

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M-19484-2023 (O&M)

Date of order: 30.04.2024

Gurjant Singh

.....Petitioner(s)

Vs.

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Suresh Singla, Advocate
for the petitioner.

Mr. Kunwarbir Singh, AAG Punjab.

Nidhi Gupta, J.

Present petition under Section 482 Cr.P.C. is filed seeking setting aside of order dated 05.07.2017 (Annexure P2) passed by learned trial Court (Sub-Divisional Judicial Magistrate, Talwandi Sabo) in CHI/98/2017 titled as "State of Punjab Vs. Gurjant Singh", whereby notice is issued to the petitioner/accused in view of challan dated 05.07.2017 presented in FIR No.104 dated 27.06.2013 (Annexure P1) under Sections 354, 355, 506 and 509 IPC (Section 500 IPC added subsequently) registered at Police Station Raman, District Bathinda; **and** also against order dated 10.06.2019 (Annexure P3), whereby charges have been framed against the petitioner and cognizance of aforesaid offences is taken after lapse of period of limitation as prescribed under Section 468 Cr.P.C.

2. In compliance of last order dated 6.2.2024, Learned State Counsel has filed status report dated 29.04.2024 by way of affidavit of

Rajesh Snehi Batta, PPS, Deputy Superintendent of Police, Sub-Division

Talwandi Sabo, District Bathinda, which is taken on record; and copy of the same is supplied to counsel opposite.

3. It is inter alia submitted by learned counsel for the petitioner/accused that FIR in the present case was registered as far back as on 27.06.2013. However, no proceedings took place in the case for about four years. Thereafter, challan was filed on 05.07.2017 (Annexure P2) before learned Sub-Divisional Judicial Magistrate, Talwandi Sabo; and charges were framed under Sections 354, 355, 506, 509 and 500 IPC vide order dated 10.06.2019 (Annexure P3).

4. Learned counsel contends that as per provision of Section 468(2)(c) Cr.P.C., it is crystal clear that for an offence that is punishable for less than three years, a statutory bar has been imposed upon the Court from taking cognizance after three years. It is argued that all the offences alleged in the FIR are punishable for imprisonment of less than three years except Section 509 IPC, in which Court can impose imprisonment for maximum up to three years along with fine. Learned counsel contends that therefore, a combined reading of Section 468(2)(c) and Section 509 IPC, shows that the learned trial Court has exceeded its jurisdiction in taking cognizance and trying the petitioner/accused in the aforesaid FIR. It is accordingly, prayed that present petition be allowed and challan dated 05.07.2017 (Annexure P2) as also order of charge dated 10.06.2019 (Annexure P3) be set aside.

5. Learned State Counsel vehemently opposes the prayer made on behalf of the petitioner and submits that no doubt, as per provisions of Section 468(2)(c), a bar has been created whereby Court

cannot take cognizance beyond three years; however, there is an exclusion of the said bar as provided under Section 473 Cr.P.C. It is accordingly prayed that the present petition be dismissed.

6. No other argument is made on behalf of the parties.

7. I have heard learned counsel for the parties and perused the case file in great detail.

8. The relevant Sections 468 and 473 Cr.P.C. are reproduced hereinbelow:-

“468. Bar to taking cognizance after lapse of the period of limitation. –

(1) Except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be-

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

[(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.](Emphasis added)

473. Extension of period of limitation in certain cases. –

Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may make cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been

properly explained or that it is necessary so to do in the interest of justice”.

9. A bare reading of the above provisions shows that no doubt a bar has been created under Section 468(2)(c) Cr.P.C.; however, the exception thereof is contained in Section 473 Cr.P.C. whereby an enabling power has been granted to the learned trial Court to take cognizance of an offence after the expiry of period of limitation in the facts and circumstances of each case and to the satisfaction of the learned trial Court that the delay has been properly explained or that it is necessary to do so in the interest of justice. As such, argument of the petitioner that in terms of the bar created under section 468 Cr.P.C., the learned trial could not have taken cognizance, is misplaced.

10. Moreover, it is pertinent that at no stage during the course of trial has the petitioner approached the learned trial court under section 468 Cr.P.C. seeking setting aside of the proceedings on ground of limitation. Even no revision petition was filed by the petitioner before the learned Sessions Judge challenging the orders impugned herein. Even the present revision petition has been filed after considerable delay of almost 6 years laying challenge to orders dated 05.07.2017 and 10.06.2019.

