IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-29138-2019 (O&M)
Date of decision: 05.04.2022

Ajay Kumar

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Sarju Puri, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

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ARVIND SINGH SANGWAN, J.

The petitioner has prayed for quashing of FIR No.80 dated 03.07.2010 for the offences punishable under Sections 420, 465, 468, 471 of the Indian Penal Code ('IPC' for short), registered at Police Station City SBS Nagar, District SBS Nagar and all the subsequent proceedings arising therefrom.

On 09.03.2022, following order was passed by this Court: -

"Learned counsel for the petitioner relies upon the order dated 08.02.2022 passed in connected petition i.e. CRM-M-29026-2019, which reads as under: -

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"Counsel for the petitioner has argued that the petitioner was in Italy when the FIR was registered and now, he wants to surrender before the trial Court and face the proceedings, in accordance with law.

Counsel for the petitioner has relied upon the judgment dated 06.02.2017, vide which 05 of the co-accused of the petitioner, who have faced the full length trial, were acquitted by the trial Court as none of the alleged victim have supported the prosecution version. It is also submitted that there is a remote possibility of conviction of the petitioner as the prosecution cannot make any further improvement and the petitioner will face the trial. Counsel for the petitioner has relied upon the judgment ***"Sudo Mandal @ Diwarak Mandal vs State of Punjab", 2011(2) RCR (Criminal) 453.***

List again on 09.03.2022.

In the meantime, the petitioner is directed to surrender before the trial Court and the trial Court will release the petitioner on interim bail subject to his furnishing bail/surety bonds and on payment of costs of Rs.1,00,000/- to be deposited with the Punjab & Haryana High Court Advocates Welfare Fund, for delaying the proceedings before the trial.

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

Learned counsel submits that said petition stands allowed and the order, declaring the petitioner as proclaimed offender, is set aside.

List again on 05.04.2022.

To be shown in the urgent list."

Learned counsel for the petitioner submits that in compliance of the order dated 08.02.2022 passed in CRM-M-29026-2016, the petitioner has already deposited the costs of Rs.1.00 lac with the Punjab and Haryana High Court Lawyers' Welfare Fund and the said petition stands allowed and the order, declaring him a proclaimed offender, is set aside. Learned counsel has referred to judgment dated 06.02.2017, vide which six co-accused of the petitioner, namely Rajinder Kumar Nafri, Kamaljit @ Rana, Jaswinder Singh, Ashish Kumar, Ramanpreet Singh and Ajay Kumar, who faced full length trial, were acquitted by the trial Court, by making the following observations: -

"...As far as the preparation of forged and fake documents submitted with British High Commission is concerned, statements of PW1, PW2 and PW7, who have proved the marriage certificates are formal in nature. The said marriage certificates are not shown to be fake and forged documents. In order to establish guilt for commission of offence falling under

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Section 471, it was incumbent upon the prosecution to establish that it is the accused who has used fraudulent or forged document as genuine with the knowledge that same is forged. Whereas, statement of PW4 Avtar Singh is concerned, he has deposed that letter Ex.PW4/A has been issued under the signatures of the then Manager Avtar Singh declaring that Account no.1097 and 1268 does not exist in their branch. Accordingly, he has deposed that letter Ex.PW4/B and statement of account Ex.PW4/C does not bear the signatures of Avtar Singh. However, during his crossexamination, he has stated that he can not tell the particular characteristics of the signatures of Avtar Singh on the basis of which he can differentiate standard and disputed signatures of Avtar Singh. Similarly, PW4 ASI Satnam Singh during his cross-examination has stated that he has got no knowledge regarding investigation of the case or disputed documents. He has stated that he does not possess knowledge regarding the accused. Even otherwise, the said official is not shown to have conducted investigation in order to gather any evidence if any of the accused facing trial before the court has himself prepared fake/forged documents as projected before the court.

Harbhajan Singh, the then Manager of the bank being PW5 during his cross-examination has himself stated that he

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does not know who prepared these documents or who is the scribe of the documents as deposed by him in his statement-in-chief. He has further stated that he has never seen the accused facing trial before the court to have ever visited their branch. Even PW8 during his cross-examination has deposed that he does not know who has prepared these documents as stated by him in his examination-in-chief. He has also admitted that he has not seen the accused visiting their branch. Statements of PW6 HC Raj Kumar, PW9 Inspector Surinder Pal Singh and PW10 Naresh Kumar are formal in nature. Their statements does not render any assistance to the prosecution for advancement of its case against the accused. IO of the case being PW17, during his cross-examination has stated that no identification parade was got conducted from any of the applicant or aspirant of the visa to get the identification of the accused from them. He has stated that he can not tell how the name of accused Kamaljit Singh has been mentioned in his investigation.

Similarly, report of CFSL Ex.PX also does not render any assistance to the prosecution version as it only speaks about comparison of specimen signatures of Mohinder Singh, Avtar Singh and Harbhajan Singh officials of the bank and the stamp impressions of the bank. No specimen handwriting of any of the

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accused has been obtained during investigation so as to get the same compared with fake/forged documents so as to establish if any of them has prepared the said documents in the process of moving alleged visa applications before the British High Commission. Moreover, when no direct evidence against accused has come on record reflecting their involvement in moving the applications before the British High Commission from the testimony of any of the applicants as discussed above, hence the question of preparing any fake documents by them does not arise. Accordingly, submissions made by learned APP for the State stands over-ruled.

No other argument has been advanced by learned APP for State or learned defence counsel.

In view of aforecited detailed discussion, this Court has reached to the conclusion that prosecution has failed to support its case with cogent and convincing evidence. Accordingly, accused Rajinder Kumar Nafri, Kamaljit @ Rana and Jaswinder Singh facing trial before the Court, are hereby acquitted of the charges framed against them by giving them benefit of doubt. Their bail bonds and surety bonds also stand discharged. File be consigned to the record room to be taken up again as and when accused Ashish Kumar, Ramanpreet Singh and Ajay Kumar will surrender before the Court or if their

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presence is procured on their apprehension."

It is further submitted that at the time, when the FIR was registered, the petitioner was not in India and he was not named in the FIR and his name surfaced subsequently in the disclosure statement of co-accused, who has already been acquitted by the trial Court. It is also submitted that there is no possibility of production of any fresh evidence against the petitioner, as the trial Court, while conducting the trial of aforesaid six accused, held that the prosecution has failed to produce any cogent and convincing evidence to prove the charge, therefore, directing the petitioner to face the trial will be a futile exercise.

Learned counsel submits that he has instructions to say that the case has attained finality, as no appeal has been filed by the State and a period of more than 05 years has already lapsed and even despite service, the complainant has not appeared. Learned counsel has relied upon ***Sudo Mandal @ Diwarak Mandal vs State of Punjab", 2011(2) RCR (Criminal) 453.***

Learned State counsel could not dispute the fact that aforesaid six co-accused of the petitioner have already been acquitted by the trial Court, after facing full length trial. It is also not disputed that the order, declaring the petitioner as proclaimed offender, on payment of Rs.1.00 lac, has also been set aside.

After hearing learned counsel for the parties, I find it to be a fit case where the FIR can be quashed.

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Accordingly, present petition is allowed and FIR No.80 dated 03.07.2010 under Sections 420, 465, 468, 471 IPC, registered at Police Station City SBS Nagar, District SBS Nagar and all the subsequent proceedings arising therefrom are ordered to be quashed qua the petitioner.

[ARVIND SINGH SANGWAN]
JUDGE

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

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