

2024:PHHC:144868



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

CRM-M-12293-2015 (O&M)

Date of decision : 06.11.2024

Daljit Singh and another**...Petitioners****Versus****State of Punjab and another****...Respondents****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Abhinav Gupta, Advocate
for the petitioners.

Mr. A. S. Samra, AAG, Punjab.

Mr. Vivek Singla, Advocate
for respondent No. 2.

MANISHA BATRA, J.

1. The instant petition has been filed by the petitioners under Section 482 of the Code of Criminal Procedure (*for short 'the Code'*) seeking quashing of FIR No. 258 dated 20.11.2013, registered under Sections 307, 115, 120-B of IPC and Section 25 of the Arms Act, 1959 at Police Station Division No. 7, Jalandhar, chargesheet/final report under Section 173 of the Code, the order dated 13.01.2015, whereby the petitioners were declared as proclaimed offenders as well as all the subsequent proceedings having emanated therefrom.

2. Adumbrated facts as emanating from the record are that the aforementioned FIR was registered on the basis of the statement recorded by respondent No. 2/complainant Karanveer Singh on 20.11.2013 alleging that on the same day, he along with his partner Maninder Singh was present in his office situated at Urban Estate, Phase-2, Jalandhar, when at about 03:30 PM,

2024:PHHC:144868



two youths having muffled faces entered inside his office, whereas two persons remained outside the gate and stairs of his office. The youths, who had barged into his office, were armed with pistols and when the complainant asked them about the reason for their coming there, they opened fire with their pistols upon him with intent to kill him. The complainant, however, managed to save himself by throwing a chair towards them and the bullets so fired hit on the side of his cabin after piercing through the chair and then hit the roof. On raising alarm, all of them fled away from the spot. The complainant disclosed that he identified one of them as Parshotam Kumar, resident of Bijnor. He also alleged that said Parshotam Kumar was having enmity with his brother Vikramjit Singh, who was residing in Norway and was going to get permanent residency. Harminder Singh, father of the complainant, recorded his statement under Section 161 of the Code disclosing that he was proceeding towards the office of his son, when two cars were noticed while going from the side of the office. One of those cars, which was Indica make, was driven by accused Parshotam Kumar and three persons were sitting therein. He also disclosed that in the second car, which was Tata 207 make, Pawan Kumar @ Pawan and Kulwinder Singh @ Kaka were sitting and he already knew them. The statements of Vikramjit Singh, who was also present in India at that time, and other material witnesses were also recorded.

3. As per the case of the prosecution, accused Parshotam Kumar was arrested on 06.12.2013. He suffered statement disclosing that he was engaged by the present petitioners, who were residing in Norway, to teach a lesson to Vikramjit Singh, who was in India at that time and he had been given a sum of Rs. 2 Lakhs by them for that purpose. He further disclosed that

2024:PHHC:144868



he had joined co-accused Pawan Kumar and Kulwinder Singh and had hired some contract killers through Gurmail Singh and had attempted to kill the complainant on 20.11.2013. Co-accused Pawan Kumar, Kulwinder Singh, Sandeep, Mangal Singh and Harmandeep Singh were also arrested. After completion of the investigation, challan under Section 173 of the Code was presented against them. As the present petitioners, who were nominated as accused on the basis of the disclosure statement of accused Parshotam Kumar, could not be arrested as they were residing abroad, therefore, proceedings under Section 82 of the Code were initiated against them and they were declared as proclaimed offenders, vide impugned order dated 13.01.2015. Their names were kept in Column No. 2 of the challan report.

4. The petitioners have challenged the order dated 13.01.2015, whereby they had been declared as proclaimed offenders on the ground that they never received any summon or bailable/non-bailable warrants qua registration of the aforesaid FIR against them. The mandatory procedure under Sections 105 and 82 of the Code had not been followed before declaring them as proclaimed offenders. Even otherwise, they have surrendered before the trial Court in compliance with the order dated 09.08.2023, passed by this Court and have been extended benefit of bail by the trial Court. Therefore, it has been urged that the impugned order is liable to be set aside.

