

246 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-35385-2019
DATE OF DECISION:-13.02.2023

Tejinder Singh @ Lucky

...Petitioner.

vs.

State of Punjab

...Respondent..

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. R.S. Bajaj, Advocate,
for the petitioner.

Mr. Ravinder Singh, AAG, Punjab.

HARKESH MANUJA, J. (Oral)

By way of present petition under Section 482 Cr.P.C., prayer has been made for quashing of FIR No.147 dated 02.06.2004, under Sections 379/411 IPC, registered at Police Station Division No.4, District Jalandhar as well as the order dated 14.09.2006 passed by learned Chief Judicial Magistrate, Jalandhar, whereby the petitioner was declared as proclaimed offender.

The facts of the case are that the aforementioned FIR No.147 dated 02.06.2004 was registered at the instance of SI Narinder Singh against three persons, namely, Ranjit Singh @ Gogi, Gurpreet Singh @ Vicky and Tejinder Singh @ Lucky i.e. the present petitioner. The present petitioner and Gurpreet @ Vicky were declared proclaimed offenders, however, vide judgment dated 16.02.2010 passed by the Court of learned Judicial

Magistrate Ist Class, Jalandhar, Ranjit Singh @ Gogi was acquitted of the charges framed against him under Section 411 IPC. At subsequent stage, another co-accused, namely, Gurpreet @ Vicky submitted himself to the jurisdiction of the court below and faced trial wherein charges under Section 411 IPC were framed against him and vide judgment dated 14.01.2012 passed by the Court of learned Chief Judicial Magistrate, Jalandhar, he was held guilty and convicted for the offence under Section 411 IPC, however, released on probation.

By way of present petition, the petitioner prays for quashing of FIR in question as well as order dated 14.09.2006, whereby, he was declared as a proclaimed person.

Learned counsel for the petitioner submits that at the young age the petitioner left for USA in the year 2004 in search of job and since then he is living there and never returned back to India. He further submits that after so many years, the petitioner now intends to visit his motherland. Learned counsel also submits that the petitioner was never involved in the alleged offence and no efforts were ever made to serve him through Embassy and thus, the order declaring him as proclaimed person was in violation of Section 82 Cr.P.C.

Learned counsel further points out that with the similar allegations and based on the same evidence, co-accused, namely, Ranjit Singh @ Gogi already stands acquitted by the trial court vide judgment dated 16.02.2010 and thus, places reliance upon the Division Bench judgment of this Court passed in “*Sudo Mandal @ Diwarak Mandal vs. State of Punjab*”, 2011 (2) RCR (Criminal) 453, to contend that once the

same evidence already stands evaluated and scrutinized by the trial court against the other co-accused, no useful purpose is going to be served to try the petitioner afresh and that too, based on the same very evidence, as it would only result in wastage of valuable time of the court and no fruitful purpose would be achieved.

On the other hand, learned State counsel submits that the other co-accused, namely, Gurpreet Singh @ Vicky was convicted under Section 411 IPC though released on probation being the first offender, thus, he submits that the petitioner should also be made to face trial.

I have heard learned counsel for the parties and gone through the paper book.

As per allegations levelled in the FIR, three persons, namely, Ranjit Singh @ Gogi, Gurpreet Singh @ Vicky and the present petitioner, Tejinder Singh @ Lucky were found standing side by side along with motorcycle bearing No.PB-09E-1376 for the purpose of selling the same.

During investigation, the vehicle in question i.e. motorcycle bearing No.PB-09E-1376 was recovered from the custody of Gurpreet Singh @ Vicky. Upon trial, Ranjit Singh @ Gogi from whom there was no recovery effected was acquitted of the charges by the trial court vide judgment dated 16.01.2010, whereas, the other co-accused, namely, Gurpreet Singh @ Vicky from whom the vehicle in question was got recovered was convicted under Section 411 IPC and was released on probation. Meaning thereby that the prosecution failed to prove the charges under Section 379 IPC against either of the co-accused namely, Gurpreet Singh @ Vicky and Ranjit Singh.

In view thereof, the case of the petitioner is at par with the case of Ranjit Singh @ Gogi from whom as well no recovery was effected and thus, was acquitted of the charges under Section 411 IPC. Undisputably, the evidence against Ranjit Singh @ Gogi and present petitioner-Tejinder Singh @ Lucky is one and the same with no fresh evidence in this regard. Once, such evidence already stands scrutinized by the trial court, no further re-appreciation of the same very evidence needs to be done now. Further, the said evidence having been disbelieved being untrustworthy, not worth conviction and thus, ultimately leading to acquittal of co-accused, namely, Ranjit Sing @ Gogi, no useful purpose is going to be served to proceed against the present petitioner by forcing him to face trial based on the same evidence, merely, on the ground that at an initial stage, he absconded from the court proceedings. The same would in fact amount to misuse of process of law being a futile exercise and were formality. Reference in this regard can be made to a Division Bench decision of this Court in case of Sudo Mandal @ Diwarak Mandal's case (supra). Relevant para No.24 thereof is reproduced hereunder for reference:-

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.”

As regards the order dated 14.09.2006 passed by the trial court, declaring the petitioner to be a proclaimed person, it has been brought to the notice of this court that in pursuance to an order dated 11.10.2022 passed by this Court, the petitioner has already submitted himself to the jurisdiction of the trial court and has been admitted to bail vide order dated 16.11.2022. In view of the aforesaid, the order dated 14.09.2006 itself loses its significance to a great extent. In addition, it may also be recorded here that, admittedly no effort was ever made by the trial court to serve the petitioner through the Indian Embassy while proceeding against under

Section 82 of the Code of Criminal Procedure.

In view of the discussion made herein above and in particular when no fresh evidence besides the evidence already led in the case of Ranjit Singh @ Gogi has to be lead at the instance of the respondent-State, FIR No. 147 dated 02.06.2004 besides all subsequent proceedings arising therefrom are hereby quashed exercise of powers under Section 482 Cr.P.C.

Accordingly, petition stands allowed subject to payment of costs of Rs.50,000/- to be deposited with the Punjab and Haryana High Court Association Lawyer's Family Welfare Fund having Account No.41564846387 with State Bank of India, High Court Branch, Chandigarh, within a period of two weeks from today.

13.02.2023

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(HARKESH MANUJA)
JUDGE

whether speaking/reasoned: Yes/No
whether reportable: Yes/No