2026:PHHC:082417

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

101 **CRM M-47965-2022 (O&M)**
Date of Decision: 21.05.2026

Ravinder Kaur Toor ...Appellant (s)

Vs.

State of Punjab ...Respondent(s)

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. K.S. Sidhu, Sr. Advocate with
Mr. Kartik Bansal, Advocate
for the petitioner.

Mr. M.S. Bajwa, DAG, Punjab.

N.S.SHEKHAWAT, J. (Oral)

CRM-39636 of 2023

1. Allowed as prayed for.

2. Annexure P-11 is taken on record subject to all just exceptions.

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3. The petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure with a prayer to quash FIR No. 62 dated 04.05.2008 registered under Sections 307, 324, 323, 120-B and 34 IPC at Police Station Sirhind, District Fatehgarh Sahib (Annexure P-1) and the impugned order dated 17.04.2009 (Annexure P-

2) passed by the trial Court, whereby, the petitioner was declared as proclaimed offender and all consequential proceedings arising therefrom.

4. Learned senior counsel appearing on behalf of petitioner contends that the petitioner is a 51-year-old lady, who is permanent resident of Australia since 1996 and had last visited India in the year 2007, i.e., much prior to the registration of the present FIR on 04.05.2008. He further contends that the petitioner had also been declared as proclaimed offender on 17.04.2009 at her back without following the due process of law and the proceedings in the present case are abuse of the process of the Court. Learned senior counsel further submits that even on the date of alleged occurrence, the petitioner was not in India and had no concern with the allegations levelled by the complainant in the present FIR. Even, all the proceedings were conducted at her back and she was wrongly declared as a proclaimed offender. Learned senior counsel further submits that after the registration of the FIR on 04.05.2008, the investigation was conducted by police and Sandeep Kumar alias Billa and Nishan Singh were nominated as accused in the present case. However, the petitioner, Devinder Singh, Jaswinder Singh and Hardeep Singh were declared proclaimed offenders by the trial Court on 17.04.2009. Even, Sandeep Kumar alias Billa and Nishan Singh both the co-accused were tried by the Court of Additional Sessions Judge, Fategarh Sahib and were ordered to be acquitted vide judgment dated 31.01.2012 (Annexure P-4). While acquitting the co-accused, the trial Court clearly observed that the

complainant on his part had failed to step into the witness box to identify the accused as assailants. Apart from that, the version of the prosecution regarding nature of injuries on the person of the complainant also did not inspire confidence in view of the fact that the medical version regarding the nature of injuries and nature of weapon was totally in contrast with the ocular version regarding the infliction of two blows by means of *kirch*. Even, there had been no evidence worth its name to connect the accused with the attack on the person of the complainant. Similarly, no evidence had come on record that the accused had entered into any conspiracy with Ravinder Kaur Toor, present petitioner. Even Devinder Singh, Jaswinder Singh and Hardeep Singh were also tried by the Court of Additional Sessions Judge, Fatehgarh Sahib and vide the judgment dated 03.03.2020 (Annexure P-5), they were also ordered to be acquitted by the trial Court.

5. Learned senior counsel further submits that even the serving officials, who had gone to serve the warrants on the petitioner were well aware of the fact that the petitioner was living abroad and had not come back to India for the last several years. However, no efforts were made to serve the petitioner at her permanent address in Australia. Even, instead of serving the petitioner on her permanent address in Australia, the proclamation was pasted at the house of her in-laws on 05.02.2009 and, thereafter, without following the mandatory provisions of Section 82 Cr.P.C., the petitioner was wrongly declared as proclaimed offender.

6. On the other hand, learned State counsel has vehemently opposed the submissions made by the petitioner on the ground that the petitioner is a proclaimed offender and he had never appeared before the trial Court. Apart from that, even there were specific allegations against the petitioner also and the petition deserves to be dismissed by this Court.

