

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-32928-2017 (O&M)

Date of decision: 03.03.2023

JOGINDER PAL SINGH

...Petitioner(s)

Versus

STATE OF PUNJAB

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Ashok Bhardwaj, Advocate for the petitioner.

Mr. Kamalpreet Bawa, AAG Punjab.

Ms. Amarjeet Kaur, Advocate for

Ms. Mohd. Salim, Advocate for the complainant.

AMAN CHAUDHARY. J.

The present petition has been filed under Section 482 CrPC for quashing of FIR No.18 dated 29.01.2009 registered at P.S. City, Sangrur, District Sangrur under Sections 341, 323, 324 IPC and all consequential proceedings arising therefrom including order dated 06.05.2014, Annexure P-3, vide which, the petitioner was declared proclaimed person.

Learned counsel contends that in the FIR in question, registered against the petitioner and his brother Narinder Pal, simple injury with a 'danda' on the fingers of the right hand of the complainant was attributed to the petitioner, while to his brother a grievous injury on the head of the complainant with a 'kirch.' The petitioner was declared innocent during investigation and he had left for Australia on 10.05.2009. However, the

petitioner was summoned under Section 319 CrPC vide order dated 05.01.2013 by the trial Court, but was declared a proclaimed person, though without complying with the provisions under Sections 82/83 read with Section 105 Cr.PC. His brother was acquitted of the charges levelled against him vide judgment dated 02.03.2015, which the complainant unsuccessfully challenged in appeal that was dismissed vide judgment dated 19.04.2016 by the Appellate Court. The continuation of the proceedings against the petitioner would be an abuse of law. He relies on judgments passed by this Court in **Sudo Mandal @ Diwarak Mandal vs. State of Punjab** 2011(2) RCR (CrI.) 453 and **Jasvinder Singh vs. State of Punjab and another** 2013(1) RCR (CrI.) 310.

Learned counsel for the State as well as the complainant have not been able to produce any material to controvert the aforesaid submissions made by learned counsel for the petitioner as regards the procedure having been complied with before declaring the petitioner a proclaimed person or controvert that in the case of the co-accused, who was tried by the trial Court, the prosecution failed to prove its case against him and that the same set of evidence is against the petitioner, there being no fresh evidence available. However, they oppose the prayer on the ground that the petitioner had been declared as a proclaimed person and pray for the dismissal of the present petition.

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

Admittedly, the petitioner, who though was named in the FIR, was declared innocent during investigation and kept in column No.2 in the

final report and he left for abroad. It is on application filed under Section 319 CrPC., that he was summoned. However, there being no material brought on record to show that service was effected upon the petitioner who was residing in Australia, as contemplated by the provisions of Sections 82/83 read with Section 105 Cr.PC, for declaring him a proclaimed person. During the interregnum, the brother of the petitioner, who was a co-accused in the said FIR, faced trial and was acquitted of the charges by the trial Court, as affirmed by the Appellate Court and the same attained finality. The same set of allegations and evidence exist against the petitioner.

The finding of the Appellate Court while dismissing the appeal filed by the complainant challenging the judgment of acquittal, reads thus:

“13. The perusal of the impugned judgment reveals that the learned trial Court has disbelieved the evidence of PW1 Balwinder Kaur and PW5 Sukhwinder Singh. After going through the finding of the learned trial Court as well as the evidence led before it, I find myself in agreement with the same. It is the case of the prosecution that six persons including accused Narinderpal Singh had attacked PW5 Sukhwinder Singh and his wife Balwinder Kaur. Those persons had caused injury on the person of Sukhwinder Singh as well as Balwinder Kaur. No medico legal examination of Balwinder Kaur was conducted. She was allegedly punched on the face. In case, she was also injured by the accused, she could have visited the hospital along with her husband for her medico legal examination. Her presence at the spot appears to be doubtful and her evidence has been rightly disbelieved by the learned trial Court. She could not tell about the previous litigation with the accused party. She also could not tell when she herself was admitted in the hospital. She did not accompany her husband to the hospital. In her examination-in-chief, she had stated that she called her brothers-in-law, who took her husband to Civil Hospital, Sangrur, but in her cross-examination, she stated that she did not call her brothers-in-law and that he himself had come to spot on his own. The conduct of this witness in not accompanying her husband

to the hospital is doubtful. In case, her husband was inflicted with head injury with a sharp edged weapon, it would have been natural for her to take her husband to the hospital. The MLR Ex.PW4/B reveals that the injured was taken to the hospital by his brother Lakhbir Singh, who has not been examined by the prosecution.

