

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

CRM-M-4286-2018

Date of Decision:-29.08.2023

Gurinder Singh.

.....Petitioner.

Vs.

State of Punjab & Anr.

.....Respondents.

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

Present:- Mr. Avtar Singh Bhatti, Advocate for the Petitioner.

Mr. Harkanwar Jeet Singh, AAG Punjab.

JASJIT SINGH BEDI, J.(ORAL)

The prayer in this petition under Section 482 Cr.PC is for quashing of FIR No.103 dated 24.09.2011 (Annexure P-2) under Sections 382, 34 IPC registered at P.S. City Hoshiarpur and all consequential proceedings including the proceedings for declaring the petitioner a proclaimed offender keeping in view the fact that the co-accused of the petitioner were acquitted by the Trial Court vide judgment dated 28.05.2015.

2. The brief facts of the case are that the statement of complainant Baila Baid (respondent no.2) was recorded to the effect that she was working with Axis Bank. On 23.09.2011 she was returning from her duty along with her friend Amrinder Kaur on a motor cycle. When she reached near her house and started walking towards her house two persons came on a motor cycle and stopped next to her. They demanded her mobile phone which she

handed over. They also demanded her purse which she refused to part with. One of the accused gave her a *datar* blow on her left hand and snatched her purse and fled away. Another person was on a separate motor cycle who also fled away along with the accused. The purse contained her Voter I Card, One ATM of UTI-8M and other documents and currency notes. Legal action was sought.

During the course of investigation while the petitioner was declared a proclaimed offender. The report under Section 173(2) Cr.PC was presented against Vijay Kumar @ Bhola and Sham Lal. Both the said accused face trial and came to be acquitted vide judgment dated 28.05.2015.

3. The Counsel for the petitioner contends that as the co-accused of the petitioner had been acquitted, no useful purpose would be served by allowing the proceedings emanating out of the aforementioned FIR to continue qua the petitioner and therefore the FIR and all consequential proceedings including the order vide which the petitioner was declared a proclaimed offender were liable to be quashed. Reliance is placed on the judgment of this Court in ***Sudo Mandal @ Diwarak Mandal Vs. State of Punjab 2011(2) RCR (Criminal) 453.***

4. The Counsel for the State on the other hands contends that the co-accused of the petitioner had faced trial and on the conclusion of the same, they came to be acquitted. The petitioner who was aware of the proceedings deliberately chose not to associate with the investigation and the subsequent trial and now cannot take benefit of the acquittal of his co-accused as the evidence in his case would be led separately. He also contends that the petitioner is a habitual offender with 04 cases pending against him bearing FIR No.104 dated 06.12.2022 under Sections 302, 201,

120-B, 148, 149 IPC registered at P.S. Mahilpur, District Hoshiarpur, FIR No.38 dated 02.05.2012 under Sections 382, 34 IPC registered at P.S. Mehtiana, District Hoshiarpur, FIR No.51 dated 30.05.2012 under Sections 392, 411 IPC registered at P.S. Mehtiana, District Hoshiarpur and FIR No.103 dated 24.09.2011 (Annexure P-2) under Sections 382 and 34 IPC registered at P.S. City, Hoshiarpur. He therefore contends that no case for quashing of the FIR and the order vide which the petitioner was declared a proclaimed offender is made out.

5. I have heard Counsel for the parties.

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

“ 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.”

7. In ***Harpreet Singh Vs. State of Punjab CRM-M-21911-***

2019(O&M) Decided on 15.07.2019 this Court has held as under:-

“ Learned counsel for the petitioner has invited the attention of the Court to the judgment of acquittal dated 07.02.2011 (Annexure P-4) to contend that the evidence adduced by prosecution during trial would be equally applicable to the case of the petitioner as well. He submits that since the prosecution miserably failed to establish the charges against the coaccused, therefore, the FIR qua the petitioner deserves to be quashed. In support of his arguments, learned counsel for the petitioner has placed reliance upon the judgments passed by this Court in **Sudo Mandal @ Diwarak Mandal Vs. State of Punjab, 2011 (2) R.C.R (Criminal) 453; Gurpreet Singh @ Khinder Vs. State of Punjab, 1995 (2) R.C.R.(Criminal) 127**, and another judgment passed by Hon'ble Delhi High Court in **Urmila Devi Vs. State (N.C.T of Delhi), 2007 (1) R.C.R.(Criminal) 246**.

