

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

Date of Pronouncement:28.09.2023

...Petitioner

VS.

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Ms. Simsi Dhir Malhotra, Advocate
for the petitioner.

Mr. Mohinder Singh Joshi, Additional Advocate General, Punjab.

N.S.Shekhawat J. (Oral)

1. The petitioner, who is a citizen of USA, has filed the present petition under Section 482 Cr.P.C. with a prayer to quash the cross case which was registered on the statement of Raj Singh @ Raju son of Mohan Singh under Sections 323, 324 of IPC in main case i.e. FIR No.153 dated 10.11.1986, registered under Sections 326, 324, 323, 34 of IPC (Annexure P-1) at Police Station Mahilpur, District Hoshiarpur and all subsequent proceedings emanating from the said FIR, on the basis of the compromise deed (Annexure P-6) and also in view of the fact that the co-accused of the petitioner have already been acquitted on the basis of compromise by the Court of Judicial Magistrate 1st Class, Hoshiarpur, on 04.01.1989.

2. Learned counsel for the petitioner submits that the petitioner is a citizen of USA and is residing there. Earlier also, the petitioner had filed two

quashing petitions with similar relief. The petitioner filed CRM-M-2264 of 2018, which was disposed of on 29.03.2019 with a direction to the petitioner to surrender before the trial Court within a period of one month from the date of the order and the trial Court was directed to release him on bail. Subsequently, another petition i.e. CRM-M-24217 of 2019 was filed, which was dismissed as withdrawn on 27.05.2019 with a liberty to raise all the pleas before an appropriate forum. Thereafter, the petitioner surrendered and was admitted to bail in the cross-version of FIR No.153 dated 10.11.1986 under Sections 323, 324 of IPC at Police Station Mahilpur, District Hoshiarpur. Now, the petitioner has come to know that the record of the trial Court was burnt in a major fire incident, which occurred in the Judicial Record Room (JRR) of the Court at Hoshiarpur on 16.06.1998, consequently, the trial could not proceed since long. Apart from that, the FIR in the present case was got registered by Rashpal Singh son of Sohan Singh against Davinder Singh son of Lekh Raj, Raj Singh son of Mohan Singh and Harbans Singh son of Labhu Ram, whereas the cross-version was registered on the basis of the statement made by Raj Singh @ Raju (since deceased) against Rashpal Singh son of Sohan Singh, Amar Nath son of Labhu Ram (since deceased), Sohan Singh son of Labhu Ram (since deceased) and Kuldip Singh alias Gurdeep Singh son of Sohan Singh (petitioner) under Sections 323 and 324 IPC. As submitted above, in the present case, Raj Singh @ Raju, complainant, Amar Nath and Sohan Singh are dead. The present case was tried by the Court of Judicial Magistrate 1st Class, Hoshiarpur and vide order dated 04.01.1989, the co-accused were ordered to be acquitted on the basis of compromise by the Court of Judicial Magistrate 1st Class, Hoshiarpur, which is evident from the zimni (Annexure P-2/1).

3. Learned counsel contends that the record of the case of Mr. A.K. Sharma, Judicial Magistrate 1st Class, Hoshiarpur had been burnt in 1998 in a fire incident and no record is available. So far as the Roznamacha of the police is concerned, it was also destroyed after a period of two years. So neither the order of the lower Court nor the record of the police were available, the petitioner was constrained to file the present petition for quashing, before this Court.

4. Learned counsel further contends that in the present case, the FIR was registered on 10.11.1986 i.e. about 37 years ago and the petitioner was arrayed as an accused in the cross-version by Raj Singh @ Raju. The complainant in the present case has died and even most of the witnesses are dead. Harbans Singh, witness has also died. Moreover, Davinder Singh son of Labhu Ram is also residing in New Zealand, for the last more than 31 years, permanently, so, it is impossible to trace him. Even the record has been destroyed in the Court as well as in the police station. However, the petitioner was able to manage a copy of the compromise dated 09.11.1986, which has been annexed herewith as Annexure P-6 with the petition. Learned counsel further contends that it was a case of minor scuffle and the parties belonged to one family. Davinder Singh, accused was a nephew of Rashpal Singh, complainant and Kuldeep Singh @ Gurdeep Singh was the younger brother of Rashpal Singh. Learned counsel further submits that in the present case, the complainant as well as Harbans Singh, witness have died, whereas, Davinder Singh is not available in India. Apart from that, the co-accused had already been ordered to be acquitted on the basis of compromise and there is no other evidence against him on the file. The learned counsel has also placed reliance

on the judgments passed by this Court in the matter of *“Gurpreet Singh alias Khinder Vs. State of Punjab”, 1995(2) CLR 100; “Balbir Singh Vs. State of Haryana”, 2000(1) CLR 396; “Sudo Mandal @ Diwarak Mandal Vs. State of Punjab”, 2011(2) RCR (CrL) 453; “Pardeep Kaur Vs. State of Punjab and another”, CRM-M-33746 of 2018, decided on 09.07.2019 and “Arvinder @ Sunny and another Vs. State of Punjab and another”, CRM-M-10431 of 2022, decided on 23.05.2022.*