5. The petitioners have further sought quashing of the aforesaid FIR and the subsequent proceedings having emanated therefrom on the ground that they were not named in the FIR and were nominated as accused in the case on the basis of the disclosure statement allegedly suffered by accused Parshotam Kumar on 06.12.2023. It is submitted that the said disclosure statement could

2024:PHHC:144868



not be taken into consideration at all against the petitioners as the same was not admissible in evidence in view of the provisions of Section 27 of the Evidence Act. It is submitted that apart from this, no other evidence whatsoever could be collected by the investigating agency against them during the course of investigation. The allegations that they had hatched a conspiracy with accused Parshotam Kumar, in pursuance of which, the latter had come to India and made an attempt to kill the complainant, are the result of a false story concocted later on only with a view to harass the petitioners. It is submitted that petitioner No. 1 is father-in-law of Vikramjit Singh, who is brother of the complainant, and since the relations between the daughter of petitioner No. 1 and Vikramjit Singh were stained, therefore, the petitioners had been implicated in this case. It is further submitted that no evidence whatsoever has come on record to show that any conspiracy was hatched by the petitioners with co-accused. They had not visited India either prior to the occurrence or at the relevant time. No calls detail records of the petitioners were collected to prove that they were hand in glove with accused Parshotam Kumar. It is further argued that the case of the prosecution has already been falsified and accused Parshotam Kumar has already been acquitted of charges framed against him and even the presence of Parshotam Kumar at the time of occurrence had not been established.

6. Learned counsel for the petitioners has further argued that the complainant, while appearing as a witness in the trial which took place against Parshotam Kumar and other co-accused, had concocted a new story by saying that it was Lakhbir Kaur, who is daughter of petitioner No. 1 and wife of Vikramjit Singh, who had conspired with other accused and had arranged an

2024:PHHC:144868



attack on him through contract killers. It is submitted that though Lakhbir Kaur had been ordered to be summoned under Section 319 of the Code as an additional accused but in a revision petition bearing No. **CRR-771-2015**, the said order has been set aside by this Court. It is submitted that the allegations in the FIR, even if taken to be correct on the face value, do not make out any case against the petitioners. They have been tried to be connected with this case on the basis of the disclosure statement of the co-accused and on the basis of some email, alleged to have been sent by Lakhbir Kaur to Italian Consulate at Kolkata with reference to Parshotam Kumar, but none of these circumstance can be taken into consideration to establish the involvement of the petitioners in any conspiracy or to make attempt to murder the complainant. It is further argued that the ingredients for commission of offence of hatching criminal conspiracy have not been established at all. The factum of acquittal of accused Parshotam Kumar is sufficient to show that the petitioners were also not the perpetrators of the subject crime as alleged against them. On being put to trial, the prosecution would rely upon the same set of evidence, which was relied upon in the case of accused Parshotam Kuamr and others and the said evidence would certainly not help the prosecution in connecting the petitioners with the said offences. It is, therefore, submitted that the trial of the petitioners would be nothing but an abuse of process of law as there are no chances of their conviction. Hence, it is urged that the FIR in question deserves to be quashed. To fortify his arguments, learned counsel for the petitioner has relied upon the authorities cited as ***S. Arul Raja vs. State of Tamil Nadu : 2010 (3) RCR (Criminal) 918***

2024:PHHC:144868



and *Sudo Mandal @ Diwarak Mandal vs. State of Punjab : 2011 (2) RCR (Criminal) 453.*

