceedings qua her were abated.

Gurdev Singh-Nambardar who was a witness to the sale deed also died during the pendency of the case. Sukhdev Singh son of Jagir Singh, who was an attesting witness to the sale deed was acquitted vide judgment dated 15.02.2017 passed by the Additional Chief Judicial Magistrate, Moga.

The petitioner-Shingara Singh was declared a proclaimed offender vide impugned order dated 22.01.2016 passed by the Additional Chief Judicial Magistrate, Moga (Annexure P-3).

3. Initially, when the present petition was filed, on 10.12.2021, the following order was passed by the Co-ordinate Bench of this Court:-

*“Notice of motion.*

*At the asking of the Court, Mr. Harsimar Singh Sitta, learned Assistant Advocate General, Punjab appears on behalf of the State, waives service and accepts notice. He seeks some time to have instructions.*

*Learned counsel for the petitioner has submitted that petitioner has been staying abroad for sometime. He has further stated that the present complainant had also instituted civil litigation against the petitioner in which the address of England of the petitioner was given whereas in the present case, purposely, with a view to harass the petitioner, she has given the address of Jalandhar while filing of proceedings under Section 420 of IPC, 1860.*

*Notice to respondent No.3, returnable on 07.01.2022.*

*State to have instructions before the date fixed.*

*In the meantime, no coercive steps shall be taken against the petitioner.”*

The matter was adjourned from time to time and consequently, on 10.10.2022, the following order was passed in this case:-

*“The present petition has been filed under Section 482 Cr.P.C. for quashing of FIR No.120 dated 2.5.2005 (Annexure P-1) under Sections 420, 465, 467, 468, 471, 120-B IPC registered at Police Station City Moga, District Moga and for setting aside the impugned order dated 22.1.2016 (Annexure P-3) vide which the petitioner was declared as a proclaimed offender as well as any proceedings arising therefrom.*

*Proxy counsel appearing for the petitioner has sought time to argue the matter on the ground that the arguing counsel for the petitioner is not available today.*

*Be that as it may, the Counsel for the petitioner shall apprise this Court as to when would the petitioner come back to India to face Trial.*

*Adjourned to 27.10.2022.*

*To be shown in the urgent list.*

*It is made clear that if any request is made for an adjournment on the next date of hearing, the same shall not be entertained.*

*Interim order to continue”.*

Thereafter, on 27.10.2022, the following order was passed by this Court:-

*“The prayer in the present petition under Section 482 Cr.PC is for quashing of FIR No.120 dated 2.5.2005 under Sections 420, 465, 467, 468, 471, 120-B IPC registered at Police Station City Moga, District Moga and for setting aside the impugned order dated 22.01.2016 passed by ACJM, Moga whereby petitioner has been declared as a proclaimed offender.*

*This matter had come up for hearing on 10.12.2021 on which date following order was passed:-*

*“ Notice of motion.*

*At the asking of the Court, Mr. Harsimar Singh Sitta, learned Assistant Advocate General, Punjab appears on behalf of the State, waives service and accepts notice. He seeks some time to have instructions.*

*Learned Counsel for the petitioner has submitted that the petitioner has been staying abroad for sometime. He has further stated that the present complainant had also instituted civil litigation against the petitioner in which the address of England of the petitioner was given whereas in the present case, purposely, with a view to harass the petitioner, she has given the address of Jalandhar while filing of proceedings under Section 420 of IPC, 1860.*

*Notice to respondent no.3, returnable on 07.01.2022.*

*State to have instructions before the date fixed.*

*In the meantime, no coercive steps shall be taken against the petitioner.”*

*The matter was adjourned from time to time and has come up for hearing today.*

*The Counsel for the petitioner was asked to seek instructions as to whether he wishes to withdraw the petition as an earlier petition had also been filed for the same relief which has been dismissed as withdrawn on 10.12.2012. He was also asked to seek instructions as to whether the petitioner wished to come back and face trial.*

*The matter was passed over but the counsel for the petitioner has not appeared to apprise the court as to the further course of action.*

*In view of the above, the interim order dated 10.12.2021 stands vacated.*

*List on 17.11.2022 for arguments.”*

4. The matter has come up for hearing today once again.
5. The learned counsel for the petitioner has argued that the proceedings ought to be quashed in view of the fact that civil proceedings have culminated in favour of the petitioner and that only one accused faced trial, who has since been acquitted. He, otherwise, states that the petitioner

