

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

CRM-M-58668-2022

Date of Decision:-10.03.2023

Harbans Singh.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- None for the Petitioner.

Mr. Kirat Singh Sidhu, Deputy Advocate General, Punjab.

JASJIT SINGH BEDI, J.

The prayer in the petition under Section 482 Cr.PC is for quashing of FIR No.7 dated 28.01.2004 under Section 36 of Punjab Apartment Property Regulation Act, 1995 registered at Police Station Division No.7, Jalandhar (Annexure P-1) as well as order dated 14.09.2015 (Annexure P-3) whereby the petitioner was declared as a proclaimed offender and order dated 17.05.2017 (Annexure P-7) whereby the Magistrate has issued warrants of attachment of the property and all subsequent proceedings arising therefrom.

2. The brief facts of the case as emanating from the petition are that the petitioner is an NRI permanently settled in Canada with his family. He is stated to have been implicated in FIR (Annexure P-1). However, without following the due procedure the petitioner was declared as a

proclaimed offender vide order dated 14.09.2015 (Annexure P-3), subsequent to which the warrants of attachment of his property were issued vide order dated 17.05.2017 (Annexure P-7).

3. The petitioner has referred to certain facts to contend that the FIR in question had been registered without following the law in its proper perspective. In fact the same was barred by limitation and court could not have taken cognizance. It is contended that no offence under Section 36 of the Punjab Apartment Property Regulation Act, 1995 was made out.

4. When the matter came up for hearing on 12.01.2023 the counsel for the petitioner was asked as to when the petitioner would come back to India to face proceedings so as to enable this Court to protect him from arrest on his return. An adjournment was sought and the case was therefore, adjourned to 31.01.2023. On the said date, the counsel for the petitioner informed the Court that the petitioner would be returning back to India in the first week of March and the case was listed for hearing today i.e. 2.3.2023.

5. Today the matter was called and passed over twice but none has appeared on behalf of the petitioner. Therefore, it is apparent that the petitioner does not wish to come back to face trial even though this Court was ready and willing to protect him in order to enable him to join proceedings. Even otherwise, the petitioner is a proclaimed offender and does not deserve any sympathy of this Court.

6. This Court in the case of ‘ ***Sarabjit Singh versus State of Punjab and another, (CRM-M-26957-2021 decided on 16.07.2021)***’, has held as under:-

“ Apart from it, admittedly the petitioner never associated himself with the trial proceedings, therefore, evidence adduced by the

prosecution qua his co-accused cannot be read in respect of the petitioner. Further, the argument of learned counsel that petitioner's mother Sukhwinder Kaur, being mother Special power of attorney holder is competent to maintain this petition is also without any merit as in criminal proceedings the presence of the accused is necessary. Needless to observe that no proceedings in a criminal trial can place in the absence of the accused, except where the permission has been granted by the Court to the said accused and ordinarily such prayers like exemption from personal appearance or even recording of evidence in the absence of accused are made by the concerned accused only. There is no provision in Code of Criminal Procedure, 1973 enabling the accused to appoint a power of attorney to represent him in criminal proceedings. The power of attorney executed under the Power of Attorneys Act, 1882 is normally meant for entrusting the power to some other person to manage, buy or sell property; to borrow money; to execute lease deed or to contest the civil litigation etc. In every criminal trial, the intention to commit crime, followed by execution by the accused or negligent act or omission constituting the penal offence are most important aspects which are ascertained by the trial Court to find involvement of the said accused in the crime, therefore, such proceedings, if permitted to be conducted in absence of accused would be violative of cardinal principles of criminal jurisprudence.

The issue regarding maintainability of the petition by an accused through general power of attorney holder has been considered by this Court in “Amit Ahuja Vs. Gian Parkash Bhambri”, 2010 (3) R.C.R. (Criminal) 586, wherein it has been held that such a petition can be maintained only if the accused is suffering from any disability being minor, insane or any other disability recognized as sufficient to permit any other person to file a petition on his behalf. But, in “Kuldeep Singh Jaswal Vs. Jaspal Singh”, 2016 (2) AICLR 703, the conflicting view was adopted by this Court, wherein it was held that any petition before the Court should be filed by the accused, but there cannot be or should not be laid down a straight jacket formula in this regard and the issue was left upon at the discretion of the concerned court to be decided upon the facts and circumstances of the case.

