



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

CRM-M-42971-2023

Date of Decision:-06.08.2024

Vinay @ Gandhi.

.....Petitioner.

Vs.

State of Punjab.

.....Respondent.

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

Present:- Mr. Anil Kumar Spehia, Advocate for the Petitioner.

Mr. Mohit Saroha, Assistant Advocate General, Punjab.

JASJIT SINGH BEDI, J.

The prayer in the petition under Section 482 Cr.PC is for quashing of the case FIR No.71 dated 28.04.2018 under Sections 379-B, 34 IPC and Section 411 IPC (was added later on) registered at Police Station Division No.6, District Police Commissionerate, Jalandhar, Punjab (Annexure P-1), the proclamation order dated 30.10.2019 passed by Judicial Magistrate (NRI Cases), Jalandhar (Annexure P-2) and all subsequent proceedings arising therefrom.

2. The brief facts of the case are that the aforementioned FIR came to be registered at the instance of Narinder Pal Dhanda son of Paramjit who stated that while he along with his friend Ravi were going towards Attari Bazar then two young men came on a motor cycle from behind snatched his I phone and escaped from the spot. The number of the motor cycle was 4880.



3. After the registration of the FIR during the course of the investigation Sanjay @ Mini was arrested in FIR No.86 of 2018 P.S. Division No.6 wherein he suffered his disclosure statement to the effect that he along with his co-accused Vinay @ Gandhi (petitioner) had snatched the mobile phone of Narinder Pal complainant and both the accused were nominated as accused in the present case.

4. As the petitioner could not be arrested he was declared proclaimed offender vide order dated 30.10.2019 (Annexure P-4). Meanwhile, his co-accused namely Sanju @ Mini faced the Trial and was acquitted vide judgment dated 04.03.2020 (Annexure P-2).

5. The petitioner filed his first petition bearing CRM-M-441-2022 which came to be argued and withdrawn on 09.05.2022 and the said order is reproduced as under:-

“ After arguing for sometime, learned Counsel for the petitioner prays for permission to withdraw the petition at this stage.

Dismissed as withdrawn at this stage.”

6. The instant second petition has now been filed impugning the FIR (Annexure P-1) and the order declaring the petitioner a proclaimed offender (Annexure P-2).

7. The Counsel for the petitioner contends that as the co-accused of the petitioner namely Sanju @ Mini had faced the Trial and was acquitted and no fresh material was to come up against the petitioner in case he was to face trial the holding of the Trial itself would be an exercise in futility and therefore, the FIR was liable to be quashed. As regards the order dated 30.10.2019 vide which the petitioner had been declared a proclaimed offender he contends that the said order had been passed in violation of Section 82 of Cr.PC and the said order was liable to be quashed.



7. The Counsel for the State on the other contends that during the course of the Trial against the co-accused Sanju @ Mini one of the grounds of acquittal was that no test identification parade had been held and the first time identification of the said accused in court had little evidentiary value. In the instant case however as the petitioner had never joined the investigation, there was every possibility that a test identification parade would be held if he was to join investigation and consequently the evidence available against the petitioner would be different from that available against his co-accused, who had been acquitted. He further contends that there was no violation of Section 82 Cr.PC. The proclamation was issued on 10.09.2019 and the case was adjourned to 26.09.2019. As 30 days had not elapsed the case was adjourned to 30.10.2019 on which date the impugned order had been passed. Therefore, no fault could be found with the said order as well. In addition he contends that the first petition filed by the petitioner was argued at length and withdrawn vide order dated 09.05.22022 (Annexure P-5) and there were no change in circumstances warranting the filing of the instant second petition. Therefore, the same was liable to be dismissed.

8. I have heard counsel for the parties and examined the record.

9. Before proceedings further it would be relevant to examine some of the judgments of the Hon'ble Apex Court and various High Courts which are as under:-.

In **Vishwas Bhandari Vs. State of Punjab & Anr. 2021 (2) SCC**

605 the Hon'ble Supreme Court held as under:-

“ 3. Upon completion of the investigation, a report under Section 173 Code was filed against Vikram Roop Rai. Furthermore, proceedings for declaring the appellant as proclaimed offender were also initiated.



4. *In the proceedings before the Court, the complainant appeared and recorded her statement while restricting her allegations in respect of Vikram Roop Rai only. In the cross-examination, she inter-alia stated to the following effect:*

" My daughter has solemnised marriage with accused Vikram on 4 August 2013 both the families had solemnised the said marriage at Gurudwara Sahib of Khera Road, Phagwara. I have attended the said marriage, we prepared CD and also clicked photos of the said marriage. Thereafter, Lunch was served at Poonam Hotel, Phagwara. After marriage, my daughter and accused Vikram stayed with us."

5. *The prosecutrix appeared as PW-2. She deposed that accused Vikram Roop Rai had taken her on the promise that he would marry her. He took her to his parents' house and kept her in his house until she was 18 years of age and only then contacted her parents. It was on 24.7.2013 that the accused Vikram Roop Rai called her parents and it was decided that both of them would get married. Subsequently, she married the accused on 4.8.2013.*

6. *The learned Additional Sessions Judge vide order dated 13.8.2013 held that neither the complainant nor the prosecutrix have disclosed the exact date of birth. Further, no birth certificate was produced to show that the age of the prosecutrix was less than 18 years on the alleged date of occurrence of abduction. The learned trial court recorded the following finding:*

"21. Although the prosecutrix PW2 in her examination in chief has stated that the accused had abducted her on the pretext that he will solemnized marriage but how and where abducted her has not been explained by her. Admittedly it is stated by her that was known to her. There is nothing in the statement of this witness that she tried to escape from the clutches of the accused or that she was forced to marry him. Even if it is presumed that the prosecutrix was minor but if she leaves her parents home in every case it cannot be held that it is the accused who has possibly abducted the prosecutrix. Prosecutrix was known to the accused, went with him, married him with consent of both families, had two children with him, then, it cannot be said that she was taken out forcibly from the custody of her lawful guardian, as it is not proved that she is minor as non production of birth certificate issued by Registrar of Births and Deaths, Jalandhar, gives rise to the presumption that, the same could have shown her to be



major and hence doubt creeps into the version of the prosecution, the benefit of which is to be given to the accused."