6. The learned counsel for the State has while referring to the reply dated 06.01.2022 argued that the petitioner was well aware of the proceedings pending against him and his co-accused and despite that fact, he chose not to appear before the Trial Court due to which was declared a proclaimed offender vide order dated 22.01.2016. In fact, the petitioner had previously filed a petition bearing No.CRM-M-37635 of 2012 for quashing of the present FIR but the said petition was dismissed as withdrawn vide order dated 10.12.2012. He, therefore, contends that not only was the petitioner aware of the pendency of the FIR, he had also availed an earlier opportunity to approach this Court and chose to withdraw the said petition. Even now, he had chosen not to come back to the country and face Trial. He, thus, contends that the present petition is liable to be dismissed in view of the act and conduct of the petitioner.

7. I have heard the learned counsel for both the parties at length.

8. Admittedly, the petitioner had approached this Court way back in the year 2012 by filing the first petition for quashing of the FIR. The same was dismissed as withdrawn vide order dated 10.12.2012. In the present petition, no such reference to an earlier petition having been filed, has been made. In fact, para 18 of the petition, it has been specifically averred that no such or similar petition had been filed earlier by the petitioner either in this Court or in the Hon'ble Supreme Court. Further, despite, this Court asking the petitioner to come back and face Trial, as per orders dated 10.10.2022 and 27.10.2022, no steps whatsoever have been taken by the petitioner to return back and face the Trial. On the contrary, the stand taken by the petitioner is that he does not wish to come back to the country.

9. This Court in the case of 'Sarabjit Singh versus State of Punjab and another, (CRM-M-26957-2021 decided on 16.07.2021)', has held as under:-

*“Apart from it, admittedly the petitioner never associated himself with the trial proceedings, therefore, evidence adduced by the prosecution qua his co-accused cannot be read in respect of the petitioner. Further, the argument of learned counsel that petitioner's mother Sukhwinder Kaur, being mother Special power of attorney holder is competent to maintain this petition is also without any merit as in criminal proceedings the presence of the accused is necessary. Needless to observe that no proceedings in a criminal trial can place in the absence of the accused, except where the permission has been granted by the Court to the said accused and ordinarily such prayers like exemption from personal appearance or even recording of evidence in the absence of accused are made by the concerned accused only. There is no provision in Code of Criminal Procedure, 1973 enabling the accused to appoint a power of attorney to represent him in criminal proceedings. The power of attorney executed under the Power of Attorneys Act, 1882 is normally meant for entrusting the power to some other person to manage, buy or sell property; to borrow money; to execute lease deed or to contest the civil litigation etc. In every criminal trial, the intention to commit crime, followed by execution by the accused or negligent act or omission constituting the penal offence are most important aspects which are ascertained by the trial Court to find involvement of the said accused in the crime, therefore, such proceedings, if permitted to be conducted in absence of accused would be violative of cardinal principles of criminal jurisprudence.*

*The issue regarding maintainability of the petition by an accused through general power of attorney holder has been considered by this Court in “Amit Ahuja Vs. Gian Parkash Bhambri”, 2010 (3) R.C.R. (Criminal) 586, wherein it has been held that such a petition can be maintained only if the accused is suffering from any disability being minor, insane or any other disability recognized as sufficient to permit any other person to file a petition on his behalf.*

*But, in “Kuldeep Singh Jaswal Vs. Jaspal Singh”, 2016 (2) AICLR 703, the conflicting view was adopted by this Court, wherein it was held that any petition before the Court should be filed by the accused, but there cannot be or should not be laid down a straight jacket formula in this regard and the issue was left upon at the discretion of the concerned court to be decided upon the facts and circumstances of the case.*

*Further, the Division Bench of this Court in “Mangal Dass Gautam Vs. State of Haryana”, 2020 (2) R.C.R. (Criminal) 382, examined the above issue and held that a petition under Section 482 Cr.P.C is an exception to general rule of criminal law and any such petition filed by accused through power of attorney must contain special reasons. It was further held that the maintainability of such petition would certainly be dependant upon various factors including facts and circumstances of that particular case to be decided by the said Court. The relevant part of the judgment is extracted below:-*