11. It is also imperative to note that the petitioner has not approached this Court with clean hands. A perusal of the present petition shows that the petitioner has failed to disclose before this Court that there are as many as eight other FIRs pending against the petitioner. The details thereof have been provided in para 10 of the Status Report filed on behalf of the respondent State, and the same is reproduced hereinbelow: -

“10. That however, in the present petition, the accused/petitioner Gurjant Singh is malafidely and intentionally concealed material fact of his involvement in 8 other case FIRs except the present one from the Hon'ble High Court, which is not acceptable as per settled law that the person, who does not come clean hands before the Hon'ble Court then he does not deserve any leniency. There are following cases, including present one, in which he is directly involved but concealed from the Hon'ble High Court. The details in chart of cases lodged against accused/petitioner is given below: -

SR. NO.	PARTICULARS OF CASE	UNDER SECTIONS	POLICE STATION
1.	FIR No.69 Dated 22.08.1999	409/465/467/471 Indian Penal Code	Raman, District Bathinda
2.	FIR No.105 Dated 11.10.2003	3/4 SC & ST Act and 506 Indian Penal Code	Raman, District Bathinda
3.	FIR No.20 Dated 05.03.2008	307/34 Indian Penal Code & 25 Arms Act	Raman, District Bathinda
4.	FIR No.40 Dated 26.04.2008	364/307/342/341/323/427/148/149 Indian Penal Code & 25/27 Arms Act	Raman, District Bathinda
5.	FIR No.70 Dated 06.06.2010	382/341/323/506/149 Indian Penal Code	Raman, District Bathinda
6.	FIR No.124 Dated 21.12.2004	341/509/148/149 Indian Penal Code	Sadar, Bathinda
7.	FIR No.104 Dated 27.06.2013	354/355/506/509 Indian Penal Code	Raman, District Bathinda
8.	FIR No.123 Dated 05.09.2015	452/324/323/506/148/149 Indian Penal Code	Raman, District Bathinda
9.	FIR No. 01 Dated 04.01.2019Cross DDR No. 32 date 04.1.2019	323,336,341,34 IPC 25,27/54/59 Arms Act	Raman, District Bathinda

It is important to mention here that the involvement of accused/petitioner Gurjant Singh in above said case prima facie

proves that he is a habitual offender and also may not have any hesitation in commission of any such like offences time and again as such present the accused/petitioner Gurjant Singh does not deserve any such relief from Hon'ble High Court."

12. Reference may be made to judgment of Hon'ble Supreme Court in **"Kusha Duruka Vs. The State of Odisha"** Law Finder Doc ID # 2470152, Criminal Appeal No.303 of 2024 decided on 19.01.2024, wherein it has been held as under:-

*"6. In **Moti Lal Songara Vs. Prem Prakash @ Pappu and another**⁴, this Court, considering the issue regarding concealment of facts before the Court, observed that "court is not a laboratory where children come to play", and opined as under:*

"19. The second limb of the submission is whether in the obtaining factual matrix, the order passed by the High Court discharging the accused-respondent is justified in law. We have clearly stated that though the respondent was fully aware about the fact that charges had been framed against him by the learned trial judge, yet he did not bring the same to the notice of the revisional court hearing the revision against the order taking cognizance. It is a clear case of suppression. It was within the special knowledge of the accused. Any one who takes recourse to method of suppression in a court of law, is, in actuality, playing fraud with the court, and the maxim suppressio veri, expressio falsi, i.e.. suppression of the truth is equivalent to the expression of falsehood, gets attracted. We are compelled to say so as there has been a calculated concealment of the fact before the revisional court. It can be stated with certitude that the accused- respondent tried to gain advantage by such

factual suppression. The fraudulent intention is writ large. In fact, he has shown his courage of ignorance and tried to playpossum.

20. The High Court, as we have seen, applied the principle "when infrastructure collapses, the superstructure is bound to collapse". However, as the order has been obtained by practising fraud and suppressing material fact before a court of law to gain advantage, the said order cannot be allowed to stand."
(emphasis supplied)"

13. It is the litigant’s bounden duty to make a full and true disclosure of facts. It is a matter of trite law, and yet bears repetition, that suppression of material facts before a Court of Law amounts to abuse of the process of the Court and shall be dealt with a heavy hand **(Ref.: “Ram Dhan v. State of Uttar Pradesh & Anr.”, (2012) 5 SCC 536, Law Finder doc ID # 352176 “K.D. Sharma v. Steel Authority of India Ltd.” (2008) 12 SCC 481, Law Finder doc ID # 198320).**

14. Ld. Counsel for the petitioner has been unable to refute or controvert the above said facts.

15. Accordingly, present petition stands **dismissed**.

16. Pending application(s) if any also stand(s) disposed of.

30.04.2024
Sunena

(Nidhi Gupta)
Judge

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