

CRM-M-21589 of 2023

2023:PHHC:064549

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

CRM-M-21589 of 2023

Date of decision: 29.04.2023

Charanjit Kaur

.....Petitioner

Versus

State of Punjab and another

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Dr. Khushbir K. Waraich, Advocate,
for the petitioner.

Mr. Jashanpreet Singh, DAG, Punjab.

NAMIT KUMAR, J.

1. This petition has been filed under 482 Cr.P.C. for quashing of FIR No.90 dated 17.09.2021, under Sections 302 and 34 IPC (added later on) registered at Police Station Rangar Nangal Batala, District Gurdaspur, Punjab, and all the subsequent proceedings arising therefrom.

2. Briefly the facts of the case leading to the filing of the instant petition arise from the death of one Ravinder Singh. A complaint was submitted to the police by Rajwinder Kaur-complainant (mother of the deceased) against Mandeep Singh, Charanjit Kaur (present petitioner), Sukhwinder Singh and 3-4 unknown persons; that on 16.09.2021 around 4-5 pm, Complainant's son Ravinder Singh went somewhere outside from home and after waiting for three hours complainant started searching for her son (deceased). At around 9-10

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pm, complainant called Charanjit Kaur (present petitioner) w/o Sukhwinder Singh @ Pitu resident of village Jahadpur and Mandeep Singh @ Kaalu s/o Sukhwinder Singh answered Complainant's call, he told complainant that Ravinder Singh has consumed excessive alcohol and he will not come home today. Then Complainant went to the house of Mandeep Singh @ Kaalu and saw her son Ravinder Singh lying on bed in Mandeep Singh's house. Then the Complainant noticed saliva was coming out of Ravinder Singh's mouth and nose and his face turned blue. Subsequently, Complainant with the help of others took Ravinder Singh to Guru Ramdass Hospital, Amritsar where the doctors checked him and declared him dead.

3. It is submitted by the learned counsel for the petitioner that the whole version of FIR by the Complainant is based upon doubt/suspicion which is evident from the contents of the FIR and thus benefit of doubt be given to the present petitioner. It is further contended that the Complainant's son Ravinder Singh (deceased) was habitual of consuming alcohol, drugs and used to create nuisance in the village after taking the intoxicating contraband and petitioner has no role in the death of Ravinder Singh. It is averred that on 16.09.2021, the Complainant's son Ravinder Singh was voluntarily intoxicated and on reaching the house of the Petitioner, he became unconscious and fell outside the house of the petitioner and petitioner's son namely Mandeep Singh being a friend took him inside and later the mother of the deceased (Complainant) also came to the house of the Petitioner. It is further contended that there is no direct/indirect evidence or

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independent witness against the petitioner to connect her with the commission of the alleged offence and whole of the allegations are false, frivolous, fabricated and concocted to harass and pressurize the petitioner. Learned counsel for the petitioner further submits that petitioner along with some other persons who were well-conversant with the facts of this case, had moved representations (Annexures P-2 and P-3) to the concerned authorities for holding enquiry in the matter. She further submits that there is a delay of one day in registration of the FIR. To support her contentions, learned counsel for the petitioner relies upon judgment of Hon'ble Apex Court in ***State of Uttar Pradesh vs R.K. Srivastava, AIR 1989 SC 2222***.

4. I have heard learned counsel for the petitioner and have carefully gone through the pleadings as well as documents appended along with the case file and the judgement relied upon by the counsel for the petitioner.

5. A perusal of the FIR shows that the name of the petitioner has been specifically mentioned as an accused. It is also not disputed that Ravinder Singh was found in intoxicated condition by the mother of Ravinder Singh i.e. complainant, after that he was taken to the hospital where he was declared dead by doctors after medical examination.

6. Relevant extract from the report dated 21.12.2021 of Chemical Examiner (Annexure P-5) is as follows: -

*“ETHYLALCOHOL detected in the contents of exhibit I, II, III & IV.
Blood alcohol concentration estimated to be 103.5 mg per 100 ml.
No Poison/No alcohol detected in the contents of exhibit V.”*

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7. Final opinion of board of doctors dated 31.01.2022 (Annexure P-6) is as follows: -

“Hence, on the basis of PMR, Chemical Examination report and HPE report, we the board is of opinion that the cause of death in this case is as a result of Ethyl alcohol Poisoning.”

From the perusal of above reports it has come to the fore that cause of death of Ravinder Singh is Ethyl alcohol Poisoning.

8. At this stage, this Court is of the opinion that the disputed questions of facts are involved in the present petition, which can only be determined on the basis of evidence to be led by the parties in order to reach the fair conclusion. In exercise of the powers under Section 482 Cr.P.C., this Court is not expected to conduct a mini trial so as to go into said questions of facts. Such inherent powers are to be exercised by this Court only under exceptional circumstances and when the proceedings, on the face of record, appear to be an abuse of process of law.