Further, the Division Bench of this Court in “Mangal Dass

Gautam Vs. State of Haryana”, 2020 (2) R.C.R. (Criminal) 382, examined the above issue and held that a petition under Section 482 Cr.P.C is an exception to general rule of criminal law and any such petition filed by accused through power of attorney must contain special reasons. It was further held that the maintainability of such petition would certainly be dependant upon various factors including facts and circumstances of that particular case to be decided by the said Court. The relevant part of the judgment is extracted below:-

“38. In the light of the above observations, it is held that a petition under section 482 of Cr.P.C., 1973 can be filed by a Power of Attorney holder. As regards the maintainability thereof, it would dependent upon the facts and circumstances of each case as also with regard to the validity of the said Power of Attorney and the powers conferred therein. It requires to be mentioned here that there is no statutory bar provided by the legislature in the Cr.P.C. relating to filing or continuing of a criminal matter through a Power of Attorney holder. The Court would generally insist that the petition under section 482 of Cr.P.C., 1973 for quashing of the FIR or a criminal complaint as also the consequential proceedings arising therefrom be filed through the accused person himself but this cannot be and should not be laid down as a hard and fast rule keeping in view the statutory mandate which by nomenclature, description and discretionary nature of powers conferred on the High Court requires it to be kept flexible. This is better left to be considered and decided by the Court dealing with the particular case in the facts and circumstances of each case as it would be impossible to envisage and think of all the circumstances in which the Court may require and like to exercise its extraordinary jurisdiction and powers as conferred under section 482 of Cr.P.C., 1973.”

Notably, the maintainability of the petition on behalf of accused through power of attorney holder has also been discussed by the Hon'ble Supreme Court in “T.C.Mathai Vs. The District & Sessions AIR 1999 SC 1385, wherein the Apex Court refused to entertain such petition on the ground of maintainability and observed as under:-

“Section 2 of the Power of Attorney Act cannot override the specific provision of a statute which requires that a particular act should be done by a party in person. When the Code requires the appearance of an accused in a court it is no compliance with it if a power of attorney holder appears for him. It is a different thing that a party can be permitted to appear through counsel. Chapter XVI of the Code empowers the Magistrate to summons or warrant for the appearance of the accused. Section 205 of the Code empowers the Magistrate to dispense with the personal attendance of accused, and permit him to appear by his pleader if he sees reasons to do so. Section 273 of the Code speaks of the powers of the court to record evidence in the presence of the pleader of the accused, in cases when personal attendance of the accused is dispensed with. But in no case can the appearance of the accused be made through a power of attorney holder. So the contention of the appellant based on the instrument of power of attorney is of no avail in this case”.

Though the above decision of the Hon'ble Supreme Court was not brought to the notice of this Court in Mangal Dass Gautam's case (supra), however, the above view was further followed by Bombay High Court in "Pravin Niwritti Sawant Vs. Nisha Pravin Sawant and another", 2007(4) R.C.R. (Criminal) 841, and by Kerala High Court in "Naveed Akhthar Vs. State of Kerala, 2016 SCC Online Kerala 13587".

At this juncture, the analysis of the facts of this case reveal that the petitioner voluntarily disengaged himself with the trial proceedings, who left the country without seeking any permission from the trial Court, therefore, this petition filed through the Special power of attorney holder is not maintainable. If such a procedure is introduced, then it would not only encourage the accused persons to seek this kind of permissions to avoid their personal presence the trial Courts or any other Court, as required by law but would also put extra burden upon the Courts and it may further cause delay in conclusion of the criminal proceedings, thereby defeating the aim and object of the penal laws.

This Court is cognizant of the scope of Section 482 Cr.P.C and in numerous judicial pronouncements, it has been held by various High Courts as well as the Hon'ble Supreme Court that the inherent powers are to be used sparingly and with circumspection and cannot be exercised in a routine manner, much less for the convenience of the accused. For the sake of arguments, even if it is assumed that in a given case such a permission needs to be given to the accused, in that eventuality also the conduct of the accused applicant would acquire importance, and this Court is of the opinion that a proclaimed offender who failed to associate with the trial proceedings despite knowledge is not entitled to invoke the inherent powers of this Court to seek quashing of criminal proceedings.

Resultantly, in view of the above discussion, this Court does not find any merit in this petition and the same is dismissed".

7. Similarly this Court in 'Varun Kumar versus State of Punjab (CRM-M-42429-2022 decided on 16.09.2022)', held as under:-

"10. Keeping in view the facts as narrated hereinabove that the petitioner was a resident of the United Kingdom (U.K.), serving in the British Army and that one of his co-accused had been acquitted

this Court was willing to stay the order whereby the petitioner had been declared a proclaimed offender enabling him to join proceedings and face trial which was to be concluded within a fixed period of time not exceeding three months.

11. However, the learned counsel for the petitioner submitted that since the petitioner was a soldier of the British Army, therefore, he could not come back to face trial on account of pressing work concerns.

12. In view of the submissions made by the counsel for the petitioner as also the fact that the petitioner has been declared a proclaimed offender twice over, I find that the filing of the present petition is frivolous as even if I did quash the order declaring the petitioner a proclaimed offender, he would still not come back to face trial.

13. In view of the above, I find no merit in the present petition and therefore, the same is hereby dismissed”.

8. In the present case, the petitioner has invoked the jurisdiction of this Court and that too through a power of Attorney. He has also chosen not to come back and face Trial despite the fact that he had filed this petition and had given an undertaking to the effect that he would return back in March.

9. In view of the aforementioned facts, I find no merit in the present petition and the same is, therefore, dismissed.

(JASJIT SINGH BEDI)
JUDGE

March 10, 2023
Vinay

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