

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

CRM-M-7361-2020 (O&M)

Date of decision: 30.05.2023

GURMEEN KAUR SAINI AND ANOTHER

....Petitioners

Versus

UNION TERRITORY, CHANDIGARH AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr.Himanshu Sharma, Advocate
for the petitioners.

Mr.Yashwant Singh Rathore, Addl. P.P.,
U.T., Chandigarh, assisted by
Ms. Sudha Singh, Advocate
for respondent No.1.

HARSH BUNGER, J.

Petitioners have filed this petition under Section 482 of the Code of Criminal Procedure, seeking quashing of FIR No.191 dated 05.07.2012 under Sections 147, 148, 149, 294, 323, 332, 358, 448, 449, 452, 499, 500, 120-B, 506 of the Indian Penal Code (for short 'the IPC') at Police Station Sector 36, Chandigarh (Annexure P-1). A further prayer has been made for quashing of order dated 12.07.2013 (Annexure P-2) passed by learned Judicial Magistrate Ist Class, Chandigarh; whereby, the petitioners have been declared as proclaimed offenders, along with all consequential proceedings arising therefrom.

2. Briefly, the above-said case FIR was registered on the complaint of Joginder Pal Kaur daughter of late Sh. Sant Singh resident of House No.727, Sector 43-A, Chandigarh, which was filed under Section 156(3) of the Code of

Criminal Procedure; whereupon, the learned Magistrate had passed an order directing registration of the case against Charan Singh Saini and others, which included the petitioners herein, who were cited as accused Nos.3 and 4 in the complaint. It is, *inter alia*, alleged in the complaint that the complainant is an unmarried and handicapped lady of 65 years of age and is suffering from various old aged problems. As per the complainant, she is residing alone and fulfils her daily needs through some rental income. It was alleged in the complaint that all the accused persons mentioned in complaint, were residing in the same locality and were having an eagle eye on the property of the complainant as she was residing alone and the said accused persons earlier tried several times to grab the property of the complainant. It was further alleged that on 10.04.2012, two persons namely, Sukhbir Singh and Mansavi, who were known to the complainant, came to her house for dropping the complainant; where the accused persons with *mala fide* intention pressurized the complainant for selling her house and attacked the complainant as well as the said two persons namely, Sukhbir Singh and Mansavi, wherein the said persons got multiple injuries and thereafter, the police was called. It is alleged that at the said time, the complainant left the place and saved her life from the hands of accused persons. As per complaint, all the accused persons came together and forcibly entered into the house of the complainant and accused Nos.2, 3, 4, 6, 7 and 8 gave severe beatings to the complainant and also dragged her on the floor. It is also alleged that accused Nos.1, 3, 5, 7, 9 and 11 used filthy and vulgar language towards the complainant. As per the complainant, accused Nos.1, 5, 10 and 12 raised *lalkara* and instigated the other accused persons.

3. Concededly, both the petitioners herein went abroad before the presentation of challan and on account of their absence, the learned trial Court

vide order dated 12.07.2013 (Annexure P-2), declared them proclaimed offenders. A perusal of paper-book reveals that the trial against other accused proceeded and ended in acquittal of other co-accused vide judgment dated 06.06.2017 and the appeal filed by complainant against the said judgment of acquittal, was also dismissed by learned Additional Sessions Judge, Chandigarh vide judgment dated 13.09.2018.

4. Learned counsel for the petitioners submitted that in the aforesaid case, the petitioners were falsely implicated. It is submitted that the instant FIR No.191 dated 05.07.2012 was a counter blast to case FIR No.101 dated 10.04.2012 under Sections 323, 506, 34 IPC. It is submitted that the prosecution witnesses, who appeared against other co-accused person who faced trial, did not support prosecution case. In this regard, reference is made to Annexures P-7 to P-10. It is submitted that remaining 11 accused persons; against whom charges were framed, were acquitted by the trial court, vide judgment dated 06.06.2017. It was further submitted that even the appeal filed by the complainant against the afore-said judgment dated 06.06.2017 was dismissed by the Court of Additional Sessions Judge, Chandigarh, vide judgment dated 13.09.2018. The petitioners have placed reliance upon the judgment passed in ***Sudo Mandal @ Diwarak Mandal vs State of Punjab 2011(2) RCR (Criminal) 453*** and it is submitted that the above-said case FIR No.191 dated 05.07.2012 (Annexure P-1) and all consequential proceedings arising therefrom including order dated 12.07.2013 (Annexure P-2) passed by learned Judicial Magistrate Ist Class, Chandigarh, declaring the petitioners as proclaimed offenders may be quashed.

