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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-18439-2024

Date of Decision: 30.04.2024

GURBHEJ SINGH

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Ms. Ojaswini Gagneja, Advocate with
Mr. Raj Kumar Malik, Advocate
for the petitioner.

Mr. Harkanwar Jeet Singh, Asstt. A.G., Punjab.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the clubbing order dated 05.01.2012 (Annexure P-11) passed by the Court of Addl. Sessions Judge, Ferozepur in FIR No.48 dated 27.05.2009 registered under Sections 302, 307, 427, 435, 148, 149 IPC, 1908 and Sections 25/27 of Arms Act, 1959 at Police Station Mamdot, District Ferozepur, Punjab and complaint case No.Crl. No.384-I dated 10.11.2009 under Section 210 Cr.P.C., quashing of the proceedings consequential to the clubbing order and for setting aside the order dated 19.09.2023 (Annexure P-24) whereby the application filed by the petitioner for discharging him in FIR No.48 dated 27.05.2009 has been dismissed.

2. The brief facts of the case are that an FIR No.48 dated 27.05.2009 under Sections 302/307/435/427/148/149 IPC and Sections 25/27/54/59 of the Arms Act, P.S. Mamdot came to be registered on 27.05.2009 at the instance of the complainant/Mukhtiar Singh against six

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persons including the petitioner. The copy of the FIR is annexed as Annexure P-1 to the petition.

3. Two accused namely, Gurdev Singh and Sukhwinder Singh were arrested and the report under Section 173(2) Cr.P.C. was submitted against them on 29.08.2009 under Section 173 Cr.P.C. The copy of the said report is attached as Annexure P-2 to the petition.

A perusal of the report would show the arrest of the remaining four accused was shown to be pending.

4. During the course of further investigation, a supplementary challan was submitted against three accused namely, Satinder Singh, Santokh Singh and Daljit Kaur whereas the petitioner was declared to be innocent. The copy of the said supplementary challan dated 09.05.2010 is attached as Annexure P-3 to the petition.

5. Meanwhile, the complainant had filed a criminal complaint No.384-I dated 10.11.2009 under Sections 302/307/427/435/148/149 IPC and Sections 25/27 of Arms Act against all the six accused on 10.11.2009 levelling more or less similar allegations as had been levelled in the FIR. Based on the said criminal complaint, a summoning order was passed by the Court of Judicial Magistrate, 1st Class, Ferozepur under Sections 302/307/427/435/148/149 IPC and Sections 25/27 of Arms Act on 09.06.2010. The copy of the said summoning order dated 09.06.2010 is attached as Annexure P-8 to the petition.

6. The petitioner was declared a proclaimed offender in the complaint case vide order dated 06.09.2011. The copy of the said order is attached as Annexure P-9 to the petition.

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7. Thereafter, the complaint case and the State case were ordered to be clubbed and tried together vide order dated 05.01.2012. The copy of the said order is attached as Annexure P-11 to the petition.

8. As the petitioner was declared a proclaimed offender, the Trial proceeded against the five accused who were convicted by the Court of Addl. Sessions Judge, Ferozepur vide judgment dated 06.08.2014. The copy of the said judgment is attached as Annexure P-12 to the petition.

9. Thereafter, the petitioner was arrested on 09.10.2018 and got recovered a 12 bore gun. A separate FIR No.126 dated 12.12.2018 under Sections 25/54/59 of Arms Act was registered at Police Station Mamdot, Ferozepur.

10. As the complaint case and State case had been ordered to be clubbed, a supplementary challan was submitted in case FIR No.48 dated 27.05.2009 under Sections 302/307/435/427/148/149 IPC and Sections 25/27/54/59 of the Arms Act. The copy of the said challan dated 01.02.2019 is attached as Annexure P-13 to the petition.

11. Charges came to be framed against the petitioner on 13.05.2019 after which all prosecution witnesses now stand examined. The copy of the said order is attached as Annexure P-16 to the petition.

12. Be that as it may, the petitioner filed a quashing petition bearing No.CRM-M-40890-2021 seeking quashing of the complaint, the summoning order and the order whereby he was declared a proclaimed offender. The complaint, the summoning order dated 09.06.2010 and all consequential proceedings were quashed by this Court vide order dated 19.07.2023. The copy of the said order is attached as Annexure P-22 to the petition.

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13. It may be relevant to mention here that the order of clubbing of the State case and the complaint case under Section 210 Cr.P.C. was not challenged and this fact assumes importance because the complaint and the consequential summoning order which were quashed vide order dated 19.07.2023 ceased to have an independent identity in view of the order of clubbing.

14. The petitioner thereafter moved an application for discharge on 02.08.2023 which application came to be dismissed on 19.09.2023. The application for discharge and the order passed thereon are attached as Annexures P-23 and P-24 to the petition.

