

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(259)

CRM-M-54417-2021

Date of decision: - 18.04.2022

Balbir Singh

....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Brijeshwar Singh Bhalla, Advocate
for the petitioner.

Mr. Sarabjit S. Cheema, AAG, Punjab.

VIKAS BAHL, J. (ORAL)

Present petition has been filed under Section 482 Cr.P.C for quashing of order dated 02.12.2011 (Annexure P-5), vide which, the petitioner has been declared proclaimed offender in FIR No.10 dated 02.02.2010, registered under Sections 420, 467, 468, 471 and 120-B of the Indian Penal Code, 1860, at Police Station Dayalpura, District Bathinda.

Learned counsel for the petitioner, *inter alia*, contends that in the present case, the petitioner was not the beneficiary as per the alleged agreement to sell and was only the attesting witness and had filed a petition for quashing of the FIR in which the Coordinate Bench of this Court vide order dated 31.01.2012 was pleased to grant personal exemption to the petitioner. It is argued that the dispute between the

complainant and co-accused was with respect to the fact that the co-accused were not the owners of the property which they had agreed to sell to the complainant. It is further argued that the petitioner had nothing to do with the said dispute as the petitioner had never represented himself as owner of the property. It is contended that the daughter-in-law of the petitioner was pregnant and was not keeping good health on account of which, the petitioner had to go abroad and although, daughter-in-law of the petitioner was saved but the child could not be saved and then the petitioner came back to India. Thereafter, the petitioner learnt that co-accused of the petitioner, who were the main accused in the case, had been acquitted vide judgment dated 08.10.2015 and it was further learnt that the petitioner was declared as proclaimed offender vide order dated 02.12.2011. Learned counsel for the petitioner has relied upon a judgment dated 17.03.2011 passed by the Division Bench of this Court in CRA-D-638-DB-2007 titled as Sudo Mandal @ Diwarak Mandal Vs. State of Punjab, in support of his arguments.

On 05.01.2022, learned counsel for the petitioner has submitted that the petitioner was ready to appear before the trial Court within a period of 15 days in case interim protection is granted and is also ready to compensate the complainant by paying an amount of Rs.30,000/-.

Learned counsel for the petitioner has submitted that in pursuance of the said order dated 05.01.2022, the petitioner has appeared before the Judicial Magistrate 1st Class, Phul on 12.01.2022 and has even got cash amounting to Rs.30,000/- in order to give to the complainant. It is further submitted that respondent No.2 and his family members have

gone abroad and thus, it is submitted that the petitioner would deposit the said amount before the trial Court, which would disburse the same to the complainant as and when he would be available. Learned counsel for the petitioner further submitted that the petitioner would appear before the trial Court on each and every date unless he is granted personal exemption or is granted permission to go abroad.

Learned State counsel has opposed the present petition and has submitted that the impugned order has been rightly passed.

This Court has heard learned counsel for the parties and gone through the paper-book.

The petitioner is only stated to be an attesting witness of the alleged agreement to sell and is not a beneficiary and the main accused in the present case has already been acquitted by the Judicial Magistrate 1st Class, Phul, vide judgment dated 08.10.2015 (Annexure P-7). It is the case of the petitioner that daughter-in-law of the petitioner was pregnant and was not keeping good health on account of which, the petitioner had to go abroad and although, the daughter-in-law of the petitioner was saved, but the child could not be saved and thereafter, the petitioner returned to India and it is only then that the petitioner learnt that he has been declared as proclaimed offender vide order dated 02.12.2011. In pursuance of above-said order dated 05.01.2022, the petitioner has already appeared before the Judicial Magistrate 1st Class, Phul on 12.01.2022 and he is also ready to deposit an amount of Rs.30,000/- with the trial Court in the name of complainant.

Although, complainant/respondent No.2 was added in the

present case and notice was also issued to him, but it is stated that respondent No.2 and his family are residing abroad. Since, the primary purpose of calling the respondent No.2 was to compensate him by making a payment of Rs.30,000/-, which can also be done by the petitioner depositing the said amount before the concerned trial Court/Illaq Magistrate, thus, no purpose would be served in keeping the present petition alive as the petitioner has already joined the proceeding.

In view of the above-said facts and circumstances, the present petition is allowed and the impugned order 02.12.2011 (P-5) is set aside, subject to the petitioner depositing an amount of Rs.30,000/- within a period of one month from today before the concerned trial Court/Illaq Magistrate and also subject to the condition that he would appear before the trial Court on each and every date except on the date when his personal appearance is exempted or he is granted permission to go abroad.

The concerned trial Court/Illaq Magistrate is directed to release the said amount of Rs.30,000/- in favour of the complainant.

It is made clear that in case the petitioner does not deposit an amount of Rs.30,000/- within a period of one month before the concerned trial Court/Illaq Magistrate from today, the present petition would be deemed to have been dismissed.

April 18, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
No