7. Respondent No.1-State and respondent No.2/complainant have filed their respective replies. It is submitted therein and learned State counsel, assisted by learned counsel for the complainant, has argued that accused Parshotam Kumar was identified by the complainant himself at the time of occurrence itself, whereas co-accused Pawan Kumar and Kulwinder Singh were identified by the father of the complainant immediately after the occurrence, when they were fleeing from the spot. Accused Parshotam Kumar, in his disclosure statement, had disclosed the factum of involvement of the present petitioner in subject crime by saying that he had been engaged by them in Norway to come to India and to teach a lesson to Vikramjit Singh. During the course of investigation, sufficient material had been collected to show that petitioner No. 1 had even sent a ticket through email to Parshotam Kumar for the purpose of arranging his safe departure to Italy through Nepal. In fact, petitioner No. 1 is the main kingpin of the crime, who along with petitioner No. 2, who is his cousin brother, had hatched a conspiracy with Parshotam Kumar for killing Vikramjit Singh and his family members. The contract killers hired by Parshotam Kumar had opened a murderous assault upon the complainant with intention to kill him. Though, accused Parshotam Kumar had been acquitted but appeal against the said order of acquittal is pending before this Court. Co-accused, who had opened fire upon the complainant, have been held guilty and convicted by the trial Court, thereby proving the fact that an attempt to murder the complainant had been made.

The petitioners had not even joined investigation so far. They were well aware

2024:PHHC:144868



about the proceedings initiated against them and that is why they had filed this petition seeking quashing of order dated 13.01.2015 immediately after passing of the same. As such, it cannot be stated that there was any lacuna in the order dated 13.01.2015. Even otherwise, they have not been able to point out any infirmity in the proceedings adopted by the trial Court while declaring them as proclaimed offenders.

8. It is further argued by learned State counsel that the petitioners have not joined the investigation so far. They are yet to be tried. The material which was collected during the course of conducting investigation qua the co-accused, who have already faced trial, is sufficient to form an opinion about commission of subject offences by the petitioners. The allegations made in the FIR and the evidence collected in support of the same disclose a *prima facie* case for commission of offence of hatching a conspiracy to eliminate the victim and his family members. This Court cannot delve deep into the record while exercising powers under Section 482 of the Code. The petitioners cannot seek quashing of the challan report, which was filed against the co-accused as no challan has been filed against them so far in view of the fact that they have not joined investigation so far. As such, it is argued that the petition is not maintainable and is liable to be dismissed. In support of the arguments so advanced, learned State counsel has placed reliance upon the authority cited as ***Supriya Jain vs. State of Haryana and another : 2023 (3) RCR (Criminal) 506.***

9. Learned counsel for the parties have been heard at considerable length and the record has been perused carefully.

2024:PHHC:144868



10. At the outset, it will be beneficial to look into the scope and ambit of the Court's power under Section 482 of the Code as spelt out in several judicial pronouncements of Hon'ble Supreme Court as well as different High Courts. The well settled proposition of law is that in exercise of inherent powers under this section, the High Court is not expected to analyze all the facts, which are placed before it and to not ordinarily embark upon an enquiry whether the evidence in question is reliable or not and whether on a reasonable appreciation of it, the accusation would not be sustained as that is the function of the trial Court. (See ***State of Andhra Pradesh vs. Gourishetty Mahesh and others, 2010 Criminal Law Journal 3844***). The inherent powers under Section 482 of the Code can be exercised only when no other remedy is available to the litigant. Such powers are very specific and are meant to secure the ends of justice, to prevent abuse of process of Court or to pass such orders as may be necessary to give effect to any order under the Code. (See ***Padal Venkata Rama Reddy @ Ramu vs Kovvuri Satyanarayana Reddy and others : (2011) 12 SCC 437***). In ***Gian Singh vs. State of Punjab : (2012) 10 SCC 303***, Hon'ble Supreme Court had observed that the inherent power under Section 482 of the Code is of wide plenitude with no statutory limitation but it has to be exercised in accordance with the guidelines engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. Hon'ble Supreme Court in ***Dr. Monica Kumar and another vs. State of U.P. and others : (2008) 8 SCC 781***, has propounded that the inherent jurisdiction under Section 482 of the Code, though wide, is to be exercised sparingly, carefully and with caution, only when such exercise is justified by the test specifically laid down in the section itself and appreciation

2024:PHHC:144868



of evidence is not permissible at the stage of quashing of proceedings in exercise of this power. The inherent powers do not confer an arbitrary jurisdiction upon the High Court to act according to the whims and caprice.

