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

**CRM-M No. 51836 of 2023 (O&M)
Date of Decision: 14.12.2023**

Hardeep Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Karan Choudhary, Advocate
for the petitioner.

HARKESH MANUJA, J.

By way of present petition under Section 482 of Code of Criminal Procedure, 1908, petitioner has prayed for quashing of FIR No. 0039 dated 01.04.2020 under Sections 302, 201 & 34 of Indian Penal Code, 1860, registered at Police Station Sadar Batala alongwith all proceedings arising therefrom.

[2] Only ground taken by the learned counsel for petitioner is that having faced trial, some accused have been acquitted by learned Additional Sessions Judge, Gurdaspur, vide judgment dated 15.05.2023 after appreciation of evidence, while in case of petitioner, the trial is yet to start.

[3] In the facts and circumstances of the present case, I do not find any substance.

[4] The Hon'ble Apex Court in "*Rajan Rai Versus State of Bihar*", reported as *2005(4) RCR (Criminal) 885*, relying upon another

Three Judges' Bench judgment in "***Karan Singh Versus State of Madhya Pradesh***", reported as ***AIR 1965 Supreme Court 1037***, observed that acquittal rendered in the trial of other accused persons is wholly irrelevant and every case has to be decided on the evidence adduced therein. Relevant para from this judgment is reproduced hereunder:-

" In view of the foregoing discussion, we are clearly of the view that the judgment of acquittal rendered in the trial of other four accused persons is wholly irrelevant in the appeal arising out of trial of appellant - Rajan Rai as the said judgment was not admissible under the provisions of Sections 40 to 44 of the Evidence Act. Every case has to be decided on the evidence adduced therein. Case of the four acquitted accused persons was decided on the basis of evidence led there while case of the present appellant has to be decided only on the basis of evidence adduced during the course of his trial."

[5] Similarly, a Full Bench of Kerala High court in "***T. Moosa & etc. Versus Sub-Inspector of Police, Vadakara Police Station, Ernakulam & etc.***", reported as ***2006(3) RCR (Criminal)***, held that judgment of acquittal of co-accused in a criminal trial is not admissible under Section 40 to 43 of the Evidence Act to bar the subsequent trial of absconding co-accused and cannot be reckoned as a relevant document while considering the prayer to quash the proceedings under Section 482 Cr.P.C. and such judgment would be admissible only to show, who were the parties in the earlier proceedings and the factum of acquittal. Relevant paras from this judgment is reproduced hereunder:-

" 50. From the above discussion, it can thus be seen that a judgment to be relevant within the meaning of

Sections 40 to 43 of the Evidence Act so as to bar a trial under Section 403 Cr.P.C. should be a judgment inter parties. So however, it does not mean that the judgment is not admissible if it is admissible under any other provisions of the Evidence Act. Thus, in order to prove as to who were the accused in the previous trial or ought to prove the factum of acquittal in those cases it will still be admissible under Section 30 or 35 of the Evidence Act. At the same time, the judgment rendered in the case of a co-accused and the reasoning of the judgment contained therein or appreciation of the evidence therein are not matters to be taken into account for the purpose of granting any relief to quash the proceedings and thus bar the trial itself. It may however, be a case where the very substratum of the case is lost which may be an exception to this rule. However, as held by the apex court it has to be held that even when a co-accused is acquitted in the very same trial, the other accused can be convicted if there are good reasons to do so. In other words, the acquittal of some of the accused by itself is not a reason to bar the trial in the case of the other accused.

52. *To quash the proceeding after referring to the overt act of the petitioner with reference to the evidence tendered in the judgment rendered in a case of a co-accused who faced the trial and based on evidence therein case of the accused cannot be done as the judgment in the earlier case is not judgment relevant within the meaning of Sections 40 to 44 of the Evidence Act. To do so will be in the realm of appreciation of the evidence which has to be done by the trial judge. In the above view, with great respect we cannot agree with the proposition of law thus, stated in Arun Kumar's case. The acquittal of some of the co-accused based on appreciation of evidence in*

their case is no ground to bar a criminal trial as the appreciation by the concerned judge in a criminal trial is not binding when the latter case is tried in the case of the other co-accused and it is for the learned trial Judge to appreciate the evidence adduced in the latter case. In that regard, possibly a particular witness may or may not be believed and his reliability may also be tested in the light of what he has stated in the earlier case etc. But those are all matters for the trial Judge to do. All that we want to say is that it will not preclude the trial of the case for the mere reason that the co-accused were acquitted. This is the principle that is stated by the Apex Court in Megh Singh v. State of Punjab 2004 SCC CrL 58, Gorle Section Naidu v. State of AP. AIR 2004 SC 1169 etc. Further, as held by the apex court in Raju Rai's case 2006 (1) KLT (SC) (SN) 8 : 2005(7) Supreme 459 the judgment in the case of the co-accused is not at all a judgment relevant within the meaning of Sections 40 to 44 of the Evidence Act. The Rule of estoppel as held by the Apex Court is a rule of admissibility of evidence and which does not bar the trial as such. Hence it has to be held that the power under Section 482 Cr.P.C. cannot be invoked to prevent the trial of the petitioners/accused solely by referring to the overt act played by the accused as spoken to by the witnesses in the case of the co-accused and this Court cannot in exercise of its jurisdiction under Section 482 Cr.P.C. quash the proceedings and prevent the trial. Hence the dictum laid down in Arun Kumar's case to the extent it has taken a contrary view of what is stated above, is not a correct law and the same is overruled.”

[6] In the factual position of the present case, allegations against the petitioner are serious in nature and it is alleged that petitioner with other co

accused, not only murdered the victim but afterwards, his body was burnt as well so that he could not be identified. Trial against other main accused persons is still pending. It is not the argument of the petitioner that his case is covered under the parameters laid down by the Hon'ble Supreme Court in ***“State of Haryana and others Versus Ch. Bhajan Lal and others”***, reported as ***1991 (1) R.C.R. (Criminal) 383***.

[7] In view of the discussion made hereinabove, no ground is made out for quashing of the FIR (supra) and the present petition is accordingly **dismissed**.

December 14, 2023

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**(HARKESH MANUJA)
JUDGE**

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