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

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Date of Decision : May 06, 2024

BALWINDER SINGH**-PETITIONER****V/S****STATE OF PUNJAB AND ANOTHER****-RESPONDENTS****CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. Gaurav Garg Dhuriwala, Advocate
for the petitioner.

Mr. Pardeep Bajaj, D.A.G., Punjab.

KULDEEP TIWARI, J. (ORAL)

1. The petitioner is a retired police officer, who is facing trial in a criminal case for falsely implicating an innocent citizen in a corruption case. Through the instant petition, as cast under Section 482 of the Cr.P.C., the petitioner seeks quashing of an order (Annexure P-1), as became passed circa a decade ago by the learned Magistrate concerned, thereby ordering for registration of an FIR against the petitioner and his co-accused Insp. Tejinder Singh. This order dated 22.03.2014 (Annexure P-1) was passed on an application made by the respondent No.2- Tara Singh (hereinafter referred to as the 'complainant') under Section 156(3) of the Cr.P.C., thereby seeking registration of FIR against the petitioner and his co-accused Insp. Tejinder Singh for falsely implicating him and one Jagtar Singh in a false corruption case.
2. Apart from quashing of the order (Annexure P-1), the other reliefs claimed in the instant petition can be summarized as under:-

(I) *Quashing of FIR No.116 dated 13.04.2014 (Annexure P-2),*



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under Sections 167, 467, 468, 471, 201, 120-B of the IPC, registered at P.S. City Sangrur, District Sangrur;

(ii) Quashing of the order dated 08.09.2016 (Annexure P-3), whereby, the learned revisional court concerned has dismissed the petitioner's revision petition preferred against the order dated 22.03.2014;

(iii) Quashing of the order dated 30.10.2023 (Annexure P-4), whereby, the learned Magistrate concerned has dismissed the petitioner's discharge application filed under Section 227 of the Cr.P.C.

3. The reliefs (supra) are claimed mainly on the ground that the provisions of Section 132 of the Indian Evidence Act, 1872 (hereinafter referred to as the 'Evidence Act') were flouted by the learned Magistrate concerned while drawing the basic order dated 22.03.2014 (Annexure P-1), thereby ordering registration of the impugned FIR. Therefore, when the basic order itself suffers from illegality and perversity, hence, all other orders (supra) drawn subsequent thereto are also illegal and unsustainable in the eyes of law.

4. Since the case at hand has a chequered history, as its genesis lies in some other criminal case, therefore, before embarking upon the process of gauging the merits/demerits of the instant petition and consequently evincing any opinion upon the validity of the impugned order(s)/FIR, it is deemed apt to begin with chronologically extracting the facts of the present case.

FACTUAL MATRIX

5. The B.D.P.O., Sherpur, made a complaint against the complainant, which became entrusted to petitioner's co-accused Insp. Tejinder

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Singh for inquiry, who was then posted as S.H.O., Police Station Sherpur. The complainant alleged that, in order to exonerate him from the inquiry pending against him, Insp. Tejinder Singh demanded bribe from him, however, he was reluctant to give any bribe and accordingly made a complaint against Insp. Tejinder Singh before the Vigilance Bureau concerned. Consequently, raids were conducted on 11.08.2011 and 12.08.2011 by official(s)/officer(s) of the Vigilance Bureau concerned to nab Insp. Tejinder Singh, however, these raids did not yield any result owing to leakage of information by some official/officer of the Vigilance Bureau. Thereafter, in order to save his skin, Insp. Tejinder Singh made a complaint to the effect that the complainant, through one Jagtar Singh, offered him bribe in relation to an inquiry pending against him and resultantly, an FIR No.68 dated 12.08.2011, under Sections 8, 9, 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the 'Act of 1988'), came to be registered at P.S. Sherpur against the complainant and Jagtar Singh. In the meantime, another FIR No.97 of 2011 was also registered on the basis of the complaint filed by the B.D.P.O. Sherpur.

6. After completion of investigation in FIR No.68 (supra), the Final Report was presented and the complainant and Jagtar Singh were chargesheeted for offences punishable under Sections 8, 9, 13(2) of the Act of 1988. During the course of trial, the complainant examined the petitioner as DW21 in his defence. The complainant and Jagtar Singh faced a protracted trial, which ultimately culminated in their acquittal, as is evident from the verdict dated 05.06.2013 (Annexure P-5). Through this verdict, not only the complainant and Jagtar Singh were acquitted with the observations that they were falsely implicated, but, the learned trial Court concerned also directed the

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S.S.P. concerned to explore the possibility of initiating criminal proceedings against Insp. Tejinder Singh for falsely implicating the accused concerned and against D.S.P. Balwinder Singh (petitioner) for forging the entries of logbook in order to obliterate evidence regarding his visit to P.S. Sherpur on 11.08.2011 and 12.08.2011. The relevant extract of the verdict dated 05.06.2013 is reproduced hereunder:-

“26. Copy of this judgment be sent to the Senior Superintendent of Police, Sangrur to explore the possibility of initiating criminal proceedings against Inspector Tejinder Singh for falsely implicating the accused in this case by forging documents and fabricating evidence and DSP Balwinder Singh, who has forged the entries of log book of his official vehicle in order to obliterate evidence regarding his visit to P.S. Sherpur on 11.8.2011 and 12.8.2011...”

