

256 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-16159-2015 (O&M)****Date of decision: 05.09.2023**

Harminder Singh

...Petitioner

VS

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr.Aayush Gupta, Advocate,
for the petitioner.

Mr. Mohit Thakur, AAG, Punjab.

Ms.Komalpreet Kaur, Advocate
for respondent no.2.

ARUN MONGA, J. (ORAL)

Petition herein is for quashing of protest petition dated 04.02.2012 in Case No.155/3/14 Annexure P-4, and the consequential order dated 03.04.2014 Annexure P-7, whereby the petitioner has been summoned under Section 323, 452, 506 of the IPC, in which after thorough investigation the cancellation report was filed in his favour.

2. Succinct facts first, as pleaded in the instant petition.

2.1. Due to a dispute between the petitioner and respondent no.2 an FIR No.22 under Sections 323, 452, 506, 148, 149 of IPC read with Section 25/27/25 (54)/59 of Arms Act, at Police Station Division No.1, Jalandhar on 24.01.2011 Annexure P-2, was registered against the petitioner. After thorough investigation aforesaid FIR was cancelled and the cancellation report was prepared on 05.04.2011 (Annexure P-3) and presented before the learned trial Court and the same was also accepted by that Court. Aggrieved against the report respondent No.2 filed the protest petition. Learned JMIC, Jalandhar, without appreciating the facts of the case, treated the protest petition as the complaint case and directed the

complainant/respondent no.2 to lead his preliminary evidence on 26.05.2012 vide order dated 29.02.2012 (Annexure P-5). The petitioner approached this High Court under Section 482 Cr.P.C. by filing CRM-M-4276 of 2013 for quashing of the aforesaid order Annexure P-5, which was disposed of with the direction that till the time any summoning order was passed, the petitioner did not have to appear in the Court of learned Judicial Magistrate Ist Class, Jalandhar. Learned JMJC, Jalandhar, vide impugned order dated 03.04.2014 Annexure P-7, without appreciating the facts of the case passed the summoning order whereby only the petitioner has been summoned under Section 323, 452, 506 of the IPC.

2.2 Respondent no.2-complainant is not appearing before the trial Court to pursue his case and adjournments have been prayed on one pretext or the other. Petitioner who is NRI, being an accused in the present case has to appear on each and every date and therefore this has caused grave injustice to the petitioner. Learned trial Court instead of dismissing the complaint under Section 249 read with Section 256 Cr.P.C. is adjourning the matter on each and every occasion, even after giving him the last opportunity to respondent no.2-complainant. Hence, the present petition.

3. While issuing notice of motion on 26.05.2015 a co-ordinate Bench then seized of the matter passed the following:-

“The grievance of the petitioner is that the complainant is constantly defaulting from the proceedings and therefore the Magistrate ought to have dismissed the complaint in view of the provisions of Sections 249 and 256 Cr.P.C. But instead repeated opportunities have been given by adjourning the matter. The petitioner is a Non-Resident Indian who has to appear on each and every date by coming to India at huge cost and inconvenience. It is the contention of the petitioner that the Magistrate has failed to adhere to the mandate of the aforesaid provisions of law defeating the rights of the petitioner.

Notice of motion for 12.8.2015.

In the meantime, proceedings before the trial Court shall remain stayed.”

4. In fact the position as stated aforesaid is reflected from the *zimni* orders passed by the trial Court, which are reproduced hereinbelow:-

“Present: Ms. Zeba Khalid, APP for State
Accused Harminder Singh in person.

Regular counsels are not appearing in the court as the District Bar Association, Jalandhar has observed "no work day" for today i.e. 27.1.2015 due to the death of Sh.N.C. Nanda retired District Attorney father of Sh.S.C. Nanda, Advocate.

No pre-charge evidence is present. An adjourned is requested by the plaintiff, due to the reason mentioned above. In view of the same, case stands adjourned to 19.02.2015 for pre-charge evidence.

sd/- Gursher Singh
JMJC, Jalandhar
27.01.2015

Present: None for the complainant.
Accused in person.

Case called several time but neither complainant nor anyone his behalf appeared before the court. In the interest of justice, case stands adjourned to 07.03.2015 for awaiting appearance of the complainant. It is also clarified that this shall be last opportunity for the complainant come before the court.

Sd/- Gursher Singh
CJJD, Jalandhar
19.02.2015

Present: Non for the complainant.
Accused in person with counsel.

Notice issued to the complainant not received back nor the complainant has appeared before the court. In the interest of justice let fresh notice to the complainant as well as his counsel be issued for 27.03.2015.

Sd/- Gursher Singh
JMJC, Jalandhar
07.03.2015

Present: Accused in person with counsel.

An application for exemption personal appearance of from complainant filed today. Heard. Same is allowed for today only.

Complainant is directed to be positively present at adjourned hearing i.e. 17.04.2015. For pre-charge evidence.

sd/- Gursher Singh
JMJC, Jalandhar
27.03.2015

Present: Accused in person with counsel.
Exemption of complainant.

An application for exemption from personal appearance of complainant filed today. Heard. Same is allowed for today only.

Complainant witness Tarlok Singh is present, but could not be examined as he has stated that he is not feeling well. An adjournment is requested on behalf of Ld. Counsel for the complainant. On the request, case is adjourned to 06.05.2015 for complainant pre-charge evidence of the complainant. An application for allowing the accused/applicant to go abroad has been filed today. Copy of the same supplied to the opposite counsel, now to come up for filing reply as well as consideration in the said application.

sd/ Gursheer Singh
JMJC, Jalandhar
17.04.2015.”

5. Reference may also be had to Section 249 of the Cr.P.C., which reads as follows:-

“249. Absence of complainant. When the proceedings have been instituted upon complaint, and on any day fixed for the hearing of the case, the complainant is absent, and the offence may be lawfully compounded or is not a cognizable offence, the Magistrate may, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused.”

6. In view of the aforesaid, I am of the view that the complainant/respondent no.2 since himself is not pursuing the matter despite ample opportunities granted and the trial is being inordinately delayed, unnecessarily because of complainants’ default, on that ground the continuance of further proceedings is not warranted. Accordingly, petitioner is discharged and instant petition is accepted and protest petition dated 04.02.2012 in Case No.155/3/14 Annexure P-4 and order dated 03.04.2014 Annexure P-7 alongwith all consequential proceedings arising therefrom are quashed.

7. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

05.09.2023

‘D’Vir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No