With these findings, the accused Vikram Roop Rai was acquitted.

7. *It is thereafter, the appellant invoked the jurisdiction of the High Court for quashing of the FIR and subsequent proceedings, inter alia, on the ground that neither the prosecutrix nor the complainant have levelled an iota of allegation against the appellant in respect of abduction of the prosecutrix. In fact, the prosecutrix married Vikram Roop Rai, the main accused and had two children with him. Such marriage was with the consent of their families. Since there is no shred of evidence against the appellant, therefore, continuation of proceedings against the appellant would amount to abuse of process of law.*

8. *We have heard learned Counsel for the parties.*

9. ***We find that the evidence of the prosecutrix and the complainant before the Court shows that there is no allegation whatsoever against the appellant. The main allegation was against Vikram Roop Rai but the prosecutrix married him on 4.8.2013 and had given birth to two children out of that wedlock. In the absence of any allegation against the appellant, we find that the continuation of proceedings against him is nothing but an abuse of process of law.***

10. ***Since there is no evidence against the appellant, the proceedings initiated against him on the basis of FIR would be untenable. The High Court was, thus, not justified in dismissing the petition against the appellant.***

11. *Hence, the present appeal is allowed. The order passed by the High Court is set aside and the entire proceedings consequent to FIR No. 31 of 2013 and charge sheet stand quashed."*

In *Sudo Mandal Vs. State of Punjab* 2011(2) RCR 453 this

Court held as under:-

“ 21. *We find that the prosecution has miserably failed to establish its case against the accused/appellants beyond*



reasonable doubt. Therefore, the judgment of conviction recorded under Section 302 of the Indian Penal Code against accused Sudo Mandal and the sentence imposed thereunder and the conviction of accused Dharminder Mandal for offence under Section 302 read with Section 34 of the Indian Penal Code and the sentence imposed thereunder are set aside. Both the appeals are allowed. Appellants Sudo Mandal @ Diwarak Mandal and Dharminder Mandal are directed to set at liberty forthwith, if not required in any other case.

Quashing of pending proceedings against other accused:-

22. *While disposing of these two appeals, we are very much concerned about the absconding village rustic accused namely Radha Mandal, Rajiya Mandal and Sambodh Mandal, who had successfully evaded the dragnet of the police. The Investigating agency has put up a case implanting eye witnesses as against all the accused. Both the eye witnesses projected by the prosecution had not passed the test of trustworthiness. Their own showing would go to establish without any pale of doubt that they could not have witnessed the occurrence. The other materials produced by the prosecution also did not advance the case of the prosecution any further. The above facts and circumstances have persuaded us to come to a definite conclusion that the accused in this case were not the perpetrators of crime of murder as alleged by the prosecution. The same set of materials would be produced before the Sessions Court on production of the remaining three accused namely Radha Mandal, Rajiya Mandal and Sambodh Mandal. After all the poor innocent labourers had migrated to other places to eke out their livelihood. The appellants herein had in fact suffered imprisonment for such a long time leaving behind their kith and kin, who might have been in dire need of financial support and help from them. Such an unpleasant situation shall not be created for the other three accused against whom also there is no material on record to fasten them with the charge of murder. We seriously pondered over rendering judicial succour to those faceless and voiceless accused who had taken to heels and hidden themselves apprehending the wrath of criminal proceedings for the heinous crime of murder. We are convinced*



that our judicial arm is not so crippled as to betray the vague hope of the hopeless.

23. We are conscious of the fact situation that those three accused namely Radha Mandal, Rajiya Mandal and Sambodh Mandal had absconded and were declared as proclaimed offenders. They had not faced the trial, but when we find that no case could be made out as against them also with the very same rickety materials, those accused also will have to be relieved of the impending pain of facing the prosecution for murder. Section 482 of the Code of Criminal Procedure reads as follows :-

"Saving of inherent powers of High Court. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

24. The above provisions recognise the inherent powers of the Court to do real and substantial justice, preventing the abuse of the process of the Court. The statutory recognition of the inherent jurisdiction of the criminal Court indicates that there is a power for the criminal Courts to make such an order as may be necessary to meet the ends of justice. We are conscious of the fact that the powers under Section 482 of the Code of Criminal Procedure are to be exercised very sparingly and in exceptional cases where abuse of the process of the Court would result in serious miscarriage of justice. The inherent powers of the Court should not be exercised to stifle legitimate prosecution. But at any rate the settled position is that this Court has the jurisdiction to quash the entire criminal proceedings to prevent the abuse of the process of the Court in order to secure the ends of justice. In our considered view the same inherent powers can be exercised when this Court finds that the innocent accused, who had absconded would simply face the empty formality of trial with the very same unbelievable and untrustworthy evidence, which would ultimately lead to their acquittal. Bringing the absconding accused to face the trial in this case in the above facts and circumstances would amount to abuse of the process of the Court. To secure the ends of justice,



we hereby quash the entire proceedings as against the absconding accused namely Radha Mandal, Rajiya Mandal and Sambodh Mandal pending before Judicial Magistrate Ist Class, Bathinda/Sessions Judge, Bathinda, as no useful purpose will be served even if they are procured and ordered to face the trial in this case.”

An SLP (Crl.) No(S).7909/2015 was filed against the aforesaid judgment of this Court which came to be dismissed on 25.01.2019.