7. It would be apt to record here that, even prior to earning acquittal, the complainant had moved an application under Section 156(3) of the Cr.P.C., thereby seeking registration of FIR against the petitioner and Insp. Tejinder Singh, however, this application remained inactioned. Consequently, after pronouncement of the verdict dated 05.06.2013, the complainant again filed an application by enclosing therewith the copy of that verdict, thus seeking decision on his application (supra) in a time bound manner. Accordingly, vide order dated 22.03.2014, the learned Magistrate concerned ordered for registration of FIR against the errant officials/officers (supra), which constituted the bedrock for registration of the impugned FIR No.116 dated 13.04.2014, under Sections 167, 467, 468, 471, 201, 120-B of the IPC, registered at P.S. City Sangrur, District Sangrur. Thereafter, investigation was conducted by an S.I.T. constituted by the competent authority, whereupon, the Final Report was presented on 18.09.2015. During investigation, one Ranjit

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Singh, who was then posted as Driver with the petitioner, was also found to be an accomplice in the offence and accordingly, he was also sent to face trial along with the petitioner and Insp. Tejinder Singh.

8. Fetching grievance from the order dated 22.03.2014, the petitioner and his co-accused Insp. Tejinder Singh preferred separate statutory revision petitions thereagainst before the learned revisional court concerned, however, they could not reap the desired results, as their revision petitions were dismissed vide impugned order dated 08.09.2016 (Annexure P-3). This dismissal order was anchored upon the observations that since FIR has already been registered and challan has also been filed, therefore, much water has flown since the making of the order dated 22.03.2014.

9. After the dismissal order (supra) becoming recorded by the learned revisional court concerned, the petitioner opted to remain silent and quietly faced trial for approx. 08 straight years. Thereafter, the petitioner moved an application under Section 227 of the Cr.P.C., thereby seeking his discharge, however, this application also received an order adversarial to the petitioner inasmuch as the learned trial Court concerned, vide order dated 30.10.2023, declined to discharge the petitioner from the charges framed against him. The reasoning adopted by the learned trial Court concerned to reach this conclusion, was that, the record indicates that entries were changed in the logbook at the instance of the petitioner, therefore, it cannot be said that there is no sufficient ground to proceed against him.

10. In this way, after remaining unsuccessful before the learned trial Court concerned to secure the desired reliefs, the petitioner has now motioned this Court, but that too, almost after a decade since the drawing of the basic



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order dated 22.03.2014.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONER

11. Primarily, the learned counsel for the petitioner has vociferously argued that, while drawing the basic order dated 22.03.2014 thus ordering registration of the impugned FIR, the learned Magistrate concerned did not take into account the bar stipulated in the proviso to Section 132 of the Evidence Act. As such, the order dated 22.03.2014 has been passed without application of judicial mind and is *void ab initio*.

12. The learned counsel for the petitioner has further argued that, the verdict of acquittal dated 05.06.2013, as drawn in favour of the complainant and Jagtar Singh, makes it evident that the learned trial Court concerned did not make any recommendation or direction for registration of the impugned FIR, rather it merely recommended/directed the S.S.P. concerned to explore the possibility of initial criminal proceedings against the petitioner and co-accused Insp. Tejinder Singh. Consequently, the reliance, as became placed by the learned Magistrate concerned upon the observations encompassed in the verdict of acquittal (*supra*), thus ordering registration of the impugned FIR, is a totally misplaced reliance for the relevant purpose.

13. Furthering his arguments, the learned counsel for the petitioner has submitted that the learned revisional Court concerned erred in law in refusing to exercise its revisional jurisdiction, merely on the ground that, much water has flown since the drawing of the basic order dated 22.03.2014, whereas, it ought to have decided the revision petitions on merits. Moreover, the impugned FIR was registered without conducting any inquiry as regards

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the offence under Section 195 of the Cr.P.C., which appears to have been committed. Not only this, the procedure prescribed under Section 340 of the Cr.P.C. has also not been adopted before registration of the impugned FIR.

14. Concluding his arguments, the learned counsel for the petitioner has adverted to merits of the matter and submitted that, in fact, not only the pages of the logbook were torn by petitioner's co-accused H.C. Ranjit Singh, who was examined as DW-20 in the trial of FIR No.68 (supra), but the allegedly forged entries were also written by him. The petitioner had merely signed the entries in the logbook, that too in good faith and on request of his co-accused H.C. Ranjit Singh. In such circumstances, there was no cogent material/evidence available with the learned trial Court concerned to frame charges against the petitioner.

