

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

[Sr. No.110+228]

CRM-M-32173-2016 (O&M)

Date of decision : 03.02.2023

Baljinder Sing Khera

....Petitioner(s)

Versus

State of Punjab and another

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. R.S. Bains, Senior Advocate with
Mr. Mohan Singh Chauhan, Advocate for the
applicant-petitioner.

Mr. Kamalpreet Bawa, AAG, Punjab.

AMAN CHAUDHARY, J.

CRM-4443-2023

For the reasons stated in the application, same is allowed, subject to all just exceptions. Copy of the judgment dated 22.07.2014 passed by the Additional Sessions Judge, Ludhiana, is taken on record as Annexure P-5.

CRM-M-32173-2016

The present petition has been filed under Section 482 Cr.P.C. for setting aside the order dated 25.07.2016, Annexure P-4, passed by Additional Sessions Judge, Ludhiana, whereby the application for the discharge of the petitioner in FIR No.131 dated 27.08.2009, under Sections 15-17-18-18B of Unlawful Activities of Prevention Act, 1967,(hereinafter referred to as “the Act”), was dismissed.

Learned Senior counsel for the petitioner contends that at the time of lodging of the FIR in question, the petitioner, who is a Canadian citizen, was residing in the said country. It is only on his return to India that

of 2015 under Section 482 Cr.P.C. praying for quashing of the FIR as also the order dated 17.03.2012, whereby he was declared as proclaimed offender, on the ground that the provisions of Section 82 Cr.PC were not complied with and that he was never approached by the police regarding the FIR, moreover, all the co-accused have been acquitted by the learned trial Court. The abovesaid petition was partly allowed vide order dated 06.05.2016 passed by this Court, Annexure P-2, by recording the fact that the petition was not pressed for quashing of FIR, however, the petitioner was ready to surrender before the trial Court; being not in knowledge of the order dated 17.03.2012 having been passed against him declaring him as proclaimed offender. It was observed that in case the petitioner surrenders before the trial Court within a week, the trial Court shall admit him on bail.

The petitioner is stated to have surrendered before the trial Court and on being granted the bail, joined investigation on 15.07.2016.

During investigation, it was found that there was no evidence against the petitioner that the amount stated to have been sent by the petitioner was given to any terrorist organization and that other co-accused, who were arrested in the case, had already been acquitted by the trial Court. Accordingly, an application for discharge of the petitioner was filed, but the trial Court committed grave error in dismissing without properly considering the facts.

Learned State counsel makes a reference to Para No.4 of the preliminary objections of the reply that during further investigation, it had come to the notice that the petitioner had sent some money to his Advocate Jaspal Singh and not for any unlawful activities to other accused or any terrorist group.

Heard.

It is apposite to make a reference to the report dated 18.07.2016 of Station House Officer, Police Station Sarabha Nagar, Ludhiana, the relevant portion of which reads thus:-

“Accused Baljinder Singh Khera had filed a CRM-M-No.41530 of 2015 before Hon’ble Punjab and Haryana High Court, Chandigarh and as per the order dated 06.05.2016 passed by Hon’ble Mr.Justice Hari Pal Verma the accused Baljinder Singh Khera surrendered before your court on 11.05.2016 and after getting the bail join the investigation on 15.07.2016. On inquiry from Baljinder Singh Khera, perusal of order dated 06.05.2016 passed by Hon’ble Mr.Justice Hari Pal Verma in CRM-M No.41530-2015 filed by Baljinder Singh Khera and para no.44 & 45 of the judgment dated 22.07.2014 passed by the court of Sh.Sukhdev Singh, Additional Sessions Judge, Ludhiana, no evidence has been found on record against accused Baljinder Singh Khera. The accused arrested in this case has already been acquitted by the Court. During investigation it is not proved that the amount which was sent by Baljinder Singh was given to any terrorist activities. Therefore, the presentation of challan against above said Baljinder Singh Khera is wastage of time of police and the court. Therefore, it is appropriate to discharge the above said Baljinder Singh Khera from this case and declared him innocent through this report. Report presented for appropriate orders.”