In ***Central Bureau of Investigation Vs. Akhilesh Singh*** **2005(1) SCC 478** two accused were discharged. The High Court quashed charges framed qua the co-accused. The CBI challenged the said order whereby the charges were quashed. While dismissing the petition, the Hon’ble Supreme Court held as under:-

5. *The police recovered some bullets from the place of occurrence and also from the dead body of deceased Syed Modi. The police also recovered a point 38 bore revolver pursuant to the confession made by Amar Bahadur Singh. A point 9 mm pistol was recovered at the instance of accused Bhagwati Singh @ Pappu. On the basis of the material available with the investigating agency, they filed a charge-sheet against the respondent. It is interesting to note that the original accused Dr. Sanjay Singh and Mrs. Amita Kulkarni were implicated as accused, but both of them were discharged by an order passed by the Sessions Judge and that order of discharge was challenged by the State before the High Court unsuccessfully. A Special Leave Petition also was filed before this Court and that too ended in dismissal on 27.1.1994. Therefore, the very basis of the alleged conspiracy by the respondent with Dr. Sanjay Singh lost its substratum. Admittedly, the respondent was not present at Lucknow when the incident happened. Respondent was implicated in the case on the basis of the alleged conspiracy between himself and the original accused Dr. Sanjay Singh. There is no other material placed before the court to prove the complicity of the respondent. Mr. Ram Jethmalani, learned Senior Advocate appearing on behalf of the respondent drew our*



attention to the various reasons given by the learned Single Judge for passing the impugned order. There was no direct evidence to show that the respondent had supplied the weapons and rendered assistance to the assailants in carrying out the common object of killing Syed Modi. Had the conspiracy charge been established, at least some of the acts and conduct of the respondent could have been made admissible under the provisions of Section 10 of the Evidence Act. **Once the main accused, who is alleged to have hatched the conspiracy and who had the motive to kill the deceased was discharged, and when that matter had attained finality, the learned Single Judge was fully justified in holding that no purpose would be served in further proceeding with the case against the respondent.**

6. Another contention urged by the appellant was that the High Court exercised the jurisdiction under Section 482 of the Criminal Procedure Court after a long lapse of time. It is true that the respondent challenged the framing of charges against him after a considerable delay, but it seems that the order of discharge passed in favour of the main accused attained finality only in 1994 when this Court dismissed the Special Leave Petition. It was thereafter only that the respondent approached the court with an application under Section 482 of the Criminal Procedure Code and the learned Single Judge in those circumstances condoned the delay. We do not think that the power exercised by the High Court suffered from any illegality or perversity. Going by the facts and circumstances of the case, we do not think that this is a fit case where this Court can interfere. The appeal is dismissed accordingly.

Appeal dismissed.”

In ***Deepak Oram Vs. State of Orissa 2023(2) ILR (Cuttack)***

544 the Hon’ble Orissa High Court held as under:-

“ 16.1 The Full bench of the Kerala High Court in the case of ***Moosa v. Sub Inspector Of Police on 23 December, 2005***



reported in 2005 SCC Online Ker 605 : (2006) 1 KLT 552

(FB): 2006 CriLJ 1922 (FB) had been called upon to decide the question whether acquittal of a co-accused in a prior trial meant that the absconding accused who is subsequently tried is also entitled to an acquittal. After an exhaustive discussion of various decisions, the Full Bench summarized the legal position as follows:

" In the light of the above discussions, we may summarise the legal position as follows:

(i) The inherent powers of the High Court reserved and recognised under Section 482 of the Code of Criminal Procedure are sweeping and awesome; but such powers can be invoked only.

(a) to give effect to any order passed under the Code of Criminal Procedure or

(b) to prevent abuse of process of any court or

(c) otherwise to secure the ends of justice. Such powers may have to be exercised in an appropriate case to render justice even beyond the law.

(ii) Considering the nature, width and amplitude of the powers, it would be unnecessary, inexpedient and imprudent to prescribe or stipulate any straight jacket formula to identify cases where such powers can or need not be invoked.

(iii) But such powers can be invoked only in exceptional and rare cases and cannot be invoked as a matter of course. Where the Code provides methods and procedures to deal with the given situation, in the absence of exceptional and compelling reasons, invocation of the powers under Section 482 of the Code of Criminal Procedure is not necessary or permissible.

(iv) The fact that an accused can seek discharge/dropping of proceedings/acquittal under the relevant provisions of the Code in the normal course would



certainly be a justifiable reason, in the absence of exceptional and compelling reasons, for the High Court not invoking its extraordinary powers under Section 482 Cr.P.C.

(v) In a trial against the co-accused the prosecution is not called upon, nor is it expected to adduce evidence against the absconding co-accused. In such trial the prosecution cannot be held to have the opportunity or obligation to adduce all evidence against the absconding co-accused. The fact that the testimony of a witness was not accepted or acted upon in the trial against the co-accused is no reason to assume that he shall not tender incriminating evidence or that his evidence will not be accepted in such later trial.

(vi) On the basis of materials placed before the High Court in proceedings under Section 482 of the Code of Criminal Procedure (which materials can be placed before the court in appropriate proceedings before the subordinate courts) such extraordinary inherent powers under Section 482 of the Code of Criminal Procedure cannot normally be invoked, unless such materials are of an unimpeachable nature which can be translated into legal evidence in the course of trial.

(vii) The judgment of acquittal of a co-accused in a criminal trial is not admissible under Sections 40 to 43 of the Evidence Act to bar the subsequent trial of the absconding co-accused and cannot hence be reckoned as a relevant document while considering the prayer to quash the proceedings under Section 482 Cr.P.C. Such judgments will be admissible only to show as to who were the parties in the earlier proceedings or the factum of acquittal.

(viii) While considering the prayer for invocation of the extraordinary inherent jurisdiction to serve the ends of justice, it is perfectly permissible for the court to consider the bona fides - the cleanliness of the hands of the seeker. If he is a fugitive from justice having absconded or jumped bail without sufficient reason or having waited for



manipulation of hostility of witnesses, such improper conduct would certainly be a justifiable reason for the court to refuse to invoke its powers under Section 482 of the Code of Criminal Procedure.

