

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

CRM-M-24987-2022

Date of Decision:-01.05.2023

Iqbal Singh Sumbal.

.....Petitioners.

Vs.

State of Punjab & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Jaswinder Singh, Advocate for the Petitioner.

Mr. Sanish Girdhar, Assistant Advocate General, Punjab.

JASJIT SINGH BEDI, J.(ORAL)

The prayer in this petition under Section 482 Cr.PC is for quashing of FIR No.200 dated 01.10.2005 (Annexure P-1) under Sections 447, 427, 506, 148, 149 IPC registered at P.S. Phillaur, District Jalandhar and all consequential proceedings arising therefrom including the order dated 11.04.2012 (Annexure P-2) vide which the petitioner was declared a proclaimed offender as 16 of the co-accused of the petitioner already stands acquitted by the Trial Court vide judgment dated 09.04.2014 (Annexure P-3).

2. The Counsel for the petitioner contends that the FIR pertains to the year 2005. The petitioner had filed his first quashing petition which came to be dismissed by this Court vide order dated 6.3.2007. Thereafter, the petitioner was declared a proclaimed offender vide order dated 11.04.2012 (Annexure P-2). Subsequently, his co-accused came to be acquitted vide

judgment dated 09.04.2014 (Annexure P-3). Therefore, the FIR and the order dated 11.04.2012 vide which the petitioner was declared a proclaimed offender ought to be quashed since the petitioner could not come back to face trial as his passport was expiring.

3. The Counsel for the State on the other hand contends that this is the second petition for quashing of FIR filed on behalf of the petitioner, the first one having been dismissed on 06.03.2007. The petitioner has filed the instant petition through a power of attorney holder which was not maintainable other than in exceptional circumstances. Mere acquittal of his co-accused would not entitle him to the relief as prayed for. Even otherwise, despite opportunity being availed during the pendency of the present proceedings the petitioner has chosen not to come back to face proceedings which shows his intention. Therefore, there was no merit in the present petition and the same was liable to be dismissed.

4. I have heard learned Counsel for the parties.

5. Before proceeding further it would be relevant to examine the judgments in regard to the arguments raised by the parties.

6. In ***Sarabjit Singh Vs. State of Punjab & Anr. 2021(4) RCR (Criminal) 87*** this Court held as under:-

“ 4. According to the petitioner since his co-accused have been acquitted, therefore, continuation of trial qua him would be nothing but wastage of precious time of the Court and on these grounds, the petitioner had filed CRM-M-30524-2020 seeking quashing of the FIR, however, the same was not entertained because the petitioner is proclaimed offender. Faced with this situation, the said petition was withdrawn, therefore, petitioner has filed this petition seeking quashing of the above mentioned impugned orders.

5. Learned counsel for the petitioner has argued that once the

prosecution had set up a common case against the petitioner and his co-accused, the judgment of acquittal rendered by the trial Court would equally benefit him. He submits that as the judgment of acquittal has been further upheld by the appellate Court, the trial qua the petitioner at this stage would be an empty formality as the chances of conviction are bleak. He submits that while declaring the petitioner as proclaimed offender, no proper procedure was adopted by the trial Court, therefore, the said order declaring him proclaimed offender is bad in law. He prays that the impugned orders may kindly be quashed.

6. *During the course of hearing, it is not disputed by learned counsel that the petitioner is still residing abroad and the petition has been filed through his mother, namely, Sukhwinder Kaur (Special power of attorney).*

7. *When confronted with the maintainability of the petition, learned counsel has submitted that since the mother of the petitioner was also an accused, therefore, she is competent to represent him as his special power of attorney to pursue his case relating to the same FIR.*

8. *After hearing learned counsel for the petitioner, this Court finds that the petition is not maintainable in the present form, as the impugned order dated 09.03.2012 declaring the petitioner as proclaimed offender is not on record, and besides, the other impugned order dated 10.02.2011, whereby non-bailable warrants were issued against the petitioner has no significance, after passing of the order dated 09.03.2012.*

9. *Apart from it, admittedly the petitioner never associated himself with the trial proceedings, therefore, evidence adduced by the prosecution qua his co-accused cannot be read in respect of the petitioner. Further, the argument of learned counsel that petitioner's mother Sukhwinder Kaur, being mother Special power of attorney holder is competent to maintain this petition is also without any merit as in criminal proceedings the presence of the accused is necessary. Needless to observe that no proceedings in a criminal trial can take place in the absence of the accused, except where the permission has*

been granted by the Court to the said accused and ordinarily such prayers like exemption from personal appearance or even recording of evidence in the absence of accused are made by the concerned accused only. There is no provision in Code of Criminal Procedure, 1973 enabling the accused to appoint a power of attorney to represent him in criminal proceedings. The power of attorney executed under the Power of Attorneys Act, 1882 is normally meant for entrusting the power to some other person to manage, buy or sell property; to borrow money; to execute lease deed or to contest the civil litigation etc. In every criminal trial, the intention to commit crime, followed by execution by the accused or negligent act or omission constituting the penal offence are most important aspects which are ascertained by the trial Court to find involvement of the said accused in the crime, therefore, such proceedings, if permitted to be conducted in absence of accused would be violative of cardinal principles of criminal jurisprudence.