After hearing the respective counsel for the petitioner, this Court does not find any merit in both the petitions.

In **Sudo Mandal's** case, the Hon'ble Division Bench was examining the judgment of conviction delivered by the trial Court against the two appellants, who were in appeal. After considering the evidence, this Court proceeded to hold that the prosecution had failed to establish the charges and, therefore, reversed the conviction and ordered acquittal of convicts. At the same time, this Court proceeded to quash the FIR in respect of three proclaimed offenders, who had neither

*filed any petition nor made any prayer for quashing of the FIR, but the Court suo motu exercised the inherent powers under Section 482 Cr.P.C. without even referring any case law on the subject. Therefore, with respect, but without hesitation, it is observed that the judgment in **Sudo Mandal's** case, apparently is deviation from other consistent law, on exercise of powers under Section 482 Cr.P.C. laid down by Hon'ble Supreme Court, and, therefore, the same cannot be treated as a precedent. Similarly, the other two judgments relied upon by learned counsel for the petitioner are of no help. Time and again, this Court as well the Hon'ble Supreme Court have laid down that the inherent powers under Section 482 Cr.P.C. should be exercised with care and circumspection considering the facts and circumstances of the case. It will be useful to refer the decision of Hon'ble Supreme Court in the case of **State of Haryana and others vs. Ch. Bhajan Lal and others, 1992 Supp(1) Supreme Court Cases 335**, the Apex Court has held as under:-*

“ The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers under Section 482, Cr.P.C. can be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should

be exercised:-

(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 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 specific provision in the Code or the concerned Act,

providing efficacious redress for the grievance of 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.

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 FIR 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.”

Further in S.W. Palanitkar vs. State of Bihar 2001(4)

RCR (Criminal) 572, the proceedings under challenge pertained to a complaint case brought under Chapter XV of the Code of Criminal Procedure and the Hon'ble Supreme Court while dealing with the powers under Section 482 Cr.P.C., made the following observations :-

“27.The approach and considerations while exercising power and jurisdiction by a Magistrate at the time of issuing process are to be in terms of Sections 200 to 203 under Chapter XV of Criminal Procedure Code, having due regard to the position of law explained in various decisions of this Court, and whereas while exercising power under Section 482 of Criminal Procedure Code the High Court has to look at the object and purpose for which

such power is conferred on it under the said provision. Exercise of inherent power is available to the High Court to give effect to any order under the Criminal Procedure Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. This being the position, exercise of power under Section 482 Criminal Procedure Code should be consistent with the scope and ambit of the same in the light of the decisions aforementioned. In appropriate cases, to prevent judicial process from being an instrument of oppression or harassment in the hands of frustrated or vindictive litigants, exercise of inherent power is not only desirable but necessary also, so that the judicial forum of the Court may not be allowed to be utilised for any oblique motive. When a person approaches the High Court under Section 482 Criminal Procedure Code to quash the very issue of process, the High court on the facts and circumstances of a case has to exercise the powers with circumspection as stated above to really serve the purpose and object for which they are conferred.”

It needs to be noticed here that the petitioner absented from the trial proceedings and never made any attempt to join the proceedings and, therefore, the evidence recorded by the trial Court in respect of the other accused who were facing trial, could not be read in respect of the petitioner.

Considering the conduct of the petitioner as well as the facts and circumstances of this case, this Court does not find any reason to invoke the inherent powers under Section 482 Cr.P.C. for quashing of the FIR as well as the order dated

04.02.2009 whereby the petitioner was declared proclaimed offender.”

8. Coming back to the facts of the instant case, it is apparent that the occurrence pertains to the year 2011. The petitioner deliberately absented himself and while his co-accused who faced trial were acquitted on 28.05.2015, it was only in the year 2017 that he chose to file a petition before this Court and when the same was withdrawn the instant petition was filed.

9. In view of the judgments in *Sarabjit Singh’s case (supra)* and *Harpreet Singh’s case (supra)*, I find no merit in the present petition and the same stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

August 29, 2023
Vinay

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