5. Per contra, learned State counsel has opposed the prayer for quashing of FIR No.191 dated 05.07.2012 (Annexure P-1) and order dated 12.07.2013 (Annexure P-2) passed by learned Judicial Magistrate Ist Class,

Chandigarh, declaring the petitioners as proclaimed offenders, by submitting that the petitioners have stayed away from the proceedings in this case for almost seven years and no leniency is required to be shown to petitioners, who have scant respect for law and were declared as proclaimed offenders. It is further submitted that the petitioners cannot derive any benefit of the acquittal of co-accused and at this stage, it cannot be said that the evidence to be led against them would be the same as was led against the said persons. Accordingly, it is prayed that the present petition may be dismissed.

6. I have heard learned counsel for the parties and have perused the paper-book with their able assistance.

7. Hon'ble the Apex Court in ***Yanab Sheikh @ Gagu v. State of West Bengal 2013(6) SCC 428***, held as follows :-

“23. The cumulative effect of the above discussion is that the acquittal of a co-accused per se is not sufficient to result in acquittal of the other accused. The Court has to screen the entire evidence and does not extend the threat of falsity to universal acquittal. The Court must examine the entire prosecution evidence in its correct perspective before it can conclude the effect of acquittal of one accused on the other in the facts and circumstances of a given case.”

8. In ***Rajan Rai v. State of Bihar, 2005(4) RCR (Criminal) 85***, Hon'ble Supreme Court held as under: -

“...In view of the foregoing discussion, we are clearly of the view that the judgment of acquittal rendered in the trial of other four accused persons is wholly irrelevant in the appeal arising out of trial of appellant – Rajan Rai as the said judgment was not admissible under the provisions of Sections 40 to 44 of the Evidence Act. Every case has to be decided on the evidence adduced therein. Case of the four acquitted accused persons was decided on the basis of evidence led there while case of the present appellant has to

be decided only on the basis of evidence adduced during the course of his trial...”

9. Full Bench of Kerala High Court in the case of ***T. Moosa v. Sub-Inspector of Police, Vadakara Police Station, Ernakulam, 2006(3) RCR (Criminal)***, held as under: -

“(vii) The judgment of acquittal of co-accused in a criminal trial is not admissible under Sections 40 to 43 of the Evidence Act to bar the subsequent trial of the absconding co-accused and cannot, hence, be reckoned as a relevant document while considering the prayer to quash the proceedings under Section 482, Criminal Procedure Code. Such judgments will be admissible only to show as to who were the parties in the earlier proceedings or the factum of acquittal.

(viii) While considering the prayer for invocation of the extraordinary inherent jurisdiction to serve the ends of justice, it is perfectly permissible for the Court to consider the bonafides - the cleanliness of the hands of the seeker. If he is a fugitive from justice having absconded or jumped bail without sufficient reason or having waited for manipulation of hostility of witnesses, such improper conduct would certainly be a justifiable reason for the Court to refuse to invoke its powers under Section 482 of the Code of Criminal Procedure.

(ix) The fact that the co-accused have secured acquittal in the trial against them in the absence of absconding co-accused cannot by itself be reckoned as a relevant circumstance while considering invocation of the powers under Section 482 of the Code of Criminal Procedure...”

10. Considering the facts of this case in view of the above-said legal position, I do not find any merit in the plea of the petitioners. A perusal of the FIR would suggest that the petitioners were specifically named therein and even

specific role has also been attributed to them. Concededly, the petitioners went abroad before the filing of the challan. It appears that they waited for the trial of the co-accused to be over and it is only after the passing of the judgment dated 06.06.2017 by the Court of Judicial Magistrate Ist Class, Chandigarh and the judgment dated 13.09.2018 passed by the Additional Sessions Judge, Chandigarh, the petitioners have filed the instant petition, seeking quashing of FIR No.191 dated 05.07.2012 (Annexure P-1) and all consequential proceedings including order dated 12.07.2013 (Annexure P-2) passed by learned Judicial Magistrate Ist Class, Chandigarh, declaring them the proclaimed offenders; on the basis of acquittal of the co-accused, who were given benefit of doubt by trial court. The petitioners were aware of the pendency of aforesaid proceedings against them and they intentionally stayed away. Thus, the petitioners have shown complete disregard for process of law.

11. The reliance upon statement of prosecution witnesses (Annexures P-7 to P-10) does not help the petitioners. Sunil (PW-2) in his statement (Annexure P-7) stated as under :-

“...None of the accused persons present in the Court did not enter into the house of the complainant nor caused any damage to her house or her...”

A perusal of above extracted statement would show that the same refers to accused who faced trial and petitioners cannot take any benefit thereof. Further, the case of the petitioner shall be decided on the basis of evidence to be led during trial against them.

12. Under the afore-said circumstances, no case for quashing of the FIR and subsequent proceedings including order dated 12.07.2013 (Annexure P-2), is made out. The present petition is dismissed being bereft of any merit.

13. All pending application/s, if any, shall stand closed.

May 30th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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