9. A bare perusal of the allegations levelled in the FIR *prima facie* reveals that serious and specific allegations have been levelled against petitioner that the petitioner caused death of complainant's son in connivance with other co-accused by giving poisonous substance mixed with alcohol or drug.

10. This Court does not find any force in the argument of the learned counsel for the petitioner that there is delay of one day in registration of FIR, as the weightage to this fact can only be given at the time of trial, no opinion could be made by this court at this point of time.

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11. Learned counsel for the petitioner submits that petitioner along with some other persons had given representations to police authorities but the fate of the said representations has not been mentioned in the present petition.

12. In the case in hand, challan has been presented against the accused and charges are yet to be framed and trial proceedings are fixed for 01.06.2023 for appearance of the accused. Relevant orders dated 07.01.2023, 27.04.2023 read as under: -

*“Present: Sh. Ravinder Singh, Ld. APP for the State.
None for the accused.*

As per report of Ahlmad, notice issued against accused no.1 to 3 received back duly served, but inspite of due service they have not come present. They are intentionally avoiding their service. Let accused no.1 to 3 be summoned throughailable warrants in the sum of Rs.5,000/- each with one surety in the like amount for 22.02.2023.

*Date of order: 07.01.2023 Vineeta Luthra, PCS
ACJ/SD-cum-SDJM/Batala*

*Present: Sh. Tejinder Pal, Ld. APP for the State.
None for the accused.*

As per report of Ahlmad, summons issued to accused Mandeep Singh, Sukhwinder Singh and Charanjit Kaur received back served, but inspite of due service they have not come present. From the report, this Court is satisfied that the accused Mandeep Singh, Sukhwinder Singh and Charanjit Kaur are intentionally avoiding service and their presence cannot be procured through ordinary process. As such, this Court is constrained to take coercive methods to procure the presence of the above named accused. He be summoned by way of B/W in

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sum of Rs.5000/- with one surety in the like amount be issued for 01.06.2023.

*Date of order: 27.04.2023 (Vineeta Luthra)
ACJ/SD-cum-SDJM/Batala”*

13. A perusal of the aforesaid orders shows that petitioner along with other co-accused is avoiding the process of law and they have been summoned by bailable warrants for 01.06.2023.

14. In ***State of Haryana vs Bhajan Lal, 1992 Supp (1) SCC 335***, which has been followed in number of subsequent judgments, the Hon’ble Apex Court, has held as under:-

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

108. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice."

15. Hon'ble Apex Court in ***State of Madhya Pradesh vs Surendra Kori 2012(10) SCC 155*** observed as under: -

*13. The High Court in exercise of its powers under Section [482](#) Criminal Procedure Code does not function as a Court of Appeal or Revision. This Court has, in several judgments, held that the inherent jurisdiction under Section [482](#) Criminal Procedure Code, though wide, has to be used sparingly, carefully and with caution. The High Court, under Section [482](#) Criminal Procedure Code, should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of wide magnitude and cannot be seen in their true perspective without sufficient material. In ***M.M.T.C. and Another v. Medchl Chemicals & Pharma (P) Ltd. and Another (2002) 1 SCC 234***, this Court held as follows:*

"The law is well settled that the power of quashing criminal proceedings should be exercised very stringently and with circumspection. It is settled law that at this stage, the Court is not justified in embarking upon an enquiry as to the reliability or

genuineness or otherwise of the allegations made in the complaint. The inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.."

In State of Orissa and Another v. Saroj Kumar Sahoo (2005) 13 SCC 540, this Court held as follows:

"Exercise of power under Section [482](#) of the Criminal Procedure Code in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Criminal Procedure Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Criminal Procedure Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "quando

lex aliauid alicui concedit, concedered videtur et id sine guo resipsae esse non potest" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself.."

*This Court, again, in **Eicher Tractors Ltd. v. Harihar Singh (2008) 16 SCC 763**, held as follows:*

"When exercising jurisdiction under section [482](#) of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge."

16. Hon'ble Supreme Court in **State of A.P. vs Gourishetty Mahesh and others 2011(6) R.C.R.(Criminal) 2546** observed as under:

"While exercising jurisdiction under section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge/Court. It is true that Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, otherwise, it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time, Section 482 is not an instrument handed over to an accused to short-circuit a prosecution and brings

about its closure without full-fledged enquiry. Though High Court may exercise its power relating to cognizable offences to prevent abuse of process of any Court or otherwise to secure the ends of justice, the power should be exercised sparingly. For example, where the allegations made in the FIR or complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused or allegations in the FIR do not disclose a cognizable offence or do not disclose commission of any offence and make out a case against the accused or where there is express legal bar provided in any of the provisions of the Code or in any other enactment under which a criminal proceeding is initiated or sufficient material to show that the criminal proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused due to private and personal grudge, the High Court may step in. Though the powers possessed by the High Court under Section 482 are wide, however, such power requires care/caution in its exercise. The interference must be on sound principles and the inherent power should not be exercised to stifle a legitimate prosecution. We make it clear that if the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of inherent powers under Section 482.”

