

CRM-M-40890-2021

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-40890-2021 (O&M)

Date of decision: 19.07.2023

Gurbhej Singh Ex-Sarpanch

....Petitioner

V/s

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Robin Singh Hooda, Advocate for the petitioner.

Mr. Virat Rana, AAG Punjab.

Mr. Amandeep Singh, Advocate for
Mr. Parneet Singh, Advocate respondent No.2.

ARUN MONGA, J. (Oral)

CM-32552-2022

This is an application for preponing the next date of hearing from 17.01.2023 to an early date.

2. The instant application is disposed of as having been rendered infructuous.

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Petition herein is under Section 482 of Code of Criminal Procedure, 1973 (for short 'Cr. P.C.') seeking quashing of a complaint case No.384-1, dated 10.11.2009 filed under Sections 302, 307, 427, 435, 148 read with Section 149 of the Indian Penal Code, 1860 and Sections 25 and 27 of Arms Act, 1959, as well as for setting aside of summoning order dated 09.06.2010 (Annexure P-4) along with all other criminal proceedings arising therefrom.

2. Succinct facts first, as pleaded in the instant petition.

2.1. Arising out of the same incident, an FIR No.48 dated 27.05.2009 was registered against six accused persons under Sections 302, 307, 427, 435, 148 read with Section 149 IPC and Sections 25 and 27 of Arms Act, 1959 at Police Station, Mamdot, District Ferozepur. During course of investigation, petitioner was found to

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be innocent. His name was kept in column No.2. Challan was presented against other co-accused.

2.2. However, petitioner was summoned vide impugned order dated 09.06.2010 (Annexure P-4) passed by learned Judicial Magistrate First Class, Ferozepur in a private criminal complaint filed by Arvinder Singh dated 10.11.2009 (Annexure P-1) under Sections 302, 307, 427, 435, 148 read with Section 149 IPC and under Sections 25 and 27 of Arms Act. Petitioner could not appear before learned Judicial Magistrate First Class, Ferozepur and was ultimately declared as a proclaimed offender on 06.09.2011.

2.3. Since the complaint was related to the same occurrence, therefore, challan in the FIR as well as complaint were clubbed under Section 210 Cr.P.C. and were treated as a State case vide order dated 05.01.2012.

2.4. Thereafter, pursuant to the FIR, co-accused of petitioner were tried by learned Additional Sessions Judge, Ferozepur and were convicted and sentenced to undergo rigorous imprisonment for life along with fine under Section 302 read with Section 149 IPC. Petitioner was not arrayed as accused by the State, as noted above.

3. Learned counsel for the petitioner submits that since the petitioner was declared innocent in the FIR case and it is only on account of Section 210 Cr.P.C. that complaint was clubbed with FIR and petitioner was arrested after declaring him as a proclaimed offender. The case of the petitioner is distinguishable from five co-accused who have been convicted because the said co-accused were not declared as innocent in the FIR, rather challan was presented against them.

3.1. Learned counsel for petitioner would further urge that the impugned summoning order dated 09.06.2010 (Annexure P-4) is a non-speaking order as the same does not deal with the evidence collected by prosecution in FIR case. He would further contend that power under Section 319 Cr.P.C. should have been invoked by complainant instead of filing a separate complaint.

4. Arguments heard.

5. Learned Judicial Magistrate First Class, Ferozepur failed to take note of Section 319 Cr.P.C., which clearly envisages that in case learned Sessions Court has already taken cognizance of offences pursuant to an FIR registered for the same and when the trial is going on, then the remedy for the complainant, if aggrieved *qua* non-summoning of alleged accused and/or having material against the person whom he alleges had also participated in commission of offence, then he ought to approach learned trial Court seeking appropriate directions against such a person for making him as an additional accused. Instead, the complainant herein rather instituted parallel proceedings by way of filing a private complaint, wherein Learned Judicial Magistrate reopened the same very offence *qua* which trial now stands concluded, vide impugned order dated 09.06.2010 (Annexure P-4).
6. In course of hearing, even otherwise, learned counsel appearing on behalf of respondent No.2-complainant submits that he is under instructions not to press the charges against the petitioner as he does not wish to pursue the private complaint filed before the Court below.
7. In view of the above, no useful purpose would be served to continue with the proceedings in complaint case since complainant himself is not interested to prosecute the same against petitioner.
8. Accordingly, the complaint (Annexure P-1) and impugned summoning order dated 09.06.2010 (Annexure P-4), as well as consequential proceedings to declare the petitioner proclaimed offender are all set-aside, in view of the observations made hereinabove.
9. Petition is hereby allowed.
10. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

July 19, 2023
Ajay

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