7. I have heard learner counsel for the parties and perused the record carefully.

8. Normally, this Court would not permit any proclaimed offender to invoke the extraordinary jurisdiction of this Court under Section 482 Cr.P.C. for quashing of the criminal proceedings. However, from the perusal of the facts of the present case, it has been found to be an exceptional case in this regard as the *malafide* intentions of the complainant were established from the day one. Even the complainant was aware of the fact that the petitioner is settled in Australia since the year 1996 and she came to India in the year 2007 only. Still, it was stated that the injuries were caused to the complainant in conspiracy with the present petitioner. Apart from that, even at her back the petitioner was declared as proclaimed offender, even though, she was permanently residing in Australia and no attempt was made to serve her at her address in Australia. Consequently, she was not even present in India at the time of occurrence and was made to suffer due to continuation of criminal prosecution and, if such, prosecution is allowed to stand, it would result in serious miscarriage of justice. Still further, in the present case, admittedly, the petitioner had not visited India since

2007, whereas the FIR in the present case was got registered by the complainant on 04.05.2008. After the registration of the FIR, the petitioner had not visited India. Before proceeding any further, it would be appropriate to refer to the provisions of Section 82 of Code of Criminal Procedure, which reads as under:-

9. Section 82 of Cr.P.C. reads as follows:-

> ***"82. Proclamation for person absconding.*** *--*
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> *(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.*
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> *(2) The proclamation shall be published as follows:-*
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> *(i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;*
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> *(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;*
>
> *(c) a copy thereof shall be affixed to some conspicuous part of the Court-house; (ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.*
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> *(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied*

> *with, and that the proclamation was published on such day."*
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> *However, by way of Section 12 of Act No.25 of 2005, subsections (4) and (5) were also inserted in Section 82 Cr.P.C. w.e.f. 23.06.2006 vide notification No.S.O.923(E) dated 21.06.2006, which reads as under:*
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> *"[(4) Where a proclamation published under subsection (1) is in respect of a person accused of an offence punishable under section 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the Indian penal Code (45 of 1860), and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.]*
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> *[(5). The provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under sub-section (1).]"*

All the provisions of Section 82 Cr.P.C. are mandatory in nature and have to be followed strictly. The law is well settled that non compliance of any clause of the above said provisions would vitiate the entire proceedings, which had been initiated under Section 82 Cr.P.C.

10. In the present case also, summons/warrants were repeatedly sent at the house of her in-laws in their village, even though, the proclamation notice was served at the house of her in-laws, knowing well that the petitioner was not present in India and had not even visited India after the alleged occurrence. Even, the parents-in-law clearly stated that the petitioner was residing abroad, and still, no efforts were made to serve the petitioner at her given address in Australia. Thus, the

impugned order dated 17.04.2009, whereby, the petitioner was declared as proclaimed offender, was illegal and unsustainable. Still further, the only allegation levelled against the present petitioner was that certain unknown persons had attacked the complainant with an intention to kill the complainant. In fact, brother-in-law *(Sala)* of the complainant also resides in Australia and he had a business dispute with the petitioner and her husband, Jagdish Singh Toor. He had helped his brother-in-law and due to this, the petitioner and her husband managed the attack on the complainant in India. Except the said allegations, no other evidence was produced on the file showing the involvement of the petitioner in the alleged crime. However, Sandeep Kumar alias Billa and Nishan Singh, alleged assailants, were tried by the Court of Additional Sessions Judge Fatehgarh Sahib and vide judgment dated 31.02.2012 (Annexure P-4), the trial Court recorded the following observations:-

> *"Thus, a careful consideration of the matter reveals that whereas Gurmeet Singh PW-1 is an introduced witness, Yashpal PW-2 has failed to identify the accused present in the court, as being the assailants. The complainant on his part has failed to step into the witness box to identify the accused as the assailants. Not only this, the version of prosecution regarding nature of injuries on the person of complainant also does not inspire confidence, in view of the fact that the medical version regarding the nature of injuries and nature of weapon is totally in-contrast with the ocular version regarding the infliction of two blows by means of kirch i.e. sharp edged weapon. There has been no evidence worth its name to connect the accused present in the court with the attack on the person of complainant. Similarly no evidence has come on record that the accused*

present in the court had entered into any conspiracy with Ravinder Kaur Toor (since declared proclaimed offender). Thus both the accused are acquitted of the charges framed against them. Since accused No.3 to 6 have been declared proclaimed offenders, file be put up again on the apprehension of accused who have since been declared proclaimed offenders. In the meanwhile file be consigned to the Record Room".