15. The petitioner filed CRM-M-48560-2023 seeking quashing of the order dated 19.09.2023 vide which the application for discharge had been dismissed. After arguing at length the petitioner withdrew the said petition on 01.04.2024. The copy of the said order is attached as Annexure P-25 to the petition.

16. Now the instant petition has been filed challenging the order dated 05.01.2012 (Annexure P-12) whereby the State case and the complaint case were ordered to be clubbed together as also the order dated 19.09.2023 vide which the application for discharge was dismissed.

17. The learned counsel for the petitioner contends that the clubbing order had wrongly been passed. Once, it was brought to the notice of the Court in the complaint case that a report under Section 173(2) Cr.P.C. had been submitted in the case of five of the six accused, the Court should have called for the said report before passing the order of summoning. She further contends that the charge had been framed in a mechanical inasmuch as the

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supplementary challan (Annexure P-3) in which the petitioner had been declared innocent had not been considered while framing charges against the petitioner. She therefore contends that the order of clubbing was liable to be quashed and the petitioner ought to be discharged of the charges framed against him.

18. On the other hand, the learned State counsel contends that the case as a chequered history. The FIR came to be registered on 27.05.2009. The petitioner was declared a proclaimed offender in a complaint case on 06.09.2011 and only came to be arrested on 09.01.2018. Fifteen years have elapsed since the registration of the FIR and the petitioner is playing hide and seek with the Court. Be that as it may, now, all of the 44 prosecution witnesses stand examined and the case is posted for final adjudication and is likely to be decided soon. Therefore, the present petition was liable to be dismissed.

19. I have heard the learned counsel for the parties and examined the record.

20. Before proceeding further in the matter, it would be apposite to refer to the provisions of Section 210 Cr.P.C. and the same is reproduced hereinbelow:-

“210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.

(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the

Magistrate shall stay the proceedings of such enquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.

21. A perusal of Section 210(2) Cr.P.C. would show that once it is brought to the notice of the Court that a report under Section 173(2) Cr.P.C. has been submitted and on such report cognizance of an offence has been taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or tried the complaint case and the State together as if both were instituted on a police report.

22. In the instant case, the report under Section 173(2) Cr.P.C. had been submitted against five of the accused (not including the petitioner). However, when the summoning order was passed, all the accused including the petitioner were summoned to face Trial vide order dated 09.06.2010. Therefore, in terms of Section 210 Cr.P.C. the Trial Court on being made aware that a challan also stood filed against five of the six accused who had been summoned in a complaint case was left with no option but to order

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clubbing of the case under Section 210 Cr.P.C. Therefore, no fault can be found with the order which has been passed in accordance with law.

23. Further for reasons best known to the petitioner, while challenging the complaint, the summoning order and the order whereby he was declared a proclaimed offender, the clubbing order was never challenged by the petitioner. Therefore, the Trial continued on the basis of the clubbing order and the subsequent order dated 13.05.2019 whereby charges came to be framed against the petitioner.

24. Interestingly, the order dated 13.05.2019 framing charges was also never challenged before a superior Court. However, on 02.08.2023 (Annexure P-23) an application for discharge was moved which came to be dismissed on 19.09.2023 (Annexure P-24). This application for discharge itself was not maintainable after charges stood framed and the evidence was being recorded. The only option before the Trial Court was to proceed with the Trial and either acquit the accused or convict him. It has been so held in the cases of *Bharat Parikh Versus C.B.I. & Anr., 2008 AIR (SCW) 4842*, *Ratilal Bhanji Mithani Versus State of Maharashtra & others, 1979 AIR (Supreme Court) 94*, *Himanshu Singh Rajawat & Anr. Versus State of Maharashtra, 2018(3) R.C.R. (Criminal) 698* and *Atma Singh & others Versus State of Punjab, 2006(3) R.C.R. (Criminal) 989*.

25. The contention of the petitioner that while framing charges on 13.05.2019 the second report under Section 173(2) Cr.P.C. in which the petitioner had been declared innocent had not been considered thereby vitiating the order cannot be accepted. In the first report under Section 173(2) Cr.P.C., the arrest of the petitioner was shown to be awaited. In the second

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report, he was declared to be innocent. However, he came to be summoned in a complaint case. By virtue of Section 210 Cr.P.C. the complaint case and the State case were ordered to be clubbed together and therefore, were to be tried as a State case. Therefore, on being summoned when the complaint case and the State case had been ordered to be clubbed together, the framing of charges was a natural corollary. Be that as it may, the order dated 19.09.2023 (Annexure P-24) which the petitioner has challenged in the instant petition was impugned earlier in the petition bearing CRM-M-48560-2023 but the said petition came to be dismissed as withdrawn. The same issue cannot be agitated time and again.

26. Further, it has been brought to the notice of the Court that all the 44 prosecution witnesses stand examined. Therefore, the Trial is at its fag-end. At this stage, the question of interference in the Trial does not arise.

27. In view of the above discussion, I find no merit in the present petition. Therefore, the same stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

30.04.2024

JITESH

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