

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

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CRM-M-15822-2017 (O&M)

Date of decision: 31.05.2023

Harpreet Singh

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Mandeep Kaushik, Advocate for the petitioner

Mr. H.S. Sullar, Sr. DAG Punjab

AMAN CHAUDHARY. J.

1. The present petition has been filed for quashing of impugned FIR No.193 dated 10.05.1999, registered under Sections 452, 427, 148, 149 IPC, at Police Station Sadar Ludhiana, District Ludhiana and all the consequential proceedings arising therefrom including the impugned order dated 06.08.2004, whereby the petitioner has illegally been declared proclaimed offender without following the proper procedure under the provisions of Section 82 Cr.P.C.

2. Learned counsel contends that the FIR was registered on 10.05.1999 against the petitioner and 4 other persons. Challan in this case was presented on 11.12.1999 and the charges were framed on 04.09.2000. Thereafter, he continuously appeared before the trial Court till March 2003, when he left for abroad for the purpose of further studies. He was declared proclaimed offender vide order dated 06.08.2004, without following the procedure as envisaged under Sections 82 and 105 Cr.P.C. During the interregnum, the evidence of the prosecution was closed on 09.08.2004 and the other 4 co-accused were acquitted by the trial Court vide judgment dated 11.08.2004, Annexure P-5 while observing that the witnesses of the prosecution have resolved from their statements, while

the PW1-complainant, who was the Principal of the Guru Nanak Engineering College, Ludhiana and the other co-accused were students did not come to face cross-examination and the Warden, who appeared as PW-3 had stated that no occurrence as alleged had taken place. The said judgment has not been challenged. The evidence against the petitioner and the co-accused, who have been acquitted, is being inseparable and indefensible. The continuation of the proceedings against the petitioner would be an abuse of law. Moreover, in pursuance of order dated 20.04.2023, the petitioner had surrendered before the trial Court on 19.05.2023 and deposited Rs.25,000/- with the Poor Patients Welfare Fund, PGIMER, Chandigarh. He relies on judgments passed by this Court in **Joginder Pal Singh vs. State of Punjab** in CRM-M-32928-2017 decided on 03.03.2023 and **Sudo Mandal @ Diwarak Mandal vs. State of Punjab** 2011(2) RCR (Crl.) 453.

3. Learned State counsel has not been able to refute the submissions that the prosecution failed to prove its case against the co-accused and that the same set of evidence exists against him. In addition, the petitioner had surrendered before the trial Court and was thereby granted bail. He opposes the petition on the ground that the petitioner had been declared proclaimed offender and is, therefore, not entitled for any relief. However, he is unable to controvert the fact of the judgment of the trial Court relating to the co-accused having attained finality, in absence of challenge made to it.

4. Heard the submissions of the learned counsel for the parties and perused the case file.

5. Noticeably, there being no material brought on record to show that service was effected upon the petitioner, residing in Austria, as contemplated by the provisions of Sections 82/83 read with Section 105 Cr.PC, for declaring him a

proclaimed offender. During the interregnum, the co-accused of the petitioner, who faced trial, were acquitted of the charges by the trial Court vide judgment dated 11.08.2004. As is apparent from the FIR, the same set of allegations exist against the petitioner.

6. Hon'ble The Supreme Court of India in the case of **Deepak Rajak vs. State of W.B.** (2007) 15 SCC 305 held that, after surrender, the benefit of acquittal in the case of co-accused on similar accusations can be extended. A Division Bench of this Court in the case of **Sudo Mandal** (supra) to secure the ends of justice, quashed the proceedings on the ground that the very same unbelievable and untrustworthy evidence based on which the co-accused, who faced the trial were acquitted, no useful purpose will be served even if presence of the absconding accused was procured to face the trial as the same would ultimately lead to their acquittal and it would amount to abuse of the process of the Court.

7. In the case of **Pardeep Kaur vs. State of Punjab and another**, CRM-M-33746-2018, decided on 09.07.2019, wherein the petitioner was residing abroad and was declared proclaimed offender and the co-accused, who faced trial were acquitted, this Court by following the judgment in the case of **Sudo Mandal** (supra), quashed the FIR as well as the order declaring the petitioner as proclaimed offender.

8. The petitioner cannot be treated differently on the basis of the same evidence adduced on which the co-accused were acquitted and there being no prospect of the case ending in conviction, the Delhi High Court in the case of **Sunil Kumar vs. State**, 1999 (4) RCR (Crl.) 637, by observing that it would be wasting the valuable of the Court to continue the trial and the accused-petitioner

should not be made to undergo the ordeal of a trial, discharged the accused. The FIR was quashed in the case of **Gurpreet Singh alias Khinder vs. State of Punjab** 1995(2) RCR (Crl.) 127, wherein on similar circumstances, the petitioner, who was charged for an offence under Sections 3 and 4 of the Terrorist and Disruptive Activities (Prevention) Act, 1985, as well as, Sections 302/34 IPC, the co-accused, who were arrested stood acquitted by the trial Court. It was held that where the evidence is same, continuation of proceedings in the case of the petitioner would result in waste of Court's time and unnecessary expenditure on State exchequer.

9. This Court in the case of **Jasvinder Singh** (supra) held that the petitioner being a proclaimed offender, will not come in the way of quashing the FIR, as on the basis of the same allegations and set of evidence against him, the co-accused stood acquitted and thus, quashed the FIR.

10. Hon'ble The Supreme Court in **State of Karnataka v. L. Muniswamy**, (1977) 2 SCC 699, held that "In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceedings ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of

mere law though justice has not to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction.”

11. It is pertinent to note that the petitioner has surrendered before the trial Court in pursuance to a direction passed by this Court on a prayer made in this regard and joined the proceedings.

12. The trial Court in its judgment as regards the co-accused of the petitioner are concerned, observed and held that, “it is clear that witnesses of prosecution resiled from their statements and PW1 who was the Principal of that time did not come to face cross-examination and as per law, incomplete statement cannot be read in evidence. Moreover no occurrence took place in his presence. Material witnesses categorically stated that no occurrence took in their place who were cited as eyewitnesses. In these circumstances, I have left with no other alternative but to acquit the accused. I have left with no other alternative but to acquit the accused. Hence, they are acquitted.”

13. It is axiomatic that the occurrence as alleged in the complaint could not be proved to have even taken place. From the facts, the allegations that emerge are identical as against the petitioner and his co-accused. The same evidence exists against both sets of accused. Thus, the fate of the present case virtually stands sealed by the acquittal delivered by the trial court in favour of the co-accused of the petitioner. The said judgment has attained finality. There being no separate and distinct case made out against him, the likelihood of the

prosecution improving its case against the petitioner is non-existent, therefore, the continuation of proceedings against him would amount to an abuse of process of the law.

14. The peculiarity of facts and circumstances of the case at hand when considered in light of the law as expounded in the judgments referred to above, this Court finds, that benefit would enure to the petitioner by the acquittal of co-accused and to secure ends of justice, the FIR No.193 dated 10.05.1999 is quashed and order dated 06.08.2004 is set aside qua him.

15. The present petition is accordingly allowed.

(AMAN CHAUDHARY)
JUDGE

May 31, 2023
M.Kamra

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