10. The issue regarding maintainability of the petition by an accused through general power of attorney holder has been considered by this Court in “**Amit Ahuja Vs. Gian Parkash Bhambri**”, 2010 (3) R.C.R. (Criminal) 586, wherein it has been held that such a petition can be maintained only if the accused is suffering from any disability being minor, insane or any other disability recognized as sufficient to permit any other person to file a petition on his behalf. But, in “**Kuldeep Singh Jaswal Vs. Jaspal Singh**”, 2016 (2) AICLR 703, the conflicting view was adopted by this Court, wherein it was held that any petition before the Court should be filed by the accused, but there cannot be or should not be laid down a straight jacket formula in this regard and the issue was left upon at the discretion of the concerned court to be decided upon the facts and circumstances of the case.

11. Further, the Division Bench of this Court in “**Mangal Dass Gautam Vs. State of Haryana**”, 2020 (2) R.C.R. (Criminal) 382, examined the above issue and held that a petition under Section 482 Cr.P.C is an exception to general rule of criminal law and any such petition filed by accused through power of attorney must contain

special reasons. It was further held that the maintainability of such petition would certainly be dependant upon various factors including facts and circumstances of that particular case to be decided by the said Court. The relevant part of the judgment is extracted below:-

“38. In the light of the above observations, it is held that a petition under section 482 of Cr.P.C., 1973 can be filed by a Power of Attorney holder. As regards the maintainability thereof, it would dependent upon the facts and circumstances of each case as also with regard to the validity of the said Power of Attorney and the powers conferred therein. It requires to be mentioned here that there is no statutory bar provided by the legislature in the Cr.P.C. relating to filing or continuing of a criminal matter through a Power of Attorney holder. The Court would generally insist that the petition under section 482 of Cr.P.C., 1973 for quashing of the FIR or a criminal complaint as also the consequential proceedings arising therefrom be filed through the accused person himself but this cannot be and should not be laid down as a hard and fast rule keeping in view the statutory mandate which by nomenclature, description and discretionary nature of powers conferred on the High Court requires it to be kept flexible. This is better left to be considered and decided by the Court dealing with the particular case in the facts and circumstances of each case as it would be impossible to envisage and think of all the circumstances in which the Court may require and like to exercise its extraordinary jurisdiction and powers as conferred under section 482 of Cr.P.C., 1973.”

12. Notably, the maintainability of the petition on behalf of accused through power of attorney holder has also been discussed by the Hon'ble Supreme Court in **“T.C.Mathai Vs. The District & Sessions Judge, Thiruvananthapuram”**, AIR 1999 SC 1385, wherein the Apex Court refused to entertain such petition on the ground of maintainability and observed as under:-

“Section 2 of the Power of Attorney Act cannot override the specific provision of a statute which requires that a particular act should be done by a party in person. When the Code requires the appearance of an accused in a court it is no compliance with it if a power of attorney holder appears for him. It is a different thing that a party can be permitted to appear through counsel. Chapter XVI of the Code empowers the Magistrate to issue summons or warrant for the appearance of the accused. Section 205 of the Code empowers the Magistrate to dispense with the personal attendance of accused, and permit him to appear by his pleader if he sees reasons to do so. Section 273 of the Code speaks of the powers

of the court to record evidence in the presence of the pleader of the accused, in cases when personal attendance of the accused is dispensed with. But in no case can the appearance of the accused be made through a power of attorney holder. So the contention of the appellant based on the instrument of power of attorney is of no avail in this case”.