14. The injured was medico legally examined in the hospital at 2.30 p.m. on 29.01.2009 and the alleged occurrence had taken place at 12.00 noon, but the doctor did not mention the duration of injuries in the MLR. He has admitted during his cross-examination that he did not mention the probable duration of injuries in the MLR. He further stated that the patient and his relative did not tell him the exact date and time of injuries. The non-mentioning of duration of injuries has create a doubt regarding the truthfulness of the prosecution case. The FIR of this case was registered at 7.45 p.m. on 29.01.2009, but copy of the FIR, which is Ex.PC was received by the Court of Additional Chief Judicial Magistrate, Sangrur, on 31.01.2009. The delay in sending the copy of the FIR to the learned Magistrate has created a doubt in the prosecution case. It appears that FIR was not recorded on 29.01.2009, due to which, there is a delay of two days in sending copy of the FIR to the learned Magistrate. PW5 Sukhwinder Singh in his cross-examination has stated that the police officials came to the hospital and recorded his statement after two days. This portion of his cross-examination proves that his statement Ex.PA on the basis of which FIR was registered, was not recorded on 29.01.2009, but was recorded on 31.01.2009. This may be the reason for sending the copy of the FIR to the learned Magistrate on 31.01.2009. This fact has also caused a dent in the prosecution story.

15. It is well settled that in case of acquittal, there is a doubt presumption of innocence in favour of the accused and the Appellate Court has to be careful in scrutinizing the evidence on record. After going through the evidence led before the trial Court, I find that the guilt of the accused is not proved beyond shadow of reasonable doubt and his false implication cannot be ruled out in this case. There is dispute between the father of the complainant and the father of the accused. DW1 Ajit Singh, the father of the accused, has proved on record the judgment of civil Court, which is Ex.D1 vide which suit for recovery filed by him against Mukhtiar Singh, the father of the complainant, was dismissed. He has also filed appeal against the said judgment, copy of the head

note his appeal is Ex.D2 and his affidavit accompanying the appeal is Ex.D3. He has also filed a complaint Ex.D5 dated 28.01.2009 against complainant Sukhwinder Singh, his brother Lakhbir Singh, his father Mukhtiar Singh and three unidentified persons for abusing accused Narinderpal Singh on 21.01.2009 and for tres-passing into his house and causing injuries on the person of his family members on 26.01.2009. The previous litigation between the parties, who were residing in the same locality may be reason for false implication of the accused and his brother Joginderpal Singh and unidentified persons. The local police had found Joginderpal Singh innocent during investigation. The allegations made by the complainant regarding theft of gold chain of his wife was also found to be false. The weapon used to commit the crime was also not recovered during investigation. This is also fatal to the prosecution case. The non-joining of independent witness from the place of occurrence is also fatal in this case, as it is proved that the alleged occurrence took place in broad day light and many persons were available there, who could have been joined in the investigation. The independent witness, who is named in the report under Section 173 Cr.P.C. i.e. Harpreet Kaur has also not been examined during trial. The bloodstained clothes of the injured were not taken into police possession.

16. In view of the discussion made above, I am of the considered opinion that the prosecution has not been able to prove the guilt of the accused beyond shadow of reasonable doubt. The infirmities in the prosecution case, which have been discussed above, are quite material. I find myself in agreement with the judgment of acquittal passed by the learned trial Court. Accordingly, the impugned judgment is upheld and the appeal is ordered to be dismissed. Summoned record be returned forthwith along with copy of this judgment.”

It would be profitable to make a reference to the judgment rendered by a Division Bench of this Court in the case of **Sudo Mandal** (supra) wherein to secure the ends of justice the proceedings were quashed, 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.

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 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.

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 (CrI.) 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 (CrI.) 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 while acquitting all other co-accused and that the allegations against Mahesh, as made out in the statement of Smt. Imarti, are far greater than that against the present petitioner, in the case of **Urmila Devi vs The State (NCT of Delhi)** 2007 (1) RCR (Crl.) 246, quite similarly in the present case as well, the allegations against the brother of the petitioner were of having inflicted a '*kirch*' blow on the head of the complainant and has been acquitted by learned trial Court, while the petitioner was attributed a danda blow, which struck the fingers of right hand of the complainant.

From composite allegations made against the present petitioner, who was declared innocent during investigation, and his brother, no separate and distinct case is made out against him and the evidence based on which, his brother was acquitted, it being inseparable and indivisible, would not point in the direction of a possible conviction. It would thus not be just to continue the proceedings against the petitioner, only to formally complete the procedure to pronounce the conclusion, when the end result seems apparent. It would also amount to a sheer wastage of precious judicial time.

In view of the above discussion, this Court is persuaded to snip the proceedings against the petitioner, in exercise of the powers conferred under Section 482 CrPC and accordingly, FIR No.18 dated 29.01.2009 registered at P.S. City, Sangrur, District Sangrur and all consequential proceedings arising therefrom including the order dated 06.05.2014 are hereby quashed.

Petition stands allowed.

(AMAN CHAUDHARY)
JUDGE

03.03.2023

M.Kamra/gsv

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