11. The Hon'ble Supreme Court has drawn up some guidelines in some categories of cases by way of illustration to circumscribe the exercise of inherent power under Section 482 of the Code to prevent abuse of process of any Court or to secure the ends of the justice or to give effect to an order of the Court. A celebrated pronouncement on this point is the case cited as ***State of Haryana vs. Bhajan Lal : 1992 SUPP (1) SCC 335***, wherein several guidelines have been laid down. Some of them, which are relevant for the purpose of disposal of the present petition, are reproduced as under:

- (i). Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (ii). Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (iii). Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (iv). Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer

2024:PHHC:144868



without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(v). Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(vi). Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(vii). Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

12. It is also well settled that if a petition under Section 482 of the Code has been filed at the stage of investigation, then it is only required to be considered whether a cognizable offence is disclosed or not. However, when the statements of the witnesses are recorded, evidence is collected and the chargesheet is filed after conclusion of investigation/enquiry, the matter stands on a different footing and the Court is required to consider the material/evidence collected through investigation. Even at that stage, the High Court is not required to go into the merits of the allegations and/or entering into the merits of the case as if it is exercising the appellate jurisdiction and/or conducting trial. In order to examine as to whether the factual contents of

2024:PHHC:144868



the FIR disclose any cognizable offence or not, the High Court cannot act like investigating agency nor can exercise the powers like an appellate court. The said question is required to be examined keeping in view the contents of the FIR and prima facie material, if any, requiring any proof. At this stage, the High Court cannot appreciate the evidence as to whether it can draw its own inference from the contents of the FIR and the material relied on it. The appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 Of the Code. Reference in this regard can also be made to the observations made by Hon'ble Supreme Court in *Kaptan Singh vs. State of U.P. and others, 2021 SCC Online SC 580* and *Dhruvaram Murlidhar Sonar vs. State of Maharashtra : (2020) 3 SCC (Criminal) 672*, wherein it has been observed that exercise of powers under Section 482 Of the Code to quash the proceedings is an exception and not a rule. Inherent jurisdiction under Section 482 Of the Code though wide is to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself.

13. On considering the contentions raised by learned counsel for the parties in the wake of the above discussed position of law, in the considered opinion of this Court, the foremost issue which requires determination is as to whether the FIR in question is liable to be quashed? On a perusal of the material placed on record, undoubtedly it is revealed that the present petitioners had not been named in the FIR and it was only co-accused Parshotam Kumar, Pawan Kumar and Kulwinder Singh @ Kaka, who were named therein. The case as set up against the petitioners is that they had entered into a criminal conspiracy with co-accused Parshotam Kumar, had

2024:PHHC:144868



given him a sum of Rs. 2 Lakhs and had instructed him to go to India as he was residing abroad at that time to teach a lesson to the family of the complainant and in pursuance of the conspiracy, co-accused Parshotam Kumar had come to India, had engaged co-accused and some other contract killers and then had made an attempt to kill the complainant. So far as the fact that the complainant faced murderous assault is concerned, the same is not in dispute. Some of the co-accused have been held guilty after facing trial in the same FIR. As per the allegations, Parshotam Kumar had suffered disclosure statement with regard to hatching criminal conspiracy with him by the present petitioners. It is also alleged that after the occurrence, petitioner No. 1 had sent air tickets to him for the purpose of his safe departure from India. Co-accused Parshotam Kumar has been acquitted of charges framed against him by giving benefit of doubt as already discussed above. The question is as to whether his acquittal can be considered to be a ground for quashing the FIR as against the present petitioners. In the considered opinion of this Court, the answer to this question should be in the negative, in view of the fact that the petitioners have not joined investigation in this case so far. This Court, while exercising powers under Section 482 of the Code, is not expected to examine the facts, evidence and other material available on record to determine as to whether there is sufficient material, on the basis of which, the case would end into conviction or acquittal.