(ix) The fact that the co-accused have secured acquittal in the trial against them in the absence of absconding co-accused cannot by itself be reckoned as a relevant circumstance while considering invocation of the powers under Section 482 of the Code of Criminal Procedure.

(x) A judgment not inter-parties cannot justify the invocation of the doctrine of issue estoppel under the Indian law at present.

(xi) Conscious of the above general principles, the High Court has to consider in each case whether the powers under Section 482 of the Code of Criminal Procedure deserve to be invoked. Judicial wisdom, sagacity, sobriety and circumspection have to be pressed into service to identify that rare and exceptional case where invocation of the extraordinary inherent jurisdiction is warranted to bring about premature termination of proceedings subject of course to the general principles narrated above.

16.2 *In the case of Akhilesh Singh (supra), the respondent was one of the accused in a case Section 120 B of the IPC read with Section -302 IPC and Section 109 of the IPC. The allegations against him were that he had entered into a conspiracy with the main accused Dr Sanjay Singh and in furtherance of the common object of the conspiracy joined hands with the other accused to commit the murder of Syed Modi. He was admittedly not present in Lucknow on the date of occurrence but had been implicated on the basis of conspiracy with Dr Sanjay Singh, the original accused. Dr Sanjay Singh and Ms. Ameeta Kulkarni were discharged by the Sessions Court and this order was challenged unsuccessfully in the High Court as well as the Supreme Court by the C.B.I. After the order of discharge attained finality which was eight years after discharge of the main accused, Akhilesh Singh challenged the order framing charge against him in the High Court. The Single*



Judge allowed the application and quashed the charges against him. The Supreme Court did not interfere with the orders either on merits or on the ground that the accused had approached the High Court at a belated stage, holding that the order had attained finality only in 1994 after which the accused had approached the High Court by filing the application under Section 482 Cr.P.C. It further held that once the main accused who had hatched the conspiracy and who had the motive to kill the deceased had been discharged and the order had attained finality, the Single Judge was justified in holding that no useful purpose would be served by proceeding against the Respondent.

16.3 *In the case of **Kanhu Behera v. State of Orissa, 2005 (II) OLR, 386**, this Court held as follows:-*

"7. In the present case perusal of the case diary reveals that the petitioner is the uncle-in- law of the deceased and the only allegation against him in the FIR is that he along with other family members demanded additional dowry of Rs.5,000/-. Except this allegation, there is no other evidence against him. None of the witnesses except the informant has even taken the name of the petitioner in their statements before the I.O. Since there is no prima facie case against the petitioner for the alleged offences and the principal accused persons have already been acquitted after a full-fledged trial, continuance of the criminal proceeding against the petitioner would be undoubtedly abuse of the process of the Court as in the present facts and circumstances of the case, the chance of conviction of the petitioner is totally bleak."

16.4 *In the case of Premananda Sahu (supra), this Court after referring to a number of decisions of the Supreme Court and this Court, quashed the proceedings after holding as follows:*

" 16. In such situation, it will be always appropriate for the Court, for the ends of justice as well as to prevent abuse of the process of law to quash the proceeding against such absconding accused in its entirety by



exercising the inherent power under section 482 Cr.P.C. It is needless to mention that the inherent powers of the High Court recognized under section 482 Cr.P.C. can always be used to prevent abuse of the process of any court or otherwise to secure the ends of justice and in appropriate cases, such power is required to be exercised to render justice even beyond law.

17. *In the above parameters, examining the facts of the present case, this court is of the view that if the petitioner is required to face the trial, such trial would definitely be a futile exercise and will amount to an abuse of the process of law. This Court further finds that this is an appropriate case where the criminal proceeding against the petitioner is required to be quashed."*

16.5 *In the case of Satyaban Pradhan (supra) this Court has held as follows:*

"9. *In applying the principle laid down in the aforesaid cases, this Court finds that the main accused Madhab Chandra Sahoo, who had allegedly assaulted the informant on his face by means of a stone with an intention to commit his murder, has already been acquitted. The allegation against the present petitioner is that he caught hold of the informant and threw him on the ground and caught hold of him. When the prosecution could not prove the main allegation of commission of offence under section 307 of the I.P.C. against the co-accused and he has been acquitted of the charges under Section 232 Cr.P.C., there is hardly any possibility of proving the case under section 307/34 of the I.P.C. against the present petitioner. So, in this view of the material on record, this court is of the opinion that it will be appropriate for this Court, for ends of justice and to prevent abuse the process of law to quash the proceeding against the absconding accused i.e. the petitioner in its entirety by exercising the inherent power under Section 482 of the Cr.P.C."*



16.6 In the case of **Hidayat Khan @ Hidayatullah Khan v. State of Orissa** reported in (2017) 68 Orissa.Cri.R 945, this Court has held as follows :

"7 There is no settled principle of law that whenever some accused persons are acquitted after facing trial or discharged by the trial Court, the co-accused should also be discharged or the proceeding in respect of such co-accused should also be quashed. Absconding accused cannot be given premium to frustrate the justice or to misuse the process of law by treating him at par with those accused who have shown respect for legal processes and have appeared and have not evaded their arrest"

16.7 In the case of **Ajaya Kumar Sethi v. State of Orissa** 2018 SCC Online Ori 275, this Court rejected the prayer of the co accused for quashing of the proceedings holding as follows:

"14. It cannot be lost sight of the fact that it is a case of abduction and gang rape of a married lady. Even if the victim has not supported the prosecution case during trial of the co-accused persons, the possibility of the victim supporting the prosecution case during the course of trial of the petitioner cannot be ruled out. In that event, what would be the evidentiary value of the victim's statement after confrontation of her previous statement given while deposing as P.W.5 in case of the co-accused persons, is to be assessed by the learned trial Court. The victim may give explanation as to why she did not support the prosecution case while she was examined during trial of the co-accused persons in spite of the fact that she gave her statement before police as well as before the Magistrate implicating the accused persons. The learned trial Court may accept such explanation. If the accused against whom accusation of abduction and gang rape is there remains as an absconder, watches the criminal proceeding in respect of the co-accused persons and after such proceeding ended in acquittal before the learned trial Court, he comes out of his hiding place either because he felt that it had



become insecure or because he believed that his presence would sooner nor later be discovered by his pursuers or that in view of the acquittal of the co-accused persons, the prosecution case against him has become weak and the Court accepts his plea on the basis of the evidence adduced in the trial of the co-accused persons and quashes the proceeding against him then it would be a travesty of justice.