11. From a bare perusal of the aforesaid findings, it is apparent that the trial Court has already discussed that no evidence had come on record that the accused present in the Court had conspired with the present petitioner. Thus, the prosecution of the petitioner will not serve any purpose in the present case.

12. I have heard learned counsel for the parties and perused the record.

13. In the various judgments passed by the Hon'ble Supreme Court and this Court, it has been held repeatedly while referring to the provisions of Section 482 Cr.P.C. that nothing under the Code of Criminal Procedure shall deem 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 the abuse of the process of any Court or otherwise to secure the ends of justice. The Hon'ble Supreme Court in the matter of ***Ajay Mitra Vs. State of M.P. & others, 2003(3) SCC 11,*** has held as follows:

"Leave granted. -

These appeals by special leave are directed against the judgment and order dated January 16, 2002 of High Court *of Madhya Pradesh, by which three Petitions filed by the appellants under Section 482 Cr.P.C. dismissed.*

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Thereafter, were the appellants filed three Criminal Miscellaneous Petitions under Section 482 Cr.P.C. before the High Court for quashing of the FIR and the proceedings of the case before the learned Magistrate. After hearing the parties, the High Court held that the investigation had not yet commenced in connection with the FIRs which had been registered at the Police Station and, therefore, the Petitions were pre-mature and accordingly all the three Petitions were rejected.

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The High Court has held that the Petitions filed by the appellants for quashing the complaint and the FIRs registered against them are pre-mature. The question which arises is that where the complaint or the FIR does not disclose commission of a cognizable offence, whether the same can be quashed at the initial stage? This question was examined by this Court in State of West Bengal &Ors. V. Swapan Kumar Guha & Ors., AIR 1982 Supreme Court 949 and it was held that the First Information Report which does not allege or disclose that the essential requirements of the penal provision are prima facie satisfied, cannot form the foundation or constitute the starting point of a lawful investigation. It is surely not within the province of the police to investigate into a Report (FIR) which does not disclose the commission of a cognizable offence and the code does not impose upon them the duty of inquiry in such cases. It was further held that an investigation can be quashed if no cognizable offence is disclosed by the FIR. The same question has been considered in State of Haryana

&Ors. V. Ch. Bhajan Lal &Ors. 1991(3) RCR (Criminal) 383 (SC) and after considering all the earlier decisions, the category of cases, in which the Court can exercise its extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 Cr.P.C. either to prevent abuse of the process of any Court or to secure the ends of justice, were sumarised in para 108 of the Report and sub-paras 1 to 3 thereof are being reproduced hereinbelow :

"1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code. 3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused."

14. The said judgment by the Three Judges Bench of the Hon'ble Supreme Court had affirmatively held that where an FIR does not disclose the essential requirements of the penal provision or does not disclose the commission of a cognizable offence, the same can be quashed at the initial stage. Reference has also been made to the judgment of Hon'ble Supreme Court in case ***"State of Haryana and others Vs. Ch. Bhajan Lal & Ors., 1991(3) RCR (Criminal) 383),*** in

which, it was observed that the High Court can exercise its extraordinary power under Article 226 of the Constitution or the inherent power under Section 482 Cr.P.C. 1973 either to prevent abuse of the process of any Court or to secure the ends of justice.