5. Vide order dated 29.10.2022, a Co-ordinate Bench of this Court had observed that the original record of trial Court relating to the present case was not available as the same was burnt during the fire incident in the year 1998. Consequently, a report in this regard was called from District and Sessions Judge, Hoshiarpur. On the next date of hearing, a report was submitted by the District and Sessions Judge, Hoshiarpur, as per which, the entire relevant record relating to the present case was burnt in a fire accident, which took place in the year 1998. Consequently, the SHO, Police Station, Mahilpur, District Hoshiarpur was directed to produce the police record of the aforesaid case by the next date of hearing.

6. A reply by way of an affidavit of Deputy Superintendent of Police, Sub-Division Rural, Hoshiarpur, was filed on behalf of State of Punjab and the same was taken on record. Even learned State counsel submits that the record in the present case was burnt in the fire accident, which occurred on 16.06.1998. He further submits that Davinder Singh, witness has been living in New Zealand alongwith his other family members since 1999 and Raj Singh, complainant has already expired. He further submitted that every effort was

being made by the concerned Court to reconstruct the file. However, no record was filed alongwith the reply by the police.

7. I have heard learned counsel for the parties and perused the record.

8. From the various communications, which have been sent by District and Sessions Judge, Hoshiarpur, it is apparent that a fire accident had occurred in the Judicial Record Room of District Court, Hoshiarpur on 16.06.1998, in which most of the record was destroyed. Even the registers of saved record were maintained and the salvaged files were entered in the registers by the officials working in JRR at that time. However, no entry of the file of this case was found in the said register. Apart from that, some record was produced by ASI Gurjinder Singh of Police Station Mehtiana and no other record could be traced out. Thus, it is apparent that despite best efforts, the complete file of the present case could not be reconstructed by the officials of the Judicial Record Room, even after a period of more than 25 years.

9. Even otherwise, from the record it is apparent that in the present case, the parties were closely related to each other and it was a case of version and cross-version. In the present case, the cross-version was registered against the petitioner and others under Sections 323, 324 IPC. The co-accused in the present case were tried by the Court of Judicial Magistrate 1st Class, Hoshiarpur and vide judgment dated 04.01.1989, the co-accused of the petitioner were ordered to be acquitted, on the basis of the compromise, which is clear from the zimni (Annexure P-2). Even a copy of the said compromise has been annexed herewith as Annexure P-6. Since the petitioner was abroad at that time, consequently, the compromise deed (Annexure P-6) was signed by the complainant, injured and all the accused, who were present at the time of the

said compromise. Even the same set of evidence can be produced against the present petitioner as well. However, it is also apparent that in the present case, the complainant has also died. Even Harbans Singh, witness has also died and one of the witness Davinder Singh is residing in New Zealand for the last more than 37 years permanently and is abroad for the last several years. Still further, in such circumstances, no purpose would be served by continuing the prosecution against the present petitioner.

10. It has been held by the Hon'ble Supreme Court in the matter of ***"Gurpreet Singh @ Khinder Vs. State of Punjab, 1995(2) CLR 100***, as under:-

"4. There is no doubt that the case against Parminder Singh and petitioner is the same. The evidence conducted by the prosecution against both the accused is one and the same. The prosecution has to adduce evidence once again against the petitioner which has already been adduced in Session Case No. 15 of 1994 in that case against the co-accused Parminder Singh. It is not the case of the prosecution that there is any other material against Gurpreet Singh, petitioner apart from the evidence which has already been placed before the Court during the trial against Parminder Singh. The prosecution failed to prove its case against Parminder Singh and the same evidence is also sought to be adduced on Gurpreet Singh. I am of the opinion that when evidence sought to be adduced is the same, it causes unnecessary waste of time of the Court and the result would be the same. It has been held by the Supreme Court in Madhavrao Jiwaji Rao Scindia and another v. Sambhajirao Chandrojirao Angre and others, 1988(1) Recent CR 565 as follows :

"The local position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied

by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilised for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction are weak and, therefore, no useful purpose is likely to be served by allowing criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage." As the learned Judge of the Designated Court Amritsar has come to the conclusion that the prosecution failed to prove its case against Parminder Singh and that the evidence did not establish the guilt of the accused, the same result must necessarily follow in the case of Gurpreet Singh."

