

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-33794-2017 (O&M)
Date of decision: 23.03.2023

BALKAR SINGH
.....Petitioner
Versus
STATE OF PUNJAB AND ANR.
...Respondents

JARNAIL SINGH
.....Petitioner
Versus
STATE OF PUNJAB AND ANR.
...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. S.P. Soi, Advocate for the petitioners
Mr. Kamalpreet Bawa, AAG Punjab
None for respondent No.2-complainant

AMAN CHAUDHARY. J.

The abovementioned petitions have been filed under Section 482 CrPC for quashing of FIR No.96 dated 20.05.2006 registered under Sections 379, 447, 148, 149 IPC at Police Station Shahkot, District Jalandhar.

Learned counsel would contend that the petitioners-Balkar Singh and Jarnail Singh are Canadian and British citizens, respectively. They were not aware of the FIR having been lodged against

them on 20.05.2006. Petitioner-Balkar Singh had left for Canada on 10.10.2006, whilst petitioner-Jarnail Singh was not even in India on the date of FIR as he had left the country in the year 2005. That both of them were declared proclaimed offenders vide order dated 27.05.2008, without complying with the provisions of Sections 82 and 105 CrPC. Both the petitioners returned to India in the year 2017 and filed petitions seeking quashing of the order declaring them proclaimed offenders. Based on orders passed by this Court, they surrendered and were to be admitted to bail. The other co-accused involved in the FIR faced trial and were acquitted by the trial Court vide judgment dated 01.11.2013, on the ground that the prosecution had failed to establish the very basis of its case, in view of which, the learned counsel would submit, that the evidence against them and the petitioners being the same, the FIR be quashed qua the petitioners. To bolster his submissions, reliance is placed on the judgments passed in the cases of **Sudo Mandal @ Diwarak Mandal vs. State of Punjab**, 2011(2) RCR (Criminal) 453 and **Jasvinder Singh vs. State of Punjab and another**, 2013(1) RCR (CrI.) 310.

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 and that the petitioners had surrendered and granted bail. However, opposed the petitions on the ground that the petitioners had been previously declared proclaimed offenders.

Despite service none has appeared on behalf of respondent No.2-complainant.

Heard the learned counsel for the parties and perused the case files.

It is worthwhile to notice that the petitioners were declared proclaimed offenders and on the petitions having been filed by them, expressing their willingness to surrender and join the proceedings, this Court directed the petitioners to surrender within a month and to be admitted on bail, as in the case of their co-accused-Kuldeep Singh, by noticing the submissions of the learned counsel that petitioner-Balkar Singh was granted Schengen visa from 10.10.2006 to 05.01.2007, upon which he went abroad; he was never served with the process of the Court at any point of time; and similarly, petitioner-Jarnail Singh, a British Citizen was residing abroad since 2005; service effected upon him was at his native village. In compliance to the aforesaid orders, concededly, the petitioners surrendered before the trial Court and were admitted to bail.

During the interregnum, the trial that proceeded against the co-accused of the petitioners culminated in their acquittal wherein the trial Court observed that, "Thus in view of my aforesaid detailed discussion, the picture which emerges out is that complainant party and accused party were co-sharers in joint possession of their land and the complainant Gurdeep Singh is not shown to be in exclusive possession of any land nor it is proved on record that he had planted 40 Popular trees in any such land in his

exclusive possession.” Further, “The complainant Gurdeep Singh nowhere disclosed that he had earlier also filed a complaint against accused persons qua the same very land and qua similar occurrence in past. The said non-disclosure of earlier case also raises a strong doubt about the bonafides of complainant Gurdeep Singh. In the said criminal case also, judgment of which is Ex.D1, the accused were acquitted by the Court holding the allegations of the complainant Gurdeep Singh not trustworthy and reliable.” Further that, “Undisputedly, there was a land dispute going on between the parties and there was previous enmity between the parties and thus the complainant Gurdeep Singh and his wife Balwinder Kaur were very much inimical against the accused persons and were interested witnesses in this case to secure punishment for the accused persons and thus it cannot be entirely ruled out that complaint in question of the complainant Gurdeep Singh against the accused persons was false and baseless in nature. It is also pertinent to mention here that there is an unexplained and undue delay of nearly two months in lodging of FIR in this case which makes the prosecution case further weak and full of suspicion, the benefit of which has to go to the accused in this case.” It was thus held that, “In view of my aforesaid detailed discussion, this court is of the opinion that prosecution has failed in establishing the very basis of its case and at the most it has only succeeded in raising a finger of suspicion towards the accused persons in the court but same is not sufficient to secure their conviction in this case as prosecution is duty bound to prove its case beyond all reasonable doubts but

it has failed to do so in the present case. Accordingly, by extending a benefit of doubt, the accused persons are acquitted in the present case.”

The appellate Court while affirming the judgment of acquittal, held that, “In order to fix criminal liability of an accused there must be cogent and direct evidence on record against them. In the instant case, after evaluating the evidence available on record, this court has reached a conclusion that evidence adduced by the prosecution is neither sufficient nor cogent to hold that respondents trespassed into the land or committed any theft of trees.”