The application for discharge of the petitioner was filed by the prosecution as no incriminating evidence had come forth against him. While the petitioner was not in the country, the trial of the co-accused culminated in their acquittal vide judgment 22.07.2014, passed by the Additional Sessions Judge, Ludhiana, Annexure P-5. The para relevant thereof reads thus:-

“The main allegations against the present accused are that they are receiving financial aid from foreign countries and then using the same financial aid for the purpose of doing unlawful activities by paying fees to advocates and by helping the family members who are involved in terrorist activities. The witnesses examined by the prosecution relating to money transaction are Ravinder Singh, an Area Manager of Pal Merchants, Ludhiana and

Sanjay Dhand, a Manager of K.C. Money Gram Ghumar Mandi, Ludhiana. These witnesses during the cross-examination has stated that the transaction of their system are legalized and affiliated from the Reserve Bank of India and the amount is paid to the person after verifying his identity and these were legal transactions and were approved by the Reserved Bank of India. So, there is no illegality and violation of any other law by receiving the amount from foreign countries by the accused.”

In so far as the order dated 25.07.2016, whereby the application for discharge of the petitioner was dismissed by the trial Court, is concerned, it is appropriate to refer to the operative portion thereof, which reads thus:-

“After going through the arguments led on behalf of learned Addl.P.P. for the State, learned counsel for the accused Baljinder Singh Khera, I am of the view that this accused Baljinder Singh Khera cannot be discharged at this stage without framing charge against him and without awaiting for the challan against him. I am of the view that it will be proper that the evidence be led on behalf of the prosecution so that the exact picture may come on the record. At this stage, this application cannot be allowed without framing charge and without leading evidence and without going through the circumstantial evidence on record. Hence, application is hereby dismissed. Now to come upon 11.9.2016 for awaiting challan against this accused.”

It seems that the Court while dismissing the application, lost sight of the fact that during the course of investigation no evidence was found against the petitioner, on account of which the challan had not been presented and only thereupon the application for discharge was filed. The dismissal of the application by the Court, despite the aforesaid and on the ground as stated in the order, shows non-application of mind.

Even the ground of dismissal of application that the petitioner cannot be discharged as the charges have to be framed and evidence has to be led, is not tenable, as this Court in the cases of **Gurwinder Singh @ Mintu v. State of Punjab**, 2012(3) RCR (Crl. 360 and **Jasvinder Singh v. State of Punjab**, 2013(1) RCR (Crl) 310 held that allowing the trial to

continue, when the other co-accused stand acquitted on the basis of same set of allegation, it will be an unnecessary waste the time of the Court and unnecessary expenditure on State exchequer, especially when the result is also likely to be the same as in the case of the co-accused, as such the proceedings were ordered to be quashed on the said principle.

The petitioner though was initially declared a proclaimed offender, he being not in the country, but had later on surrendered and joined investigation, whereafter no incriminating evidence was found against him during the investigation. Still further, as admitted in the reply filed by the State to the present petition, the amount alleged to have been sent for the purpose of unlawful activities, was found to infact been sent to Mr.Jaspal Singh, Advocate. During the interregnum, the co-accused had been tried and acquitted by the learned Additional Sessions Judge, Ludhiana by recording that the amount was received from foreign countries through legalized transaction after approval from the Reserve Bank of India and was meant for granting financial aid to pay fees to the advocates and helping the family members. In view of the above, the continuation of proceedings against the petitioner being an exercise in futility, would be an abuse of process, for which, the inherent powers of the Court meant to do real and substantial justice can be exercised. A profitable reference can be made to a Division Bench judgment of this Court in the case of **Sudo Mandal @ Diwarak Mandal v. State of Punjab**, 2011(2) RCR (Crl.) 453, wherein to secure ends of justice, the entire proceedings were quashed against the accused, who had been declared proclaimed offender, on the ground that in the meanwhile the co-accused were acquitted, by observing that, “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.”

Considering the judgments referred to hereinabove, allowing the proceedings to continue against the petitioner in the peculiar facts and circumstances of the case as narrated above, would be an abuse of process of law, thus, the impugned order deserves to be set aside.

Accordingly, the present petition stands allowed.

03.02.2023
Anjal/gsv

[AMAN CHAUDHARY]
JUDGE

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