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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-23723-2022
Date of Decision:29.05.2023

MAKHAN SINGH

..... Petitioner

Versus

STATE OF PUNJAB

..... Respondent

2) CRM-M-23731-2022

PARAMJIT KAUR ALIAS PARMJEET

.....Petitioner

Versus

STATE OF PUNJAB

.....Respondent

3) CRM-M-23748-2022

RAJWINDER SINGH ALIAS RAJU

.....Petitioner

Versus

STATE OF PUNJAB

.....Respondent

4) CRM-M-23901-2022

BALIHAR SINGH

.....Petitioner

Versus

STATE OF PUNJAB

.....Respondent

5) CRM-M-30235-2022

AMANDEEP SINGH

.....Petitioner

Versus

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Naresh Kumar Bansal, Advocate
for the petitioner.

Ms. Guramrit Kaur, DAG, Punjab
assisted by ASI Jorawar Singh.

JAGMOHAN BANSAL, J. (Oral)

1. By this common order CRM-M-23723-2022, CRM-M-23731-2022, CRM-M-23748-2022, CRM-M-23901-2022 and CRM-M-30235-2022, as all are arising out of one FIR, are hereby disposed of. For the sake of convenience, facts are borrowed from CRM-M-23723-2022.

2. The petitioner through instant petition under Section 482 Cr.P.C. is seeking quashing of FIR No.157 dated 29.06.2012 registered at Police Station Nakodar, Jalandhar(Annexure P-1), under Sections 376 and 420 of IPC.

3. The brief facts emerging from the record which are necessary for the adjudication of the present petition are that prosecutrix lodged a complaint alleging that Gian Chand Patwari introduced her to Pavitar Singh who further introduced her with Sharma from Canada, Daljit from Phagwara and Paramjit Kaur. A cordial relations developed between all of them. All the aforesaid persons sexually exploited her on the pretext of sending her to Canada. She was defrauded on the promise of sending her to Canada after getting her married with Makhan Singh. She was locked in a matrimonial case with her husband and was in need and the accused provided her accommodation. Pavitar Singh, Mohinder Singh, Makhan Singh, Pappu, Jaswinder Singh, Raju, Balihar and Sharma (27-28 persons in total) sexually exploited her. On the complaint of prosecutrix aforesaid FIR came to be registered.

4. The police after completing investigation filed its report under Section 173 Cr.P.C. Charges came to be framed against 5 persons.

The petitioners were out of country and they came to be declared proclaimed offender. By order dated 04.04.2022 passed by this Court, the petitioners were directed to surrender before the Trial Court and move an application for regular bail. The arrest of the petitioners was stayed till the disposal of bail application. The petitioners surrendered before the Trial Court and they were admitted on bail.

During the pendency of trial against five persons i.e. other than petitioners, star witness i.e. prosecutrix came to be examined. She turned hostile. The Additional Sessions Judge, Jalandhar vide judgment dated 11.10.2021 acquitted four co-accused and one co-accused died during the pendency of trial.

5. Learned counsel for the petitioner *inter alia* contends that that from the perusal of FIR no offence is made out against the petitioner. The allegations against the petitioner and other accused who have already been acquitted is *pari materia*. The trial court has passed detailed and reasoned order while acquitting co-accused. The respondent No. 2 has not supported the case of the prosecution as she has not identified the co-accused who were appearing before the Trial Court. Respondent No.2 had deposed that she does not know the petitioner and she was declared hostile, thus, there seems no reason to continue proceedings against the petitioner.

6. Learned State counsel does not dispute the factual position and confirms that co-accused in FIR stands acquitted.

7. I have heard the arguments and perused the records.

8. The petitioner through instant petition is seeking quashing of

impugned FIR on the ground of acquittal of four co-accused as role attributed to the present petitioner is *pari materia*. Before advertng with facts of this case, it would be relevant to notice scope and power of high court while advertng with these issues.

8.1. **A two judge bench of Supreme Court in State of Haryana & others Vs Bhajan Lal & others 1992 Supp (1) SCC 335** after considering plethora of judgments has illustrated circumstances where High Court in exercise of its power under Article 226 of Constitution of India and Section 482 of Cr.P.C. can quash FIR. The Supreme Court has reminded the courts that power should be exercised in exceptional cases and with full circumspection. Relevant paragraphs and findings read as:

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised 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 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.

103. 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.