11. It has been held by the Division Bench of this Court in the matter of ***"Sudo Mandal @ Diwarak Mandal Vs. State of Punjab"***, ***Criminal Appeal No.D-638-DB-2007***, decided on ***17.03.2011***, as under:-

"22. While disposing of these two appeals, we are very much concerned about the absconding village rustic accused namely Radha Mandal, Rajiya Mandal and Sambodh Mandal, who had successfully evaded the dragnet of the police. The Investigating agency has put up a case implanting eye witnesses as against all the accused. Both the eye witnesses projected by the prosecution had not passed the test of trustworthiness. Their own showing would go to establish without any pale of doubt that they could not have witnessed the occurrence. The other materials produced by the prosecution also did not advance the case of the prosecution any further. The above facts and circumstances have persuaded us

to come to a definite conclusion that the accused in this case were not the perpetrators of crime of murder as alleged by the prosecution. The same set of materials would be produced before the Sessions Court on production of the remaining three accused namely Radha Mandal, Rajiya Mandal and Sambodh Mandal. After all the poor innocent labourers had migrated to other places to eke out their livelihood. The appellants herein had in fact suffered imprisonment for such a long time leaving behind their kith and kin, who might have been in dire need of financial support and help from them. Such an unpleasant situation shall not be created for the other three accused against whom also there is no material on record to fasten them with the charge of murder. We seriously pondered over rendering judicial succour to those faceless and voiceless accused who had taken to heels and hidden themselves apprehending the wrath of criminal proceedings for the heinous crime of murder. We are convinced that our judicial arm is not so crippled as to betray the vague hope of the hopeless.

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 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.”

12. Still further, this Court has held in the matter of **“Pardeep Kaur Vs. State of Punjab and another”**, CRM-M-33746-2018, decided on **09.07.2019** as under:-

*“Counsel for the petitioner has relied upon the Division Bench judgment of this Court **“Sudo Mandal @ Diwarak Mandal vs State of Punjab”**, 2011(2) RCR (Criminal) 453, wherein it has*

been held that even in case of proclaimed offender if the prosecution of the other accused has resulted into acquittal, no purpose will be served in directing the person, who is declared as proclaimed offender to face the trial if the chances of conviction are bleak.

In reply, counsel for the State on instructions from ASI Amarjit Singh, has not disputed the fact that the co-accused of the petitioner have already been acquitted by the trial Court and the appeal filed by the State was dismissed by the Lower Appellate Court. It is also not disputed that the Will, in question, was never produced before the trial Court.

Counsel for the complainant has, however, submitted that the petitioner has tried to take benefit of the Will by filing a civil suit, however, the same was dismissed as withdrawn on 19.09.2012 and thereafter, no fresh suit was filed. Counsel for the complainant has also not disputed the fact that the judgments passed by both the Courts below have attained finality and no revision has been filed as per the reply filed by him.

*After hearing the counsel for the parties, I find merit in the present petition considering the findings recorded by both the Courts below that in the absence of the original Will on record, no offence is made out, in my opinion even if the petitioner is directed to face the trial afresh, no purpose will be served in directing her to face the prosecution in view of the **Sudo Mandal's case (supra)**. Accordingly, this petition is allowed, the order dated 24.05.2004, vide which the petitioner has been declared as proclaimed offender is set-aside and the impugned FIR No.55 dated 26.03.2003 (Annexure P-1) registered under Sections 420, 465, 467, 468, 471 IPC at Police Station Division No.4, District Jalandhar and challan dated 23.10.2006 (Annexure P-2) all other subsequent proceedings arising therefrom are ordered to be quashed."*

13. In view of the above discussion and the law laid down by this Court in *Gurpreet Singh's case (Supra)*, *Sudo Mandal's case (Supra)* and *Pardeep Kaur's case (Supra)*, it is apparent that no purpose would be achieved with the continuation of the prosecution of the petitioner, who otherwise is facing the trial for the last about 37 years and the cross case, which was registered on the statement of Raj Singh @ Raju son of Mohan Singh under Sections 323, 324 of IPC in FIR No.153 dated 10.11.1986, registered under Sections 326, 324, 323, 34 of IPC (Annexure P-1) at Police Station Mahilpur, District Hoshiarpur and all subsequent proceedings emanating from the said FIR, on the basis of the compromise deed (Annexure P-6) are hereby quashed qua the present petitioner and the petition is allowed.

28.09.2023
hemlata

(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes