

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-37906-2021 (O&M)

Date of Decision: April 10, 2023

Amandip SinghPetitioner

Versus

State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr. Rajinder Kumar Singla, Advocate, for the petitioner.

Mr. Vinay Kumar Gupta, AAG, Punjab.

HARKESH MANUJA, J.

By way of present petition under Section 482 of Code of Criminal Procedure, 1908, petitioner has sought quashing of the complaint dated 06.10.2016 (Annexure P-5), summoning order dated 12.06.2017 (Annexure P-6) and all subsequent proceedings arising therefrom including the order passed by the Trial Court on 14.11.2017 (Annexure P-10) declaring him as a proclaimed offender.

Brief facts of the case are that on a private complaint dated 06.10.2016, made by one Kharak Singh, petitioner and other persons (including father of the petitioner) were summoned by the learned Magistrate vide order dated 12.06.2017. However, as the petitioner failed to participate in the proceedings before the Ld. Magistrate, he was declared as a proclaimed offender (PO) vide order dated 14.11.2017. Co-accused of the petitioner who faced trial, were charge-sheeted under Sections 324, 34 IPC, though finally the co-accused Gurbax Singh and Jaswinder Singh were acquitted vide judgment dated 10.09.2019. However, as the petitioner

was declared as proclaimed offender, proceedings qua him remained pending and through the present petition, petitioner has sought quashing of the complaint dated 06.10.2016, summoning order dated 12.06.2017 as well as all subsequent proceedings arising therefrom including the order passed by the trial Court on 14.11.2017 declaring him as a proclaimed offender.

Explaining the background behind these proceedings, Learned counsel for the petitioner submits that criminal complaint dated 06.10.2016 was in fact an offshoot of FIR No. 20 dated 03.04.2016, u/ss 341, 323, 506, 148,149 IPC registered at P.S. Bilga against complainant Kharak Singh and other co-accused in which entire occurrence was witnessed by Jaswinder Singh who happens to be the father of the petitioner. Kharak Singh after inflicting injuries on his person by concocting false and frivolous story got lodged DDR No.28 dated 03.04.2016 u/ss 324, 34 IPC against Ganda Singh, Jaswinder Singh and petitioner. On account of directions issued by this Court in CRM-M-25718 of 2016 & CRM-M-24040 of 2016, Superintendent of Police (HQ) Jalandhar carried out investigation and detailed report dated 17.09.2016 u/s 173 CrPC was presented and the version in DDR No.28 dated 03.04.2016 was found to be false while version in FIR No. 20 dated 03.04.2016 was supported. He also points out that while filing the complaint, this report was not brought into the knowledge of Ld. Magistrate. He further submits that petitioner who married with Manpreet Kaur on 03.01.2016, was settled in Canada and on being exonerated by the police in the aforesaid DDR, petitioner applied for Visa to the Canadian Government and the same was issued on 07.12.2016.

Ultimately, petitioner left India on 24.12.2016 and till date he has not returned and is still residing in Canada.

On merits, Learned counsel for the petitioner contends that when other co-accused already stand acquitted by the learned Trial Court vide judgment dated 10.09.2019, and the version of complainant has been found to be false, continuation of the proceeding against the petitioner would be futility as accusations and evidences against the petitioner are same. With respect to PO proceedings, he contends that though notice issued to the petitioner were received back with the report that he is residing abroad, petitioner was not served at his address in Canada where he was residing and he was declared as a proclaimed offender without giving adequate opportunity and without serving him at the address where he was residing or even any effort to serve him through Embassy as prescribed under Section 105 Cr.P.C. and therefore, order dated 14.11.2017 is liable to be set aside. In support of his submissions, he relies upon following authorities:

- i. Sudo Mandal @ Diwarak Mandal versus State of Punjab, **2011(2) RCR (Criminal) 453**,
- ii. Sandip Shankarlal Kedia versus The State of Maharashtra and another, **2014(45) RCR (Criminal) 797**;
- iii. Deepak versus State of Punjab, **2015(6) RCR (Criminal) 353**;
- iv. Jasvinder Singh versus State of Punjab and another, **2013(1) RCR (Criminal) 310**; and
- v. Kuldip Singh Jaswal and others versus Jaspal Singh and another, **2015(45) RCR (Criminal) 991**.

Per contra, Learned Counsel for the respondent-State submits that petitioner is a proclaimed offender and, therefore, he cannot come back after so many years and claim parity with the other co-accused.

I have heard learned counsel for both the parties and gone through the paper book of the case and I find substance in the arguments raised by the learned counsel for the petitioner. When the trial court vide its judgment dated 10.09.2019 has acquitted the other co-accused persons after finding the version of the complainant unbelievable and motivated, to secure the ends of Justice it is necessitated to quash the entire proceedings against the petitioner whose trial after the acquittal of other accused would result in a mere futility. The case of the petitioner is squarely covered by the judgment of a division bench of this Court in **Sudo Mandal's case** (supra) as well as authorities in **Deepak's case** (supra) and **Jasvinder's case** (supra) relied upon by the counsel for the petitioner.

With respect to PO proceedings as well, I do not find that learned Trial Court has proceeded in accordance with law while declaring the petitioner as proclaimed offender under section 82 of Cr.P.C. Petitioner left for Canada on 24.12.2016 and was residing abroad at the time of these proceeding, which has also been reflected in the zimni orders as well as in the proclamation report. In that eventuality, it cannot be said that he has been evading the proceedings of the court by absconding or concealing himself and effort should have been made to serve at the address on which petitioner was residing at that time as envisaged under section 82(2)(i)(a) of Cr.P.C. read with Section 105 thereof, however, no such step was taken. Therefore, order dated 14.11.2017, declaring the petitioner to be proclaimed offender is also liable to be set aside.

Though, no objection has been taken by state but it is also appropriate to notice that in view of the authority cited by the counsel for the petitioner in **Kuldeep Singh’s** case (supra) that there is no statutory bar in Cr.P.C. regarding filing of petition through an attorney holder.

In view of the discussion held above, present petition is allowed and complaint dated 06.10.2016, summoning order dated 12.06.2017 and all subsequent proceedings arising therefrom including the order passed by the trial Court on 14.11.2017 declaring the petitioner as a proclaimed offender are hereby quashed.

Pending miscellaneous application(s), if any, shall also stand disposed of.

April 10, 2023
sanjay

(HARKESH MANUJA)
JUDGE

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