

CRM-M-38550-2018

: 1 :

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : CRM-M-38550-2018

Date of Decision : May 10, 2023

Jaspinder Singh Malhi

.... Petitioner

vs.

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Ranjit Singh Ghuman, Advocate
for the petitioner.

Mr. Jaiteshwar S. Bhandari, AAG, Punjab.

* * *

GURBIR SINGH, J. :

Prayer in this petition filed under Section 482 Cr.P.C. is for quashing the order dated 28.03.2016, passed by the learned Judge, Special Court, Ludhiana (Annexure P-1), in a Criminal Case No.RBT-SC/34776/2013, arising out of FIR No.18 dated 20.01.2010, registered under Sections 302, 307, 506, 148, 149 IPC, 1860 and Sections 25 of the Arms Act, 1959, at Police Station, Jagraon, District Ludhiana, whereby the petitioner along with one Satinder Pal Singh @ Nikku has been summoned to face trial in the aforesaid FIR, along with all consequential proceedings arising therefrom.

Learned counsel for the petitioner submits that the petitioner, who was a resident of State of Punjab, is presently residing at Surrey, Canada. The case in question was registered by one Harsimranjit Singh. The petitioner was falsely implicated in this case along with some other accused

the present petition.

After thorough investigation, challan under Section 173 Cr.P.C. was presented on 13.04.2010 (Annexure P-3) against the other persons. Though some other persons were named in the said Challan, but the name of the petitioner was kept in Column No.2 of the Challan. Pursuant to the finding of innocence, recorded by the Investigating Agency, the petitioner was issued Police Clearance Certificate vide No.1466/PCC dated 18.05.2010 by Senior Superintendent of Police, Ludhiana (Rural) and then, the petitioner immigrated to Canada in October 2010. Since then, the petitioner has not visited India. A copy of the Police Clearance Certificate has been annexed with the present petition as Annexure P-4.

During trial, after recording statement of complainant – Harsimranjit Singh on 11.01.2016, prosecution moved an application under Section 319 Cr.P.C. and vide order dated 28.03.2016 (Annexure P-1), the petitioner and one Satinder Pal Singh @ Nikku have been summoned as additional accused to face trial along with other accused persons, merely on the basis of statement of complainant – Harsimranjit Singh dated 11.01.2016. Later on, the same complainant – Harsimranjit Singh, while deposing as PW-1 on 20.07.2017, denied the contents of his earlier statement dated 11.01.2016 and stated that the same was made under pressure of police officials which means there was no truth in his earlier statement dated 11.01.2016. Copies of both his statements dated 11.01.2016 and 20.07.2017 have been annexed with this petition as Annexures P-5 and P-6 respectively.

The petitioner was erroneously declared a Proclaimed Offender vide order dated 08.11.2016. He had already challenged the said order in a separate petition pending before this Court.

Vide judgment dated 01.12.2017 (Annexure P-7) passed by learned Additional Sessions Judge, Ludhiana, all the accused were acquitted. From the judgment, it is established that complainant – Harsimranjit Singh was examined as PW-1 and eye-witnesses Gurwinder Singh, Inderjit Singh and Gurdeep Singh were examined as PW-2, PW-4 and PW-5 respectively (Annexures P-8 to P-10 respectively). Mere summoning of the petitioner on the basis of statement of complainant – Harsimranjit Singh was against the provisions of law. The Court did not apply its mind and did not give the finding that there was reasonable prospects of the case ending in conviction of accused who were being summoned. Reliance in this regard has been placed on **Michael Machado vs. Central Bureau of Investigation – 2000 (2) RCR (CrL) 75 (SC)**.

Judgment passed by the Trial Court had attained finality. There is no likelihood that criminal proceedings against the petitioner would culminate into conviction. As the evidence, which could be led by the prosecution, has already been led. The witnesses of the prosecution did not support the prosecution version and their evidence had been duly appreciated by the learned Trial Court. Learned counsel has further placed reliance on a Division Bench judgment of this Court in the case of **Sudo Mandal @ Diwarak Mandal vs. State of Punjab – 2011(2) RCR (Criminal) 453** and has submitted that in this case, five accused were

involved in a murder case. Two accused were arrested and three were declared Proclaimed Offenders. The two accused, who were arrested, were tried and convicted by Trial Court. The convicts filed the appeal. The High Court acquitted both the convicts and also quashed the proceedings against the absconding Proclaimed Offenders in exercise of power under Section 482 Cr.P.C. as the evidence produced in the case was not trust-worthy.