15. *What will happen in future in the trial of the petitioner cannot certainly be predicted at this stage. This Court cannot assume a thing and quash the criminal proceeding against the petitioner on the ground that the co-accused persons have been acquitted as the victim has not supported the prosecution case. It cannot be said that the continuance of the criminal proceeding against the petitioner in spite of acquittal of the co-accused persons would be an abuse of process. When prima facie materials are there on record against the petitioner for commission of offences under which the charge sheet has been submitted, I am not inclined to invoke the inherent power under section 482 of Cr.P.C. to quash the impugned order and the criminal proceeding against the petitioner in G.R. Case No. 844 of 2003."*

Discussion

17. ***On a conspectus of various decisions of the Supreme Court and different High Courts, it is apparent that there is no universal rule that in each and every case of acquittal of a co accused, the case against an absconding co accused has to be quashed. When the conclusion in the subsequent trial can be predicted with certainty that there is no chance of conviction of such co accused, valuable time and resources of the trial court should not be wasted for holding such a trial. There can also be no quarrel over the proposition that no useful purpose would be served by compelling an accused who face a trial subsequently, where the main accused who has been tried earlier, has been acquitted or discharged due to paucity or non availability of evidence and there is no***



chance of better evidence being adduced in the subsequent trial or where the evidence against all the accused persons is inseparable and indivisible. But for arriving at such a conclusion and quashing the proceedings, the High Court has to carefully examine the nature of evidence already adduced in the concluded trial and the nature of materials available against the absconding accused and the type of evidence which may or can be adduced against the accused who has not faced the trial. If the fate of the trial cannot be predicted with certainty, the proceeding should not be quashed.

18. In the trial of the co accused, the prosecution does not have the opportunity or obligation to adduce all evidence against the absconding co-accused. The fact that the testimony of a witness was not accepted or acted upon in that trial against the co-accused is no reason to assume that such witness shall not tender incriminating evidence or that his evidence will not be accepted in such later trial. It may be possible that a witness may not have come to the witness box or having come, may not have deposed against the accused persons in the trial for a variety of reasons including false implication, threats from absconding accused or failure to recollect the incident. But this does not mean that such a witness will never implicate the accused in the subsequent trial. Similarly a witness who has not come to the witness box in the first trial, may appear and depose against an accused who has not faced the previous trial.

19. The High Court under Section 482 of the Code of Criminal Procedure, 1973, has the inherent power to pass such orders as may be considered necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. Such power can also be exercised suo motu. But it has to be exercised sparingly and with circumspection. It is to be exercised ex debito justitiae to prevent abuse of process of court, but should not be exercised to stifle legitimate prosecution. (See **State of Haryana v. Bhajan Lal**, reported in 1992 Supp (1) SCC 335 : AIR 1992 SC 604 ; **State of Karnataka v. M. Devendrappa** : (2002) 3 SCC 89; **A.P. v. Golconda Linga Swamy** : 2004 SCC (CrL) 1805). As the law in this regard has been settled in a catena of decisions of the



Supreme Court including the aforesaid decisions and reiterated by this Court in a number of decisions, it is not necessary to make an elaborate discussion of the same. But it is necessary to state that it is also been decided in a number of decisions that the absconding accused who have scant regard for the legal process, should not be shown any indulgence while exercising the extraordinary power under Section - 482 Cr.P.C.

20. While considering the prayer of an accused for quashing of proceedings in exercise of power under Section - 482 Cr.P.C., where the chances of conviction of the accused is bleak, delay in approaching the Court may not be a ground for rejecting the application if the High Court is satisfied that allowing the proceedings to continue will be an exercise in futility and result in wastage of time and resources of the Court. But at the same time, it is open to the High Court to take into account, the bona fides and conduct of the accused who invokes exercise of the extraordinary power under Section 482 of the Cr.P.C. Whether such accused absconded or jumped bail, the reasons for doing so and whether he has waited "for manipulation of hostility of witnesses"? Conduct of an accused can be a justifiable reason for the court to refuse to exercise its power under Section 482 of the Code of Criminal Procedure."

In Anant Mishra @ Amit Mishra @ Surya Praksh Mishra Vs.

State of U.P. & Anr 2022(4) ILR (Allahabad) 307 the High Court of Judicature at Allahabad, Lucknow Bench held as under:-

" 3. Brief facts giving rise to the present petition are that opposite party no. 2 - Matadeen lodged an FIR on 08.10.2016 against the unknown persons bearing Case Crime No. 372 of 2016 under Section 364 IPC, Police Station Lambhuwa, District Sultanpur with the allegation that some unknown accused abducted his brother Sikander. During investigation, the name of five persons, namely, Jitendra Pandey alias Chintu, Jitenra Pathak, Dharam Raj Nishad, Anand Deep Dubey alias Ashu Deubey and Anan Mishra (present applicant) came into light. Thereafter the police submitted charge sheet against Jitendra



Pandey, Jitendra Pathak and Dharam Raj Nishad and they were arrested. The trial against three persons were commenced before the learned Additional District Judge Court No. 3 Sultanpur vide Sessions Trial No. 111 of 2017 in which statement of PW-1 complainant Matadeen was recorded on 06.03.2018.