A case wherein Jaswant Singh, a co-accused of Gurmeet Singh, whilst being abroad had been declared proclaimed offender, had sought quashing of the FIR, on the ground that the complainant had already settled his score with the main accused-Gurmeet Singh and the trial Court had already acquitted him. However, the High Court declined his prayer on account of the fact that he was specifically named in the FIR and criminal acts had been attributed to him but directed him to surrender before the trial Court and file an application for regular bail. On a challenge laid by him, Hon’ble The Supreme Court in **Jaswant Singh vs. State of Punjab and another**, 2021 SCC OnLine SC 1007, observed that in its view the said case was amongst those fittest cases where High Court ought to have exercise its powers under Section 482 CrPC and closed the proceedings to secure the ends of justice and held that, “In our considered view, the High Court erred in firstly not considering the entire material on record and further in not

appreciating the fact that the dispute, if any, was civil in nature and that the complainant had already settled his score with the main accused Gurmeet Singh against whom the proceedings have been closed as far back as 26.09.2014. In this scenario, there remains no justification to continue with the proceedings against the appellant.”

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.

The 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 an abuse of the process of the Court.

In the case of **Pardeep Kaur vs. State of Punjab and another**, CRM-M-33746-2018, wherein the petitioner was residing abroad and was declared proclaimed offender, while 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.

The evidence adduced in the case against all the accused persons being inseparable and indivisible, the petitioners cannot be treated differently on the basis of the said evidence 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 him.

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.

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.

The test to be applied by a Court for deciding whether it is expedient and in the interest of justice to permit a prosecution to continue, is by taking into consideration any special features which appear in a particular

case that the uncontroverted allegations prima facie establish the offence and wherein the opinion of the Court chances of conviction are weak and no useful purpose is likely to be served by allowing the criminal prosecution to be continued, the Court can quash the proceedings, were the observations of Hon'ble The Supreme Court of India in the case of **Madhavrao Jiwaji Rao Scindia vs. Sambhajirao Chandraojirao Angre**, 1988 (1) RCR 565.

The Delhi High Court discharged the petitioner, as the trial Court had disbelieved the testimony of Smt. Imarti and the other witnesses whilst acquitting all other co-accused including Mahesh, against whom the allegations made by the complainant, were far greater than that against the petitioner in the case of **Urmila Devi vs. The State (NCT of Delhi)** 2007 (1) RCR (CrI.) 246.

In the case of **P. Ramachandra Rao vs. State of Karnataka** (2002) 4 SCC 578, the Constitution Bench of Hon'ble The Supreme Court of India with regard to exercise of power under Section 482 Cr.P.C., held thus:

“... In appropriate cases, inherent power of the High Court, under Section 482 can be invoked to make such orders, as may be necessary, to give effect to any order under the Code of Criminal Procedure or to prevent abuse of the process of any court, or otherwise, to secure the ends of justice. The power is wide and, if judiciously and consciously exercised, can take care of almost all the situations where interference by the High Court becomes necessary on account of delay in proceedings or for any other reason amounting to oppression or harassment in any trial, inquiry or proceedings. In appropriate cases, the High Courts have exercised their jurisdiction under Section 482 CrPC for quashing of first information report and investigation, and terminating criminal proceedings

if the case of abuse of process of law was clearly made out.”

Hon’ble The Supreme Court of India in **Parbatbhai Aahir**
Alias Parbatbhai Bhimsinhbhai Karmur and others v. State Gujarat
and others, (2017) 9 SCC 641, has held thus:

- “16. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions:
- 16.1. Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.
- 16.2. The invocation of the jurisdiction of the High Court to quash a first information report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.
- 16.3. In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.
- 16.4. While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (0) to secure the ends of justice, or) to prevent an abuse of the process of any court.
- 16.5. The decision as to whether a complaint or first information report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated.

- 16.6. In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.
- 16.7. As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing insofar as the exercise of the inherent power to quash is concerned.
- 16.8. Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.
- 16.9. In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and
- 16.10. There is yet an exception to the principle set out in propositions 16.8, and 16.9. above. Economic offences involving the financial and economic well-being of the State have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.”

It is axiomatic from the findings of the Courts below returned

while acquitting the co-accused of the petitioners, that there was a land

dispute between the parties, of which they being co-sharers were in joint possession; neither the plantation of trees by the complainant was proved nor exclusive possession; concealment of previous complaint regarding the same issue and similar occurrence, the allegations wherein were found to be untrustworthy and unreliable leading to acquittal of the accused; the complainant and his wife were interested witnesses; an unexplained and undue delay of nearly two months in lodging of FIR. The allegations in the FIR against the petitioners as well as the co-accused, who have already been acquitted, are common, that they forcibly cut 40 trees and took them away and on evaluation of the evidence by following the rule of prudence, the same was found to be neither sufficient nor cogent to hold that the accused trespassed into the land or committed any theft of trees. All the factors above inure to the benefit of the petitioners, to invite their acquittal, the evidence available against them and their co-accused being indivisible and inseparable, the possibility of conviction is remote and bleak, thus, the continuation of the proceedings against them would amount to an abuse of process of the law.

In order to secure the ends of justice, the jurisdiction under Section 482 CrPC can be exercised, which is designed to achieve salutary purpose that criminal proceedings ought not to be permitted to degenerate into means of harassment.

Having analysed the peculiarity of facts and circumstances of the case in hand whilst bearing in mind the exposition of law, this Court

under the wide ambit and plentitude powers of Section 482 CrPC, finds it appropriate to put at rest the criminal case against the petitioners. As a corollary thereto, the present petitions are hereby allowed. FIR No.96 dated 20.05.2006 registered under Sections 379, 447, 148, 149 IPC at police station Shahkot, District Jalandhar and all consequential proceedings arising therefrom stand quashed qua the petitioners.

A photocopy of the judgment be placed on the file of the connected case.

(AMAN CHAUDHARY)
JUDGE

23.03. 2023
M.Kamra

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