Learned State counsel has opposed the petition. He has contended that on the evidence brought on the file, the learned Trial Court summoned the petitioner as additional accused to face trial along with the other accused, in view of law laid down by Hon'ble Supreme Court in **Hardeep Singh vs. State of Punjab (SC) – 2014(1) ADJ 727**. It has further been submitted that the petitioner intentionally left India after registration of case against him. The witnesses deposed in the Court against the accused who were facing trial and not against the petitioner. The petitioner cannot take advantage of those statements. It is for the prosecution to prove in the trial the allegations against the petitioner beyond shadow of any doubt. This Court cannot quash the proceedings only on the ground that the co-accused have already been acquitted. He has prayed for dismissal of the petition.

Heard.

The case in question was registered on the basis of statement of Harsimranjit Singh. As per the prosecution version, police party was present at Kamal Chowk, GT Road, Jagraon in connection with routine patrolling.

Information was received by the police party regarding firing incident at Bus

CRM-M-38550-2018

: 5 :

Stand Chowk, Jagraon. They reached Civil Hospital, Jagraon where complainant – Harsimranjit Singh came and his statement was recorded. He made statement that he was resident of Jagraon and was doing business of Finance by the name of Grewal Financing. On that day, he, along with Charanjit Singh @ Guron, his father Gurdeep Singh, Inderjit Singh, Baldeep Singh, Gurvinder Singh and Satnam Singh was coming towards Bus Stand, Jagraon in connection with some personal work. They all were going on foot towards a Sweet Shop at about 10:30 AM, when a white colour Alto car and a black colour Scorpio car came and stopped near them. Gurpreet Singh @ Lehmber son of Prithi Singh, resident of Salempura, Sidhwa Bet armed with .12 bore DBBL gun, Jaspinder Singh @ Malhi son of Zorawar Singh, resident of Sherpura Road, Jagraon armed with .12 bore gun, Gurpreet Singh @ Deepa son of Harbans Singh, resident of Gurusar Kaunke, Gurpreet Singh @ Gopi son of Kuldeep Singh, resident of Kothe Sher Jung, Satinderpal Singh @ Nikku son of Jarnail Singh, resident of near Octroi No.5, Jagraon and Charanjit Singh @ Rinku son of Gurjit Singh, resident of Beehla armed with country made pistol alighted from the said vehicles. Jaspinder Singh @ Malhi raised *lalkara* for not leaving them alive. Thereupon, Gurpreet Singh @ Lehmber fired from his 12 bore DBBL gun towards Hargunjit Singh, which hit at his head. Jaspinder Singh @ Malhi fired from his 12 bore gun towards Inderjit Singh hitting on his back. Both Hargunjit Singh and Inderjit Singh were injured and they fell down. The complainant and others went towards a side in order to save their lives. Then, all the above said accused along with 2/3 other unidentified persons, who were already sitting

CRM-M-38550-2018

: 6 :

in their vehicles, while firing gun shots fled away towards Moga road side, on their said vehicles. Several people gathered at the spot and with their help, injured Hargunjit Singh and Inderjit Singh was shifted to Civil Hospital, Jagraon, in an ambulance. There, Hargunjit Singh was declared dead and after giving first aid, Inderjit Singh was referred to DMC Hospital, Ludhiana. A few minutes after the occurrence, the complainant received a call on his mobile phone No.98884-79834 from mobile No.99881-00751 of Gurpreet Singh @ Lehmbur, who threatened him that they wanted to kill him but he had saved himself and they would kill him at his own house. The motive behind this occurrence was stated that in the year 2009, there was a quarrel with Jaspinder Singh @ Malhi over elections for the post of President in the College. Due to that reason, accused attacked them.