4. *Learned counsel for petitioner has submitted that in this case three witnesses were examined. PW-1 Matadeen is the first informant, brother of the abductee has not supported the prosecution case. PW-2 Monu alias Dilip Kumar, who is niece of abductee, has clearly stated that no one had called him on mobile phone for ransom of Rs.25,00,000/- and he also did not support the prosecution case. PW-3 is the abductee Sikander. He also did not support the prosecution case. He clearly stated that nobody abducted him nor any ransom was demanded. Thus PW-3 has also not supported the case of the prosecution. Therefore, all the three accused persons were exonerated of the charges levelled against them under Section 364-A IPC and they have been acquitted by learned IIIrd Additional Sessions Judge, Sultanpur vide order dated 28.09.2018.*

5. *Further submission of learned counsel for petitioner is that after passing the judgment of trial court dated 28.09.2018, this fact was within the knowledge of Investigating Officer but the Investigating Officer intentionally filed charge sheet on 24.12.2018 before the court concerned ignoring the judgment passed by trial court dated 28.09.2018.*

6. *It is further submitted that since the witnesses were examined in Sessions Trial No. 111 of 2017 and they did not support the prosecution case, so it will be futile exercise to face the trial. In support of his submission, learned counsel for petitioner has relied upon a judgment of this Court in the case of **Diwan Singh v. State reported in 1964 Lawsuit (All) 182**, in that case also the accused were discharged on the ground of acquittal of co-accused, which are having the similar allegation and same prosecution witnesses.*

7. *Learned counsel for petitioner has submitted that in the case of Diwan Singh (supra) it was held that if the allegation*



and witnesses are same and after examination of witnesses one accused is acquitted, then other co-accused can be punished or not. this Court has clearly held that under such circumstances the conviction of co-accused cannot be sustained.

8. *Learned AGA for the State has opposed the prayer made by learned counsel for the applicants, but could not dispute the fact of acquittal of other co-accused persons.*

9. *I have considered the rival submissions made by learned counsel for the parties, perused the record and the judgements relied upon by learned counsel for the applicant.*

10. *In the matter of Diwan Singh (Supra), this was the issue that if allegation & witnesses are same and after examination of witnesses one accused is acquitted, then other co-accused can be punished or not. This Court has clearly held that under such circumstances the conviction of co-accused cannot be sustained. Relevant paragraph Nos. 4, 5 & 6 of the judgment of Diwan Singh (supra) are quoted hereinbelow:-*

"4. Learned counsel for the applicant has argued that both Manohar and the applicant were arrested together, searched together and as a single recovery list was prepared about the articles alleged to have been recovered from them and as the same witnesses were examined. by the prosecution in both the trials before the Magistrate, it will be incongruous to convict one of them on the basis of the same evidence and to acquit the other. I find force in this contention,

5. The judgment of the learned Sessions Judge in Criminal Appeal No. 262 of 1963 setting aside the conviction and sentence of Manoliar was not challenged by the State by filing an appeal and, as such, has become final. It is no doubt true that the learned Sessions fudge acquitted Manohar on a technical ground because, in his opinion, "the prosecution suffers from a patent infirmity creating reasonable doubt regarding the identity of the alleged fire arms". He did not disbelieve the evidence of the prosecution on facts. The reasoning given by the learned Sessions Judge in acquitting Manohar is not very appealing but the fact remains that Manohar who was arrested along with the applicant on the same charge and against whom the same evidence has been produced by the prosecution, has been acquitted, while the appeal of the applicant against his conviction was dismissed by the learned 1st Additional Sessions Judge of Etawah. In view of the acquittal of Manohar on the same facts and on the same evidence which has become absolute, it is not possible to maintain the conviction of the applicant.

6. *If two persons are prosecuted, though separately,*



*under the same charge for offences having been committed in the same transaction and on the basis of the same evidence, and if one of them is acquitted for whatever may be the reason and the other is convicted, then it will create an anomalous position in law and is likely to shake the confidence of the people in the administration of justice. Justice is not only to be done but also seem to be done. Therefore, I am clearly of opinion that as has been held in the case of **Pritam Singh v. State of Punjab. (S) AIR 1956 SC 415**, the principle of stare decisis will apply in the present case and the applicant's conviction cannot be sustained."*

11. After going through the judgements relied by learned counsel for the applicant, it is very much clear that Court has held that considering the testimony of witnesses, if one accused is acquitted, no criminal proceeding can be sustained against co accused on the same set of witnesses and in the present case too, there is no separate witness and on the basis of testimony of same prosecution witnesses, main accused was acquitted by the court below, Whenever there is no prospect of the case ending in conviction, valuable time of court should not be wasted for holding trial only for the purpose of completing the procedure to pronounce the conclusion on future date. Therefore, criminal proceeding cannot be permitted to continue against the applicant.

12. Therefore, under such facts and circumstances of the case as well as law laid down by the Apex Court, criminal proceeding against the applicants in S.T. No. 111 of 2017, arising out of Case Crime No. 372 of 2016, under Section 364-A/34 IPC, Police Station Lambhuwa, District Sultanpur cannot be sustained and is hereby quashed.

13. With the aforesaid observation/direction, this petition under Section 482 Cr.PC. is allowed. Office is directed to communicate this order to the trial court concerned for necessary action and compliance.

14. Office is directed to communicate this order to the trial court concerned for necessary action & compliance."

In Jasvinder Singh Vs. State of Punjab & Anr. (2013)1 RCR

(CrL) 310 this Court has held as under:-

" 6. Thus, the petitioner being a proclaimed offender, will



not come in the way of quashing the FIR, in case, the evidence against him is the same as that of the other co-accused who stand acquitted.

7. Accordingly, the said argument of learned counsel for the respondent-State cannot be sustained.

8. On the other hand, the co-accused were tried by the trial Court. However, the prosecution could not prove its case against them. The case of the petitioner is identical. It is not disputed that the evidence against the petitioner, too, is the same.