17. The Hon’ble Supreme Court and this Court in catena of judgments has held that the power of quashing of FIR/Criminal proceedings under section 482 CrPC is to be used in exceptional, sparing and rarest of rare cases. Emphasis is placed upon guidelines

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framed by Hon'ble Apex Court in the case of ***M/S Neeharika Infrastructure Pvt. Ltd. Vs State of Maharashtra and others, 2021 AIR (SUPREME COURT) 1918***

“x x x x

iv) *The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the `rarest of rare cases (not to be confused with the formation in the context of death penalty).*

v) *While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;*

vi) *Criminal proceedings ought not to be scuttled at the initial stage;*

vii) *Quashing of a complaint/FIR should be an exception rather than an ordinary rule;”*

18. Hon'ble Supreme Court in ***Saranya v. Bharathi and another, 2021(4) R.C.R.(Crl.) 46*** observed as under: -

“Before considering the rival submissions of the parties, few decisions of this Court on the principles which the High Court must keep in mind while exercising the jurisdiction under Section [482](#) Cr.P.C., 1973/at the stage of framing of the charge while considering the discharge application are required to be referred to and considered.

*7.1 In the case of Deepak (supra), to which one of us (Dr. Justice D.Y. Chandrachud) is the author, after considering the other binding decisions of this Court on the point, namely, ***Amit Kapoor v. Ramesh Chander (2012) 9 SCC 460; State of Rajasthan v. Fatehkaran Mehdu (2017) 3 SCC 198; and Chitresh Kumar Chopra v. State (Government of NCT of Delhi) (2009) 16 SCC 605***, it is*

observed and held that at the stage of framing of charges, the Court has to consider the material only with a view to find out if there is a ground for "presuming" that the accused had committed the offence. It is observed and held that at that stage, the High Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, take at their face value, disclose the existence of all the ingredients constituting the alleged offence or offences. It is further observed and held that at this stage the High Court is not required to appreciate the evidence on record and consider the allegations on merits and to find out on the basis of the evidence recorded the accused chargesheeted or against whom the charge is framed is likely to be convicted or not.

x x x x x

*It also appears that during the course of the investigation, the investigating officer has collected very important evidence in the form of call details between A1 & A2 which are in the proximity of the time of commission of offence and even thereafter. Therefore, in the facts and circumstances of the case, when respondent no.1 herein has been chargesheeted for the offences under Sections [420](#), [302](#) r/w [109](#) IPC and as observed hereinabove when there is ample material to show at least a prima facie case against respondent no.1 herein - A2, **the High Court has committed a grave error in quashing the chargesheet/entire criminal proceedings qua her in exercise of powers under Section [482](#) Cr.P.C., 1973** **Quashing the chargesheet against the accused is not justified. The High Court has evidently ignored what has emerged during the course of investigation. The High Court has entered into the appreciation of the evidence and considered whether on the basis of the evidence, the***

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accused is likely to be convicted or not, which as such is not permissible at all at this stage while considering the application under Section 482 Cr.P.C., 1973 The High Court was not as such conducting the trial and/or was not exercising the jurisdiction as an appellate court against the order of conviction or acquittal. Therefore, in the facts and circumstances of the case, the High Court ought not to have quashed the chargesheet qua respondent no.1 herein - original accused no.2.”

19. *Prima facie* it appears that the instant case does not fall under any of the above parameters laid down by the Hon’ble Supreme Court.

20 The inherent power under Section 482 has to be exercised cautiously for meeting the ends of the justice and should not be arbitrarily exercised to cut short the normal process of a criminal trial.

21 Moreover, the petitioner along with other co-accused is not appearing before the trial Court trying to evade the process of law.

22. The judgment in R.K. Srivastava’s case (supra) relied upon by the counsel for the petitioner will be of no help to petitioner at this stage as facts of that case are entirely different from the present case.

23. In view of the foregoing discussion and for reasons stated above, there is no merit in the present petition.

24. Before parting with the case, it is made clear that observation made in this order is only for the limited purpose of deciding the present petition and shall not be construed as an expression of opinion on the merits of the case and should not have any

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bearing or influence on the trial. It shall be open to the petitioner to raise all such pleas before the trial Court as are available to her in defence during the trial.

25. With the aforesaid observations, the present petition is dismissed.

29.04.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether Reportable

:

Yes/No