REASONS FOR DISMISSING THE INSTANT PETITION

15. This Court has heard the submissions made by the learned counsels for the parties and also made a meticulous survey of the entire record.

16. At the first instance, it would be pertinent to record that the Registry of this Court has informed that the petitioner's co-accused Insp. Tejinder Singh had also accessed this Court, through filing CRM-M-2860-2017, thereby claiming reliefs almost alike to the ones, as claimed herein. However, the petition (supra) was dismissed as withdrawn by a Co-ordinate Bench of this Court, vide order dated 14.12.2022. The relevant extract of this order reads as under:-

"1. This petition is filed seeking quashing of order dated 22nd March, 2014 passed by the learned Chief Judicial Magistrate, Sangrur.



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2. Learned counsel for the petitioner on instructions from petitioner who is present in Court and identified by the him seeks permission to withdraw the present petition. However, he submits that request would be made before the court concerned for expeditious trial.

3. Dismissed as withdrawn.

4. There is no doubt that in eventuality of request being made before Court concerned for expeditious trial, the same would be considered in accordance with law.

5. Since the main petition has dismissed as withdrawn, pending applications, if any rendered infructuous.”

17. Although the petitioner has conveniently concealed the above facts from this Court, however, he can take shelter of ignorance in this regard, as the petition (supra) was preferred by his co-accused and he was not a party therein. However, now it is a matter of fact that the validity of the impugned order dated 22.03.2014, thus ordering for registration of the impugned FIR, has already been evaluated by a Co-ordinate Bench of this Court in the petition cast under Section 482 of the Cr.P.C. by petitioner's co-accused (supra), which has been dismissed as withdrawn vide order dated 14.12.2022 and this order has now attained finality and conclusivity.

18. Although the learned counsel for the petitioner could not cite any cogent and valid grounds, which may constrain this Court to, despite the legality of the impugned order(s)/FIR becoming evaluated by a Co-ordinate Bench of this Court, now re-examine the validity thereof, however, he has persistently argued for interference of this Court through making re-analysis of the impugned order(s)/FIR, specifically in view of the bar engrafted in proviso to Section 132 of the Evidence Act. Therefore, despite making of the order dated 14.12.2022 on petitioner's co-accused's petition (supra), this Court can and is accordingly exercising its jurisdiction under



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Section 482 of the Cr.P.C. for examining the issues stirred in this petition.

19. Since the learned counsel for the petitioner has, in his claiming the reliefs extracted in the lead paragraphs of this verdict, laid much emphasis on Section 132 of the Evidence Act, therefore, it is deemed apt to, at this juncture, make a survey of this Section, which is extracted hereunder:-

“132. Witness not excused from answering on ground that answer will criminate. — A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind:

Proviso. — Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.”

19. On the strength of the hereinabove extracted Section, the learned counsel for the petitioner has constructed an argument that, mere testification of the petitioner as DW-21 in the trial of FIR No.68 (supra), could not have been used by the learned Magistrate concerned for launching prosecution against him in the impugned FIR. The reason being that, the proviso attached to Section 132 of the Evidence Act explicitly states that any answer which a witness shall be compelled to give shall not subject him to any arrest or prosecution, or to be proved against him in any criminal proceedings, except for the purpose of prosecution for giving false evidence by such answer.

20. This Court has examined the impugned order dated 22.03.2014



(Annexure P-1), which constituted the bedrock for registration of the impugned FIR, however, what emerges from scrutiny thereof is that, the learned Magistrate concerned did not at all place any reliance upon any testimony made by the petitioner, for ordering registration of the impugned FIR, rather it took into consideration all the facts and circumstances of the case, besides taking into account the recommendations/directions recorded by the learned trial Court concerned against the petitioner and his co-accused Insp. Tejinder Singh, in the verdict dated 05.06.2013. Consequently, the argument of the petitioner that Section 132 of the Evidence Act has been infringed while drawing the impugned order dated 22.03.2014 pales into insignificance, as this Section does not come into operation in the peculiar facts and circumstances of the present case. The grievance of the petitioner, if any, can be attributed to the adverse recommendations/directions recorded by the learned trial Court concerned in verdict dated 05.06.2013. However, it is also not under dispute that this verdict dated 05.06.2013 has now attained finality and conclusivity.

21. Now, insofar applicability of Sections 195 and 340 of the Cr.P.C. is concerned, which constitutes second argument of the learned counsel for the petitioner, this Court is of the opinion that it is a misplaced argument, inasmuch as, the petitioner and his co-accused are not facing trial under any of the offences prescribed in Section 195 of the Cr.P.C. In fact, the petitioner and his co-accused are facing trial for commission of offence under Section 167, 467, 468, 471, 201, 120-B of the IPC. Therefore, there arose no occasion for adhering to the procedure envisaged under Section 195 and 340 of the Cr.P.C.