On an application filed by mother of accused pleading his innocence, inquiry was conducted and he was found innocent. Senior Superintendent of Police, Ludhiana (Rural) also approved the inquiry report. On completion of necessary investigation, challan against the accused was presented and name of the petitioner was kept in Column No.2 of the challan. Complainant – Harsimranjit Singh was examined. The petitioner was ordered to be summoned as additional accused, to be tried with other accused persons. The petitioner was named by the complainant in his statement recorded before the police, on the basis of which, FIR was registered. The complainant deposed in the Court. Specific act was attributed to the petitioner that he raised *lalkara* and exhorted that other party should not be left alive. He also fired from his 12 bore gun at Inderjit

CRM-M-38550-2018

: 7 :

Singh hitting on his back. The motive for the crime was stated to be an earlier quarrel in the year 2009 with the petitioner regarding elections for the President of the College. Whatever evidence had come during trial at the time of summoning additional accused, it was enough for coming to the conclusion that there was more than prima facie case against the petitioner and the accused were rightly summoned to face trial by invoking the provisions of Section 319 Cr.P.C. There is no illegality in the order dated 28.03.2016 (Annexure P-1), whereby the petitioner along with one Satinder Pal Singh @ Nikku has been summoned to face trial.

Thereafter, the petitioner was declared Proclaimed Offender. The other accused persons faced trial. Vide judgment dated 01.12.2017 (Annexure P-7), passed by learned Additional Sessions Judge, Ludhiana, all the other accused facing trial were acquitted on the ground that the complainant as well as other eye-witnesses did not support the version of prosecution against the accused. The said finding was recorded against the accused persons who were facing trial and no evidence had come on record with regard to the petitioner. Learned Additional Sessions Judge, Ludhiana held in the judgment that the case was not investigated properly. Para No.19 of the said judgment reads as under :-

“19. It is evident this case has not been investigated properly. Because neither gun MOI allegedly recovered from possession of accused Gurpreet Singh alias Lehmbar on 5.04.2010 by PW6-A Inspector Devinder Singh was got checked from the Armour or the Laboratory to prove its workability nor sanction as required under Section

39 of the Arms Act, 1959 was obtained to launch prosecution against accused Gurpreet Singh alias Lehmbhar for commission of offence punishable under Section 25 of the Arms Act, 1959. Further to connect this gun with the alleged occurrence dated 20.01.2010, the gun as well as the cartridge case recovered from the spot were not got examined from any ballistic expert. This gun and the said cartridge case were not sent to the Forensic Science Laboratory. Inspector Pawanjit and SI Devinder Singh investigating officers as well as Inspector Rajwinder Singh Station House officer, who presented the final report are held accountable for this lapse committed during investigation of the case, as per law laid in case State of Gujrat Versus Kishanbhai (2014) 5 SCC 108 where it was held as under :

21. On the culmination of a criminal case in acquittal, the concerned investigating/prosecuting official(s) responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for. Taking into consideration the seriousness of the matter, the concerned official may be withdrawn from investigative responsibilities, permanently or temporarily, depending purely on his culpability. We also feel compelled to require the adoption of some indispensable measures, which may reduce the malady suffered by parties on both sides of criminal litigation. Accordingly, we direct, the Home Department of every State Government, to formulate a procedure for taking action against all

erring investigating/prosecuting officials/ officers. All such erring officials/officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and decisive. The instant direction shall also be given effect to within 6 months.”

A person, who had actually participated in the crime, cannot give a slip to the legal proceedings against him on the basis of mere technicalities. The duty of the Court is to try the case in accordance with law against the petitioner, who was lawfully summoned to face the trial. In case **Sudo Mandal** (*supra*), accused Sudo Mandal alone was apprehended. He faced trial under Section 302 IPC and was sentenced. Second accused Dharminder Mandal, who was declared Proclaimed Offender, was arrested and he faced trial under Section 302 read with Section 34 IPC. Accordingly, he was convicted and sentenced. The other three accused could not be prosecuted as they absconded and were declared Proclaimed Offenders. The Court was hearing the appeals filed by Sudo Mandal @ Diwarak Mandal and Dharminder Mandal. The said judgment is distinguishable on facts and ratio of said judgment cannot be applied to the facts and circumstances of the case in hand. At the time of deciding the appeals, the High Court had opportunity to appreciate the entire evidence recorded during trial against the appellants. Finding that evidence as not trust-worthy, the appellants were acquitted and in exercise of power under Section 482 Cr.P.C.,

CRM-M-38550-2018

: 10 :

proceedings against absconding accused were quashed. In the case in hand, this Court is not having any opportunity at this stage to appreciate the evidence.

In view of what has been discussed above, I am of the view that there is no illegality in the order dated 28.03.2016 (Annexure P-1), whereby the petitioner along with one Satinder Pal Singh @ Nikku has been summoned to face trial.

Accordingly, finding no merit in the present petition, the same is hereby dismissed.

May 10, 2023

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(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.