9. In the case of **Gurpreet Singh alias Khinder v. State of Punjab reported as 1995(2) RCR (Criminal) 127**, somewhere in similar circumstances, where the petitioner was charged for an offence under sections 3 and 4 of the Terrorist and Disruptive Activities (Prevention) Act, 1985, as well as, sections 302/34 IPC and the FIR was quashed as the co-accused, who were arrested stood acquitted by the trial Court. It was held that where the evidence is same, continuation of proceedings in the case of the petitioner would result in waste of court's time and unnecessary expenditure on State exchequer. The proceedings in the said case against the petitioner were quashed while relying on the judgment of Hon'ble the Apex Court rendered in the case titled as **Madhavrao Jiwaji Rao Scindia and another v. Sambhajirao Chandrojirao Angre and others reported as 1988(1) Recent CR 565** by observing in para 4 as under :-

" The local position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilised for any oblique purpose and where in the opinion of this Court in the opinion of the Court chances of an ultimate conviction are weak and, therefore, no useful purpose is likely to be served by allowing criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

In another case, the Single Bench of Delhi High Court titled as



Urmila Devi v. The State (NCT of Delhi), (Delhi) reported as 2007(1) RCR (Criminal) 246 while relying on various judgments of Hon'ble the Apex Court and the other High Courts quashed the proceedings against the petitioner under section 304B/34 IPC, as all the co-accused were acquitted and there was no question of invoking Section 34 I.P.C. Para 5 of the said judgment reads as under :-

"5. The learned counsel for the petitioner took me through the judgment dated 24.09.2003 to show the manner in which the evidence led by the prosecution witnesses and, particularly, by the mother and sisters of the deceased (Meenu) have been discussed in detail by the trial court and have been found to be untrustworthy. He then referred to the decision of a learned Single Judge of this Court in the case of **Sunil Kumar v. State, 1999(4) RCR (Criminal) 637 : 81(1999) DLT 197** wherein, also, the co-accused had been acquitted while the petitioner therein had been absconding and, therefore, the trial could not proceed against him. Subsequently, after the co-accused were acquitted, the petitioner, in that case, surrendered before the Additional Sessions Judge and sought his discharge on the ground that the other accused had been acquitted of the offences under Sections 148, 302, 149 IPC. Rejecting that prayer, the learned Additional Sessions Judge had framed a charge under sections 304/34 IPC against the petitioner therein. However, this court set aside that order and concluded that the trial would only mean a wastage of time inasmuch as it was of the view that the evidence against all the accused persons was inseparable and indivisible and, therefore, when the co-accused had been acquitted, there was no reason to treat the petitioner differently on the basis of the same evidence. Paragraph 3 of the said decision is relevant and it reads as under:-

"3. The question thus is as to whether in the face of the judgment of acquittal the petitioner should still be permitted to undergo the ordeal of a trial. In **Sat Kumar v. State of Haryana, AIR 1974 Supreme Court 294** it was held that there is no rule of law that if the Court acquits some of the accused on the evidence of a witness raising doubt with regard to them the other accused against whom there is absolute certainty about his complicity in the crime based on the remaining credible part of the evidence of that witness must be acquitted. But where the evidence against all the accused persons is inseparable and indivisible and if some of the accused persons have been acquitted, the remaining accused persons cannot be treated differently on the basis of the same evidence."

10. In the case of **Amarjit Vs. State reported as 1996(1) C.C. Cases 465**, the co-accused had been acquitted. The Court came to the conclusion that the petitioner was not required to undergo the ordeal of a trial, particularly, when the co-accused



was acquitted.

11. *Thus, in case, the evidence sought to be adduced is the same, allowing the trial to continue will unnecessary waste the time of the Court especially the result is also likely to be the same as in the case of the co-accused. It would be a futile exercise to continue the proceedings against the present petitioner when the other co-accused stands acquitted on the basis of same set of allegation.*

12. *In view of the above, discussion and facts, the present petition is allowed and FIR No. 22 dated 16.02.2000 under sections 452, 427, 506, 323, 148 & 149 IPC registered at Police Station Sohana, District S.A.S. Nagar, Mohali and Order dated 27.02.2001 passed by the trial Court and all consequential proceedings arising therefrom are hereby quashed.”*

In *Sri Premanand Sahu Vs. State of Orissa* 2013(8) RCR (Criminal) 35 the Hon’ble Orissa High Court held as under:-

“ 15. *There is no quarrel over the proposition laid down in the above decision in the case of T. Moosa (supra). However, this court is of the view that in the facts of a particular case, on analyzing the nature of allegations made by the prosecution against the accused persons and the materials collected during investigation, if it is found that in case of trial against the co-accused persons, the trial court, on considering such materials and evidence, has found that the prosecution has failed to prove its case against the said accused persons facing trial and it is found that there can be no other material which, if trial is conducted against the absconding accused, will point towards his guilt, allowing the trial to continue against the absconding accused will be nothing but a futile exercise wasting the hours of the Court, which will inevitably end in acquittal of the accused, who was absconding.*

16. *In such situation, it will be always appropriate for the Court, for the ends of justice as well as to prevent abuse of the process of law to quash the proceeding against such*



absconding accused in its entirety by exercising the inherent power under section 482 Cr.P.C.

It is needless to mention that the inherent powers of the High Court recognised under section 482 Criminal Procedure Code can always be used to prevent abuse of the process of any court or otherwise to secure the ends of justice and in appropriate cases, such power is required to be exercised to render justice even beyond law.

17. *In the above parameters, examining the facts of the present case, this Court is of the view that if the petitioner is required to face the trial, such trial would definitely be a futile exercise and will amount to an abuse of the process of law. This Court further finds that this is an appropriate case where the criminal proceeding against the petitioner is required to be quashed. Accordingly, the criminal proceeding, being G.R. Case No. 208 of 2010, corresponding to Naiknidhi P.S. Case No. 63 of 2010, pending before the learned J.M.F.C., Basudevpur stands quashed.*

The CRLMC is accordingly allowed.”

In Gurwinder Singh Vs. State of Punjab (2012) 3 (RCR) (Crl.)