15. The Hon'ble Supreme Court of India in ***"R Kalyani vs. Janak C. Mehta" reported as 2009 (1) SCC 516*** has held as under:

> *"Leave granted.*
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> *2. Appellant lodged a First Information Report (FIR) against the respondents on or about 4.1.2003 under Sections 409, 420 and 468 read with Section 34 of the Indian Penal Code.*
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> *3. First and second respondent approached the High Court for an order for quashing of the said FIR as also the investigation initiated pursuant thereto or in furtherance thereof. The High Court allowed the said proceedings by reason of the impugned order dated 29.4.2004.Mr. K.K. Mani, learned counsel appearing on behalf of the appellant, would, in support of the appeal, contend :*
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> *(1) The High Court exercised its inherent jurisdiction under Section 482 of the Code of Criminal Procedure wholly illegally and without jurisdiction insofar as it entered into the disputed questions of fact in regard to the involvement of the respondents as the contents of the first information report disclose an offence of cheating, criminal breech of trust and forgery.*
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> *(2) While admittedly the investigation was not even complete, the High Court could not have relied upon the documents furnished by the defendants either for the purpose of finding out absence of mens rea on the part of the applicants or their involvement in the case.*

(3) Respondent Nos.1 and 2 herein being high ranking officers of M/s. Shares and Securities Ltd., a company dealing in shares, were vicariously liable for commission of the offence being in day to day charge of the affairs thereof.

(4) An offence of forgery being a serious one and in view of the fact that the respondent No.2 forwarded a letter purporting to authorise the accused No.3 to transfer shares to the National Stock Exchange, he must be held to have the requisite intention to commit the said offence along with the respondent No.3.

(5) In any view of the matter, the respondent No. 3 being not an applicant before the High Court, the entire criminal prosecution could not have quashed by the High Court.

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In Hamid v. Rashid alias Rasheed & Ors. [(2008) 1 SCC 474], this Court opined :

"6. We are in agreement with the contention advanced on behalf of the complainant appellant. Section 482 Criminal Procedure Code saves the inherent powers of the High Court and its language is quite explicit when it says that nothing in the 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 the Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. A procedural Code, however exhaustive, cannot expressly provide for all time to come against all the cases or points that may possibly arise, and in order that justice may not suffer, it is necessary that every court must in proper cases exercise its inherent power for the ends of justice or for the purpose of carrying out the other provisions of the Code. It is well established principle that every Court has inherent power to act ex debito

justitiae to do that real and substantial justice for the administration of which alone it exists or to prevent abuse of the process of the Court."

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One of the paramount duties of the Superior Courts is to see that a person who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint.

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A vicarious liability can be fastened only by reason of a provision of a statute and not otherwise. For the said purpose, a legal fiction has to be created. Even under a special statute when the vicarious criminal liability is fastened on a person on the premise that he was in charge of the affairs of the company and responsible to it, all the ingredients laid down under the statute must be fulfilled. A legal fiction must be confined to the object and purport for which it has been created. In Sham Sunder & Ors. v. State of Haryana [(1989) 4 SCC 630], this Court held :

"9. But we are concerned with a criminal liability under penal provision and not a civil" liability. The penal provision must be strictly construed in the first place. Secondly, there is no vicarious liability in criminal law unless the statute takes that also within its fold. Section 10 does not provide for such liability. It does not make all the partners liable for the offence whether they do business or not."

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27. If a person, thus, has to be proceeded with as being vicariously liable for the acts of the company, the company must be made an accused. In any event, it would be a fair *thing to do so, as legal fiction is raised both against the Company as well as the person responsible for the acts of the Company.*

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30. The appeal is dismissed with the aforementioned observations".

16. As a sequel to the above discussion, the present petition is allowed and the FIR No. 62 dated 04.05.2008 registered under Sections 307, 324, 323, 120-B and 34 IPC at Police Station Sirhind, District Fatehgarh Sahib (Annexure P-1), the impugned order dated 17.04.2009 (Annexure P-2) passed by the trial Court, whereby, the petitioner was declared as proclaimed offender and all consequential proceedings arising therefrom are ordered to be quashed qua the petitioner only.

17. Pending applications, if any, stand also disposed of, accordingly.

21.05.2026 **(N.S.SHEKHAWAT)**
amit rana **JUDGE**

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