13. *Though the above decision of the Hon'ble Supreme Court was not brought to the notice of this Court in Mangal Dass Gautam's case (supra), however, the above view was further followed by Bombay High Court in “**Pravin Niwritti Sawant Vs. Nisha Pravin Sawant and another**”, 2007(4) R.C.R. (Criminal) 841, and by Kerala High Court in “**Naveed Akhthar Vs. State of Kerala, 2016 SCC Online Kerala 13587**”.*

14. *At this juncture, the analysis of the facts of this case reveal that the petitioner voluntarily disengaged himself with the trial proceedings, who left the country without seeking any permission from the trial Court, therefore, this petition filed through the Special power of attorney holder is not maintainable. If such a procedure is introduced, then it would not only encourage the accused persons to seek this kind of permissions to avoid their personal presence before the trial Courts or any other Court, as required by law but would also put extra burden upon the Courts and it may further cause delay in conclusion of the criminal proceedings, thereby defeating the aim and object of the penal laws.*

15. *This Court is cognizant of the scope of Section 482 Cr.P.C and in numerous judicial pronouncements, it has been held by various High Courts as well as the Hon'ble Supreme Court that the inherent powers are to be used sparingly and with circumspection and cannot be exercised in a routine manner, much less for the convenience of the accused. For the sake of arguments, even if it is assumed that in a given case such a permission needs to be given to the accused, in that eventuality also the conduct of the accused applicant would acquire importance, and this Court is of the opinion that a proclaimed offender who failed to associate with the trial proceedings despite knowledge is not entitled to invoke the inherent powers of this Court*

to seek quashing of criminal proceedings.

16. Resultantly, in view of the above discussion, this Court does not find any merit in this petition and the same is dismissed.”

In *Narinder Pal @ Nandu Vs. State of Punjab & Anr.* CRM-M-45553-2022 Decided on 16.03.2023 this Court has held as under:-

“ 6. Initially when this matter had come up for hearing on 29.09.2022, the counsel for the petitioner was asked to obtain instructions as to when the petitioner was likely to come back in order to face Trial as the question of the present petition being urged on merits while the petitioner was a proclaimed offender did not arise. An adjournment was sought and on 29.09.2022 the case was adjourned to 03.11.2022. On the said date the members of Bar were abstaining from work and the case stood adjourned to 02.02.2023. On the said date once again, the counsel for the petitioner was asked as to whether the petitioner was ready and willing to come back to face proceedings. He sought 04 weeks time to argue the matter and the case was posted for hearing on 14.03.2023. On 14.03.2023 an adjournment was sought once again and today the court has been informed that the petitioner does not wish to come back and wanted to withdraw the present petition.

7. A perusal of the sequence of events as narrated above could establish that despite being given ample opportunities to come back and face proceedings, the petitioner firstly undertook to return back but has subsequently expressed a desire to withdraw the instant petition. Quite obviously an attempt was to obtain an interim order and thereafter keep the matter lingering on one pretext or the other. The conduct of the petitioner must be deprecated. In fact, the filing of the present petition is completely frivolous as even if this Court did quash the order whereby the petitioner was declared a proclaimed offender, he would still not come back to face Trial as was evident from the statement made by his counsel that the petitioner did not wish to return back.

8. In view of the above, I find no merit in the present

petition and, therefore, the same is hereby dismissed.”

7. Coming back to the facts of the instant case, it may be relevant to note that on 02.06.2022 notice of motion was issued and the matter stood adjourned to 10.10.2022. On that date the petition was adjourned for 14.03.2023 on which date the following order was passed:-

“ The learned Counsel for the petitioner submits that the petitioner shall be back in India positively by the first week of May 2023.

Adjourned to 01.05.2023.

*To be shown in the **Urgent Cause List.** ”*

When the matter came up for hearing today, the counsel for the petitioner submitted that the petitioner was unable to come back to face proceedings on account of the fact that his passport was expiring. Further, on a query, no satisfactory answer has been given by him as to when the petitioner would return back to face proceedings.

8. The aforementioned facts would show that firstly, this is the second petition for quashing of the FIR, the first having been dismissed on 6.3.2007. It has been filed through a power of attorney without any exceptional circumstances having been disclosed other than the fact that the petitioner was of the age of 73 years and a resident of Canada. Interestingly, the co-accused of the petitioner were acquitted in the year 2014 whereas the present petition for quashing of the FIR has been filed in the year 2021, 07 years after the judgment of acquittal. Even otherwise, mere acquittal of the co-accused would not be a ground to quash the instant proceedings and the petitioner would have had to come back to face trial as had been undertaken by him but has chosen not to do so despite this Court willing to stay the

operation of the order dated 11.04.2012 (Annexure P-2) thereby enabling the petitioner to join proceedings.

9. In view of the aforementioned facts and the conduct of the petitioner, I find no reason to quash either the FIR or the order whereby the petitioner has been declared as a proclaimed offender. Resultantly, the present petition stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

May 01, 2023
Vinay

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