360 this court has held as under:-

“ 7. *No doubt that the police had named 6 persons in the FIR, but the petitioner was not apprehended at the spot. 3 accused were tried in custody and 2 were declared proclaimed offenders, out of whom Sat Narain has already expired and 3 accused have already been acquitted by the learned Trial Court vide its order dated 18.04.2011 in which it has been observed that there is no cogent evidence on record led by the prosecution to prove that the petitioner had assembled with a motive to prepare a dacoity or a heinous offence. In reply, it has not been mentioned at all that the State is prosecuting the present petitioner with some other evidence which has not been brought on record in the trial in which similarly situated 3 co-accused had already been acquitted. Meaning thereby, the evidence which is being relied upon by the State is the same*



which has already been tested by the learned Trial Court at the time when the 3 co-accused of the petitioner were acquitted.

8. *The basic allegation is that the petitioner and co-accused were armed with swords and one of them was armed even with a country made pistol when the secret informer had divulged the information that they had assembled at the late hours with a motive to commit crime of dacoity as all of them were armed with lethal weapons. The petitioner could not be apprehended and the persons, who were apprehended and tried, had already been acquitted of the charge, meaning thereby it has not been accepted by the learned Trial Court on the evidence which has already been led that there was any motive much-less preparation on the part of the co-accused of the petitioner for committing crime of dacoity which could attract the provisions of Sections 399 & 402 Indian Penal Code. In State of Haryana and others' case (supra), the Supreme Court had laid down 7 parameters/ guidelines to be considered at the time of quashing of the FIR in which one of the guidelines was that where the allegations made in the FIR 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, then the Court can exercise its inherent jurisdiction under Section 482 of the Code of Criminal Procedure, 1973 in order to quash the FIR. Section 399 of the Indian Penal Code postulates a dacoity which is defined under Section 391 of the Indian Penal Code which provides for meeting of mind of five or more persons for committing the said offence, but in the present case, the question of dacoity does not arise at all after acquittal of 3 co-accused and death of one of the co-accused. Moreover, a finding has already been recorded that the prosecution has failed to bring on record any cogent evidence by which the Court could infer that the petitioner or his co-accused had assembled for the purpose of preparing a dacoity.*

9. *In Gurpreet Singh's case (supra), the allegation against 3 persons was of committing the offence, out of which one was arrested and the other had escaped. The arrested accused was acquitted and the escaped accused surrendered subsequently but no additional evidence was made available*



against the accused. In view thereof, the proceedings against him was ordered to be quashed on the principle that continuation of proceedings on the basis of same evidence would result in the waste of Court's time and unnecessary expenditure on State exchequer. In Sudo Mandal @ Diwarak Mandal's case (supra), five accused were involved in a murder case in which two accused were arrested and three were declared proclaimed offenders. The two arrested accused were tried and acquitted. It was held by this Court that it would be an empty formality to send rest of the accused for trial on the same unbelievable and untrustworthy evidence which would ultimately lead to their acquittal.

10. In view of the aforesaid discussion, I am of the view that in the present case as well, it would be an exercise in futility in proceeding against the present petitioner on the same set of evidence as nothing has been said in the reply that some additional evidence has been collected against the present petitioner for the purpose of his trial and as such the present FIR No. 244 dated 25.09.2007, registered under Sections 399, 401,402 of the Indian Penal Code and 25, 54, 59 of the Arms Act, 1959 at Police Station City Rajpura, District Patiala (Annexure P-1) and all the subsequent proceedings arising therefrom are found to be an abuse of process of law and are hereby quashed.”

10. A perusal of the aforesaid judgments would show that there is no hard and fast rule regarding quashing of proceedings qua an accused in a case where the co-accused have faced trial and have been acquitted. However, broadly the parameters that have been set out are that in case the court finds that no fresh evidence is likely to come up against the accused who is to face trial subsequently when the co-accused who have faced the trial already stand acquitted and the chances of conviction are bleak then it would be an exercise in futility and a sheer wastage of court time to subject the absconding accused to a denovo trial and the FIR is liable to be quashed.



However, on the other hand, if the court was to come to the conclusion that there was likelihood of other evidence coming up against an accused to be tried subsequently or that the Pws who had earlier deposed in favour of the accused were likely to depose against this accused to be tried subsequently then the court would be well within its rights to decline the prayer for quashing of the FIR.

11. Coming back to the facts of the present case a perusal of the judgment of acquittal would show that one of the ground for the same is that no test identification parade had been held with respect to the identity of Sanju @ Mini. By no stretch of imagination can it be held by this Court that if the petitioner joins proceedings no test identification parade would be held and, therefore, the consequence would be acquittal as in the case of Sanju @ Mini. There is some truth in the arguments raised by the State that if the petitioner joins the investigation, the investigating agency would subject him to test identification parade consequent to which his fate would be decided during the course of the Trial. Therefore, it cannot be said that the Trial against the petitioner would be an exercise in futility as he would be acquitted in all probability.

12. As regards the validity of the order dated 30.10.2019 vide which the petitioner was declared proclaimed offender, it may be noted that the proclamation was issued by the Court on 10.09.2019 and the case was adjourned to 26.09.2019. As 30 days had not elapsed from the date of proclamation, the case was adjourned to 30.10.2019 on which date the impugned order came to be passed. Therefore, it cannot be said that the order declaring him a proclaimed offender was liable to be *quashed*.

13. It may also be relevant to mention here that the FIR pertains to the year 2018. The petitioner was declared proclaimed offender on



30.10.2019. His co-accused was acquitted on 04.03.2020. The petitioner approached this Court by way of his first petition seeking similar relief which came to be argued and withdrawn on 09.05.2022. The instant second petition was filed in August 2023. Apparently the petitioner has remained a bystander to the legal proceedings pending against his co-accused. He has chosen not to join the same and in fact has approached this Court repeatedly without any change in circumstances. The conduct of the petitioner cannot be condoned in any manner.

14. In view of the aforementioned discussion I find no merit in the present petition and the same stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

August 06, 2024
Vinay

Whether speaking/reasoned	Yes
Whether reportable	Yes