14. This Court is primarily concerned with the allegations taken as a whole to conclude whether the same constitute an offence or not? Neither this Court is expected to unduly interfere nor meticulous examination of the evidence is needed at this stage. It is also not the appropriate stage to delve

2024:PHHC:144868



deep into the records. The instant one can also be not stated to be a case, where on considering the allegations as levelled against the petitioners and reflecting from the material on record, it can be stated that no *prima facie* case is made out against them. The petitioners are alleged to have hatched a conspiracy to commit an offence to eliminate the victim and his family members. This offence, by itself, is distinct from the offence to do the acts, which were to be done in pursuance of the conspiracy. They might not have been present at the spot of occurrence at the relevant time and they might not have actually participated in the same but so far as the allegations of hatching a conspiracy are concerned, the same are required to be examined, keeping in view the allegations in the FIR and the material collected by the investigating agency. At this stage, this Court cannot appreciate the evidence to draw any inference. The factum of acquittal of co-accused Parshotam Kumar as well as the fact that the order passed by the trial Court summoning Lakhbir Kaur, daughter of petitioner No. 1, as additional accused under Section 319 of the Code, had been set aside by this Court in the aforesaid revision petition, are not such grounds, which can be taken into consideration by this Court while exercising powers under Section 482 of the Code. For the reasons aforesaid, it is, accordingly, held that no reasonable ground for quashing of FIR has been made out. As such, the relief claimed by the petitioners to that effect is rejected.

15. So far as the prayer made by the petitioners for quashing of the challan report, filed under Section 173(2) of the Code, is concerned, it may be mentioned that this challan had been presented only against co-accused Parshotam Kumar, Pawan Kumar, Kulwinder Singh, Mangal, Harmandeep

2024:PHHC:144868



Singh and Sandeep Singh and not against the petitioners. These accused persons have not only faced trial but except Parshotam Kumar, all of them have been convicted by the trial Court, vide judgment of conviction and order on quantum of sentence, both dated 23.11.2016. Even otherwise, since no challan had been filed against the petitioners, therefore, they have no *locus standi* to seek quashing of the same. As such, the prayer made by them to this effect is also rejected.

16. So far as the order dated 13.01.2015, whereby the petitioners were declared as proclaimed offenders, is concerned, it is not in dispute that when the warrants were issued against them and when proceedings under Section 82 of the Code were initiated against them as well as on the date when they were declared as proclaimed offenders, they were residing in Norway and were not present in India. There is nothing on record to show that the procedure as prescribed under Section 105 of the Code was followed before passing the impugned order, therefore, the proceedings adopted by the trial Court for declaring the petitioners as proclaimed offenders cannot be stated to be sustainable in the eyes of law. Even otherwise, vide order dated 09.08.2023, a direction was given by this Court that if the petitioners appeared before the trial Court on or before 22.09.2023 and applied for grant of bail, their petition would be decided by the trial Court on the same date. The record shows that in compliance with the aforesaid order, the petitioners had moved an application for grant of bail, which was allowed, vide order dated 20.09.2023, passed by the learned Additional Sessions Judge, Jalandhar. In view of this fact, the impugned order, declaring the petitioners as proclaimed

2024:PHHC:144868



offenders, has become infructuous. Therefore, the prayer made by the petitioners to this effect also becomes infructuous.

17. In view of the discussion as made above, the present petition is hereby dismissed to the extent to which the prayer made by the petitioners for quashing of aforesaid FIR No. 258 dated 20.11.2013 and challan report filed therein is concerned. As already discussed, since the petitioners have been extended benefit of bail but have not joined the investigation proceedings so far, therefore, they are directed to join the same by appearing before the Investigating Officer/SHO of the Police Station concerned within a period of 45 days from today, failing which, the benefit of bail granted to them shall automatically stand cancelled.

18. Let a copy of this order be sent to SHO of the Police Station concerned as well as to the trial Court for intimation and necessary action/compliance.

06.11.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>