*“38. In the light of the above observations, it is held that a petition under section 482 of Cr.P.C., 1973 can be filed by a Power of Attorney holder. As regards the maintainability thereof, it would dependent upon the facts and circumstances of each case as also with regard to the validity of the said Power of Attorney and the powers conferred therein. It requires to be mentioned here that there is no statutory bar provided by the legislature in the Cr.P.C. relating to filing or continuing of a criminal matter through a Power of Attorney holder. The Court would generally insist that the petition under section 482 of Cr.P.C., 1973 for quashing of the FIR or a criminal complaint as also the consequential proceedings arising therefrom be filed through the accused person himself but this cannot be and should not be laid down as a hard and fast rule keeping in view the statutory mandate which by nomenclature, description and discretionary nature of powers conferred on the High Court requires it to be kept flexible. This is better left to be considered and decided by the Court dealing with the particular case in the facts and circumstances of each case as it would be impossible to envisage and think of all the circumstances in which the Court may require and like to exercise its extraordinary jurisdiction and powers as conferred under section 482 of Cr.P.C., 1973.”*

*Notably, the maintainability of the petition on behalf of accused through power of attorney holder has also been discussed by the Hon'ble Supreme Court in “T.C.Mathai Vs. The District & Sessions*

Judge, Thiruvananthapuram”, AIR 1999 SC 1385, wherein the Apex Court refused to entertain such petition on the ground of maintainability and observed as under:-

*“Section 2 of the Power of Attorney Act cannot override the specific provision of a statute which requires that a particular act should be done by a party in person. When the Code requires the appearance of an accused in a court it is no compliance with it if a power of attorney holder appears for him. It is a different thing that a party can be permitted to appear through counsel. Chapter XVI of the Code empowers the Magistrate to summons or warrant for the appearance of the accused. Section 205 of the Code empowers the Magistrate to dispense with the personal attendance of accused, and permit him to appear by his pleader if he sees reasons to do so. Section 273 of the Code speaks of the powers of the court to record evidence in the presence of the pleader of the accused, in cases when personal attendance of the accused is dispensed with. But in no case can the appearance of the accused be made through a power of attorney holder. So the contention of the appellant based on the instrument of power of attorney is of no avail in this case”.*

*Though the above decision of the Hon'ble Supreme Court was not brought to the notice of this Court in Mangal Dass Gautam's case (supra), however, the above view was further followed by Bombay High Court in “Pravin Niwritti Sawant Vs. Nisha Pravin Sawant and another”, 2007(4) R.C.R. (Criminal) 841, and by Kerala High Court in “Naveed Akhthar Vs. State of Kerala, 2016 SCC Online Kerala 13587”.*

*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 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.*

*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.*

*Resultantly, in view of the above discussion, this Court does not find any merit in this petition and the same is dismissed”.*

*In ‘Varun Kumar versus State of Punjab (CRM-M-42429-2022 decided on 16.09.2022)’, this Court has held as under:-*

*“10. Keeping in view the facts as narrated hereinabove that the petitioner was a resident of the United Kingdom (U.K.), serving in the British Army and that one of his co-accused had been acquitted this Court was willing to stay the order whereby the petitioner had been declared a proclaimed offender enabling him to join proceedings and face trial which was to be concluded within a fixed period of time not exceeding three months.*

*11. However, the learned counsel for the petitioner submitted that since the petitioner was a soldier of the British Army, therefore, he could not come back to face trial on account of pressing work concerns.*

*12. In view of the submissions made by the counsel for the petitioner as also the fact that the petitioner has been declared a proclaimed offender twice over, I find that the filing of the present petition is frivolous as even if I did quash the order declaring the petitioner a proclaimed offender, he would still not come back to face trial.*

*13. In view of the above, I find no merit in the present petition and therefore, the same is hereby dismissed”.*

10. In the present case, the petitioner has invoked the jurisdiction of this Court for the second time and that too through a Power of Attorney. He has not chosen to disclose in this petition that he had earlier filed a similar petition which came to be withdrawn way back on 10.12.2012. He has, otherwise, chosen not to come back and face Trial.

11. In view of the aforementioned facts, I find no merit in the present petition and the same is, therefore, dismissed.

**( JASJIT SINGH BEDI)**  
**JUDGE**

**November 23, 2022**  
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No