

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-50571-2022

DECIDED ON: 02.02.2023

HARWINDER SINGH

.....PETITIONER

versus

STATE OF PUNJAB AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present:- Mr. S. S. Momi, Advocate
for the petitioner.

Mr. Rajiv Verma, DAG, Punjab.

Mr. P. S. Waraich, Advocate
for respondent No.2.

SANDEEP MOUDGIL, J. (ORAL)

This is a petition under Section 482 Cr.P.C., for quashing of the order dated 23.02.2015 (Annexure P-11), passed by learned Judicial Magistrate Ist Class, Samana, declaring the petitioner to be a proclaimed offender in Criminal Complaint No.COMI/109/2014, dated 19.08.2014 (Annexure P-1), titled as “Balwinder Singh versus Swaran Singh and Others”, under Sections 452, 323, 324, 325, 326, 506, 148, 149 and 201 of the IPC and all other consequential proceedings arising therefrom qua the petitioner as the entire impugned proceedings are abuse of process of law.

Learned counsel for the petitioner contends that the declaration of the petitioner as proclaimed offender is violation of Article 21 of the Constitution of India, wherein the complaint was filed by respondent No.2, against the petitioner in which he along with other persons were summoned vide order dated 01.12.2014 (Annexure P2), passed by learned Judicial

Magistrate 1st Class, Samana.

After issuance of summoning order, bailable warrants were issued against the petitioner and other accused persons vide order dated 08.12.2014. Thereafter on 15.12.2014, accused Swaran Singh, Kulwinder Singh, Balwinder Kaur and Swinder Singh were admitted to bail on furnishing bail bonds and bailable warrants were issued against the remaining accused persons including the present petitioner for 22.12.2014. Subsequently, on 03.01.2015, bailable warrants earlier issued against the petitioner Harwinder Singh were received back with the report that he is residing at Chandigarh and not at the address as given in the complaint and non-bailable warrants were issued against him for 09.01.2015.

Thereafter, fresh non-bailable warrants were issued on 09.01.2015 and in sequence of such proceedings, the trial Court issued proclamation under Section 82 Cr.P.C., for 19.01.2015, observing that the petitioner is intentionally evading the service of non-bailable warrants. The petitioner was finally declared as proclaimed offender vide order dated 23.02.2015 (Annexure P-11), the order which has been impugned before this Court.

Finally, the judgment and order of conviction along with sentence was passed against other co-accused vide order dated 23.10.2019 (Annexure P-12), who preferred an appeal before the learned Additional Sessions Judge, Patiala.

It is during the pendency of the said appeal, a compromise was entered into between the parties and on the basis of the same, a quashing petition was preferred before this Court vide CRM-M-50329-2022. During the

proceedings of the aforesaid petition, the statements of the parties were got recorded and a report dated 02.12.2022, was received from the learned Additional Sessions Judge, Patiala, categorically stating that the parties have entered into a compromise without any undue influence or pressure.

This Court while considering the Full Bench Dictum in ***‘Kulwinder Singh and others versus State of Punjab’, 2007 (3) RCR (Criminal) 1052 and ‘Gian Singh versus State of Punjab and another’, (2012) 10 SCC 303***, quashed the complaint No.COMI/109/2014, dated 19.08.2014, under Sections 452, 323, 324, 325, 326, 506, 148, 149 and 201 IPC, summoning order dated 01.12.2014, passed by JMIC, Samana, judgment and order of sentence dated 23.10.2019, passed by JMIC, Samana and all other consequential proceedings arising therefrom, on the basis of compromise dated 29.08.2022.

In the light of the aforesaid facts, it has been submitted by the learned counsel for the petitioner that continuation of proceedings, whereby the petitioner has been declared as proclaimed offender vide impugned order dated 23.02.2015 (Annexure P-11), passed by JMIC, Samana, would be nothing but an abuse of process of law.

Learned counsel for the petitioner has placed reliance upon the orders dated 20.07.2022 and 24.08.2022 respectively, passed by a coordinate Bench of this Court in CRM-M-46062-2017, titled as ***“Jatin Dhawan and another versus State of Haryana and another”*** and CRM-M-12534-2022, titled as ***“Krishan Kumar versus State of Haryana and another”***, wherein it has been held that once the main case is dismissed as withdrawn the continuation of proceedings under Section 174-A IPC shall be an abuse of

process of law.

He also placed reliance upon the orders of this Court dated 12.12.2022 and 13.12.2022 passed in CRM-M-55634-2022 titled as ***Jinder Singh Vs. State of Punjab and another*** and CRM-M-45051-2022 titled as ***Hari Singh Meena Vs. State of Haryana***.

Another Co-ordinate Bench of this Court in a case titled as ***“Ashok Madan Vs. State of Haryana and another” reported as 2020 (4) RCR (Criminal) 87*** has also held as under:-

“No doubt, the learned counsel for the respondent has vehemently agrued that the offence under Section 174A I.P.C. is independent of the main case, therefore, merely because the main case has been dismissed for want of prosecution, the present petition cannot be allowed, however, keeping in view the fact that the present FIR was registered only on account of absence from the proceedings in the main case which had been subsequently regularised by the court while granting bail to the petitioner, the default stood condoned. In such circumstances, continuation of proceedings under Section 174-A I.P.C. shall be abuse of the process of court.

7. Accordingly, the petition is allowed. FIR No.446 dated 21.08.2017, registered under Section 174A I.P.C. At Police Station Kotwali, District Faridabad, as well as consequential proceedings shall stand quashed.”

Considering the aforesaid judgments and the observations made hereinabove, this Court is of the considered view that the pendency of such proceedings would render the proceedings absolutely useless as the petitioner

is not going to be convicted and continuation of the same would only be a

waste of time for the Courts below but will be patent abuse of process of law.

Hence, the order dated 23.02.2015 (Annexure P11), passed by learned Judicial Magistrate Ist Class, Samana, declaring the petitioner to be a proclaimed offender in Criminal Complaint No.COMI/109/2014, dated 19.08.2014 (Annexure P-1), titled as “Balwinder Singh versus Swaran Singh and Others”, under Sections 452, 323, 324, 325, 326, 506, 148, 149 and 201 of the IPC with all consequential proceedings arising therefrom, is hereby quashed qua the petitioner.

The present petition is, therefore, allowed.

(SANDEEP MOUDGIL)
JUDGE

02.02.2023

Poonam Negi

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