8.2. A two judge Bench of this Court while acquitting appellants has adverted with status of co-accused in **Sudo Mandal @ Diwarka Mandal vs. State of Punjab 2011(2) R.C.R.(Criminal) 453** and has held:

“22. While disposing of these two appeals, we are very much concerned about the absconding village rustic accused namely Radha Mandal, Rajiya Mandal and Sambodh Mandal, who had successfully evaded the dragnet of the police. The Investigating agency has put up a case implanting eye witnesses as against all the accused. Both the eye witnesses projected by the prosecution had not passed the test of trustworthiness. Their own showing would go to establish without any pale of doubt that they could not have witnessed the occurrence. The other materials produced by the prosecution also did not advance the case of the prosecution any further. The above facts and circumstances have persuaded us to come to a definite conclusion that the accused in this case were not the perpetrators of crime of murder as alleged by the prosecution. The same set of materials would be

produced before the Sessions Court on production of the remaining three accused namely Radha Mandal, Rajiya Mandal and Sambodh Mandal. After all the poor innocent labourers had migrated to other places to eke out their livelihood. The appellants herein had in fact suffered imprisonment for such a long time leaving behind their kith and kin, who might have been in dire need of financial support and help from them. Such an unpleasant situation shall not be created for the other three accused against whom also there is no material on record to fasten them with the charge of murder. We seriously pondered over rendering judicial succour to those faceless and voiceless accused who had taken to heels and hidden themselves apprehending the wrath of criminal proceedings for the heinous crime of murder. We are convinced that our judicial arm is not so crippled as to betray the vague hope of the hopeless.

23. We are conscious of the fact situation that those three accused namely Radha Mandal, Rajiya Mandal and Sambodh Mandal had absconded and were declared as proclaimed offenders. They had not faced the trial, but when we find that no case could be made out as against them also with the very same rickety materials, those accused also will have to be relieved of the impending pain of facing the prosecution for murder. Section 482 of the Code of Criminal Procedure reads as follows:-

“Saving of inherent powers of High Court. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of

any Court or otherwise to secure the ends of justice.”

24. The above provisions recognize the inherent powers of the Court to do real and substantial justice, preventing the abuse of the process of the Court. The statutory recognition of the inherent jurisdiction of the criminal Court indicates that there is a power for the criminal Courts to make such an order as may be necessary to meet the ends of justice. We are conscious of the fact that the powers under Section 482 of the Code of Criminal Procedure are to be exercised very sparingly and in exceptional cases where abuse of the process of the Court would result in serious miscarriage of justice. The inherent powers of the Court should not be exercised to stifle legitimate prosecution. But at any rate the settled position is that this Court has the jurisdiction to quash the entire criminal proceedings to prevent the abuse of the process of the Court in order to secure the ends of justice. In our considered view the same inherent powers can be exercised when this Court finds that the innocent accused, who had absconded would simply face the empty formality of trial with the very same unbelievable and untrustworthy evidence, which would ultimately lead to their acquittal. Bringing the absconding accused to face the trial in this case in the above facts and circumstances would amount to abuse of the process of the Court. To secure the ends of justice, we hereby quash the entire proceedings as against the absconding accused namely Radha Mandal, Rajiya Mandal and Sambodh Mandal pending before Judicial Magistrate Ist Class, Bathinda/Sessions Judge, Bathinda, as no useful purpose will be served even if they are procured and

ordered to face the trial in this case."

8.3. A single judge bench of Karnataka High Court in **Salman @ Shameer Vs State of Karnataka (W.P. No. 25286 of 2018 (GMRES). D/d. 13.7.2018)** has held:

5. In another decision reported in 2002 (1) KCCR 1 in the case of Muneer Ahmed Qureshi, Muneer @ Gaun Muneer v. State of Karnataka by Kumaraswamy Layout Police, wherein this Court has held that:

"Entire case of the prosecution as against six accused is practically inseparable and individual one and especially when the Judgment of acquittal is passed, when P.W. 1 denies the entire incident or the role of the accused. This reasoning of acquittal would also definitely enure to the

petitioner. Even if the petitioner is tried there cannot be any other material other than what is already produced and considered by Trial Court.

In such circumstances it will be an exercise in futility to make the petitioner to undergo the ordeal of crime, and then to be acquitted. Holding that the proceeding against the accused person who was absconding and subsequently against whom a split up charge sheet was filed was quashed."

6. In the above said backdrop and the dictum of the Hon'ble Apex Court and this court, the only point that requires for consideration of this court is -

"Whether the materials placed before the court against the accused person who has already acquitted and the material available against the petitioner herein, are one and the same and inseparable if juxtapose compared with each other".

7. If the allegations are indivisible and inseparable in

nature, in such an eventuality, the judgment of acquittal can also be extended to the absconding accused persons or against whom, a separate split up charge sheet has been filed. Therefore, it is incumbent upon the court to examine the materials on record to find out whether the petitioner is entitled for such benefit in a given particular case. Therefore, it is just and necessary to ascertain the factual aspects of this case.”

9. The conceded position emerging from the record is that the allegations against the petitioner as well as co-accused are identical. The prosecutrix turned hostile. The prosecutrix in her deposition before the Trial Court refused to identify not only persons facing trial but also others including present petitioner. The Trial Court has noticed this fact in its judgment dated 11.10.2021. The relevant extracts of judgment dated 11.10.2021 are reproduced as below:

11. In order to prove its case, the prosecution examined complainant/prosecutrix (thorough Camera proceeding). She stated that in the year 2011, she was living at Deep Nagar, Jalandhan Cantt. Her father had died some 19 years ago and after his demise, she is doing the business of property consultant on her own since then. She did not know the persons namely Pavittar Singh, Jagtar Singh alias Commander, Sukhwinder Singh alias Pappu, Mohinder Singh and Harvinder Singh alias Bhaur, who are present in the court as accused. She further stated that she never had any dealing with the said persons nor they ever dealt with her in any capacity. She also did not know the persons namely Amandeep Singh son of Jagtar Singh, Makhan Singh son of Mon Singh, Rajwinder Singh

alias Raju son of Pavitter Singh residents of village Dhaliwal, PS Sadar Nakodar or Balihar Singh son of Pritam Singh resident of village Lakhanpal PS Sadar Jamsher, Jalandhar and Paramjit Kaur daughter of Avtar Singh resident of Satnampura Phagwara District Kapurthala. No one ever dealt with as a commodity nor tried to sold her for sexually purposes. She was never taken to any house or Kothi by the accused persons nor she was pressed upon to have sexual acts with 27-28 persons. Accused persons never engaged her or compelled her for any activity of sexual nature with any other person against her wish, will or consent. She never made any representation or complaint against the accused or to any other higher authorities for taking legal action against them for ruining her life and body. This witness was declared hostile during her examination-in-chief by Ld. Addl. PP for the State and she was cross examination with by ld. Addl. PP for the State with the permission of this court.

12 to 27 xxxxxxxx

28. *After going through the arguments advanced by learned. Addl. PP for the State and learned counsel for the accused and after going through the record minutely, I am of the view that the present case has been registered on the complaint of victim/prosecutrix against the accused. The present FIR was registered against the accused in the year 2012 and thereafter, the present case was going on for procuring the presence of all the accused person for its commencement for long time, and after procuring the presence, the charge was framed against accused in the year, 2018 and thereafter the prosecutrix*

appeared in the court as a witness for her examination on 17.02.2021. Interestingly, star witness ie prosecutrix/victim has been examined by the prosecution as PW1, but has not supported the prosecution version and she was got declared hostile at the request of learned Addl. PP for State and during cross-examination by learned Addl. PP for State, nothing incriminating against the accused could come out from the mouth of these witnesses with regard to commission of offence. The other evidence led by the prosecution is not sufficient to connect the accused with the commission of offence. As such, there is no convincing evidence on record to convict the accused. 29. In view of the above discussion, the prosecution has failed to prove its case, beyond any reasonable doubt. So, point of determination stands decided in favour of accused. Accused Jagtar Singh alias Cammrade, Sukhwinder Singh alias Pappu, Mohinder Singh and Harwinder Singh alias Bhor are hereby acquitted of the charges framed against him. Their bail bonds and surety bonds stands discharged. Case property, if any, be dealt with as per rules, after the period of filing appeal/revision, if any, subject to its result. File be consigned to the Record Room, Jalandhar with the direction the same be revived as and when accused Amandeep Singh, Rajwinder Singh @ Raju, Balihar Singh and Paramjit Kaur egurender before the court or arrested by the police.

10. In the case in hand, the prosecutrix had alleged that 27-28 persons committed rape upon her. She specifically named 10 persons including present petitioner. In her testimony before the Trial Court she

had resiled from her allegations not only qua persons facing trial but also against present petitioner. She has specifically resiled from her allegations against the petitioner apart from co-accused. The Trial Court has acquitted persons facing trial on the basis of statement of prosecutrix. The allegations against the petitioner is pari-materia with the co-accused who have already been acquitted.

11. In view of above noted peculiar facts and circumstances of the case and applying the principles laid down by Hon’ble Supreme Court in Bhajan Lal (supra), judgment of this court in Sudo Mandal (supra) and judgment of Karnataka High in Salman @ Shameer (supra), this court is of the considered opinion that it would in the fitness of things and interest of justice if present petition is allowed and accordingly allowed.

17. FIR No.157 dated 29.06.2012 registered at Police Station Nakodar, Jalandhar, under Sections 376 and 420 of IPC and all other consequential proceedings are hereby quashed qua the petitioner (s).

(JAGMOHAN BANSAL)
JUDGE

29.05.2023
Ali

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>