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22. Nonetheless, the biggest hurdle, which the petitioner needs to cross, is that of delay and laches. Although the vice of delay and laches is strictly not applicable on a person invoking the inherent jurisdiction of this Court under Section 482 of the Cr.P.C., but, in the instant matter, it is in fact a big impediment for the petitioner. It is not under dispute that the impugned order, thus ordering registration of the impugned FIR, was passed almost a decade ago, i.e. on 22.03.2014. The petitioner, who is a retired police officer, is well aware about his right, which also reflects from his act of preferring a statutory revision against the order dated 22.03.2014 before the learned revisional court concerned. After dismissal of his revision petition on 08.09.2016, the petitioner opted to remain silent for almost 08 straight years.

23. In the case of ***“Pathapati Subba Reddy (Died) by L.Rs. & Ors. Versus the special deputy collector (Ia)”, Special Leave Petition (Civil) No. 31248 of 2018, Decided on: April 8, 2024***, the Hon’ble Supreme Court has categorically held that, it is for the general welfare that a period of limitation be put to litigation and the basic object is to put an end to every legal remedy and to have a fixed period of life for every litigation, as it is futile to keep any litigation or dispute pending indefinitely. The relevant paragraphs of this judgment read as under:-

“7. The law of limitation is founded on public policy. It is enshrined in the legal maxim “interest reipublicae ut sit finis litium” i.e. it is for the general welfare that a period of limitation be put to litigation. The object is to put an end to every legal remedy and to have a fixed period of life for every litigation as it is futile to keep any litigation or dispute pending indefinitely. Even public policy requires that there should be an end to the litigation otherwise it would be a dichotomy if the litigation is made immortal vis-a-vis the litigating parties i.e. human beings, who are mortals.

8. The courts have always treated the statutes of limitation and pre-



scription as statutes of peace and repose. They envisage that a right not exercised or the remedy not availed for a long time ceases to exist. This is one way of putting to an end to a litigation by barring the remedy rather than the right with the passage of time.

9. Section 3 of the Limitation Act in no uncertain terms lays down that no suit, appeal or application instituted, preferred or made after the period prescribed shall be entertained rather dismissed even though limitation has not been set up as a defence subject to the exceptions contained in Sections 4 to 24 (inclusive) of the Limitation Act.”

24. This Court has examined the entire petition, however, there is not a whisper, much less any sufficient and reasonable grounds to pass the hurdle of delay and laches. Therefore, in absence of the same, this Court refrains from exercising its jurisdiction under Section 482 of the Cr.P.C. after 10 years of passing of the basic order dated 22.03.2014. This Court is well aware that, to protect innocent citizens from the abuse of process of law, the inherent powers of this Court under Section 482 of the Cr.P.C. can be invoked at any stage of trial, however, in the facts and circumstances explained above, this Court does not find any cogent reason, which may constrain this Court to exercise its jurisdiction after such a huge delay of 10 years.

25. Reiteratedly, earlier the petitioner's co-accused Insp. Tejinder Singh had also accessed this Court, thereby claiming reliefs almost alike to the ones at hand, however, his claim was declined. Now, the petitioner has also approached this Court on the same cause of action. These facts point out only one thing that the petitioner's intent is to delay the conclusion of trial, which is now at the stage of prosecution evidence.

26. This Court has also examined the impugned order dated 30.10.2023 (Annexure P-4), whereby, the learned Magistrate concerned has dismissed the petitioner's discharge application filed under Section 227 of

the Cr.P.C. Although this order is a revisable order, but, since the petitioner has approached this Court through the instant motion, therefore, the validity of this order is also examined. The learned counsel for the petitioner has failed to point out any illegality or perversity in this order. Perusal of this order reflects that the issues, as raised by the petitioner before the learned trial Court concerned, are the issues, which require appreciation of evidence, which is yet to be adduced by the prosecution. The learned trial Court concerned has aptly decided all the issues raised by the petitioner and now charges have also been framed after finding sufficient material on record.

27. In summa, the instant petition is **dismissed** being bereft of any merits.

28. It transpires from the record that the Final Report in the present case was presented on 18.09.2015, but, charges have been framed on 20.02.2024, i.e. after approx. 09 years. Although this Court is, in the absence of requisite information, not in a position to comprehend the reason behind such a huge delay in framing of charges, yet it is deemed imperative to direct the learned trial Court concerned to make all efforts to expeditiously conclude the trial of the present case, preferably within two years from today.

29. A copy of this order be forthwith sent to the learned trial Court concerned for information and compliance.

May 06, 2024

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(KULDEEP TIWARI)
JUDGE