Before Rameshwar Singh Malik, J.

KULDIP SINGH AND OTHERS—*Petitioners*

versus

STATE OF PUNJAB—*Respondents*

Crl.M. No. M-15353 of 2012

August 24, 2012

Code of Criminal Procedure, 1973 - S.482 - FIR was registered against petitioners and others - Co-accused of petitioners were acquitted - Petitioners were declared proclaimed offenders - Filed petition for quashing of FIR after co-accused were acquitted - Dismissed - Held - Simply because co-accused of the petitioners have been acquitted when they remained proclaimed offenders prosecution against them cannot be quashed - Process of court cannot be utilized for oblique purpose.

(2) (2010) 1 SCC 428

Held, that so far as the second question is concerned, this court is of the considered view that simply because co-accused of the petitioners have been acquitted during the period when the petitioners remained proclaimed offenders, the prosecution against the petitioners cannot be quashed. I say so because there is nothing in favour of the petitioners which may entitle them for such a relief. Rather, quashing of the prosecution, under such circumstances, shall encourage the persons like the petitioners who have no respect for the law. Barring exceptions, a person who has been running from the law is not entitled to invoke the inherent jurisdiction of this Court under Section 482 Cr.P.C.

(Para 14)

Further held, that the process of the Court cannot be allowed to be utilized for any oblique purpose. The ends of justice are higher than the needs of some laws, though justice has got to be administered according to laws made by the legislature,. This Court would be slow in quashing the criminal prosecution in the circumstances obtaining in the present case. Since the petitioners were admittedly not party to the judgment of acquittal dated 29.10.2010 (Annexure P-2), it will not be admissible as such, in favour of the petitioners in view of the provisions of Section 40 to 43 of the Indian Evidence Act. Admittedly, it is not the second trial of the petitioners because of which no prejudice is going to be caused to the petitioners. They will be now facing this criminal trial because earlier they had been the proclaimed offenders.

(Para 15)

Arvind Thakur, Advocate, *for the petitioner.*

RAMESHWAR SINGH MALIK J. (ORAL)

(1) The petitioners seek quashing of the impugned FIR No. 46 dated 7.3.2003, under Sections 379, 411, 420, 467, 468, 471 of the Indian Penal Code ('IPC' for short) 25, 54, 59 of the Arms Act, registered at Police Station Division No. 2, Pathankot as well as consequential proceedings arising therefrom, by way of instant petition under Section 482 Cr.P.C., invoking the inherent jurisdiction of this Court.

(2) The sole contention raised by the learned counsel for the petitioners is that since co-accused of the petitioners came to be acquitted, vide judgment dated 29.10.2010 (Annexure P-2) and the petitioners remained

proclaimed offender during this time, the impunged FIR was liable to be quashed qua the petitioners because continuation of the criminal trial against the petitioners shall be only a futile exercise.

(3) Learned counsel for the petitioners contended that petitioners were never aware about the impugned FIR registered against them because of which they could not appear before the learned trial court. However, learned counsel for the petitioners fairly conceded that petitioners were declared proclaimed offender in the year 2003, as stated in para 7 of the petition. Learned counsel for the petitioners relies upon the Division Bench Judgment of this Court in ***Sudo Mandal @ Diwarak Mandal*** *versus* ***State of Punjab (1),*** to contend that it will not serve any purpose to force the petitioners to face criminal trial, in view of the acquittal of their co-accused, vide judgment dated 29.10.2010 (Annexure P-2).

(4) I have heard the learned counsel for the petitioners and with his able assistance, have gone through the record of the case.

(5) After considering the contentions raised and also keeping in view the peculiar facts and circumstances of the present case, this Court is of the considered opinion that the present petition is wholly misconceived and is liable to be dismissed. I say so because of more than one reasons, being recorded hereinafter.

(6) Firstly, the sole contention raised by the learned counsel for the petitioners that the impugned FIR is liable to be quashed simply because co-accused of the petitioners have been acquitted, during the period when the petitioner remained proclaimed offenders, is without any substance, besides being wholly misconceived.

(7) The averments taken in para 7 and 8 of the petition which are relevant for the purpose of deciding this controversy, read as under:-

> *7. "That it is pertinent to mention here as petitioners were never aware of any FIR registered against them so could not appear before the trial court and ultimately they were declared proclaimed offenders in years 2003.*

(1) 2011 (2) RCR (Crl.) 453

8. That petitioner No.2 and 3 were ultimately arrested on 11.5.2011 and petitioner No.1 was arrested on 15.7.2011 and they remained on police remand as well as in Judicial Custody. Ultimately, all the petitioners were released on regular bail by the Ld. Additional Sessions judge, Gurdaspur on 22.10.2011 meaning thereby they remained in judicial custody for more than 3 months. In the meantime the charges were framed against the petitioners and as of now all are facing trial before the lower trial court" (emphasis is mine)

(8) A bare reading of the averments taken by the petitioners, reproduced above, would show that the petitioners remained proclaimed offender for about 8 years. During this period, their coaccused came to be acquitted, vide judgment dated 29.10.2010 (Annexure P-2). However, it is also pertinent to note here that in spite of acquittal of the co-accused of the petitioners, the learned trial court had already framed the charge against the petitioners, as per the averments taken in para 8 of the petition.

(9) The twin questions of law that fall for consideration of this Court are:- whether even after treating the allegations levelled against the petitioners in the impugned FIR, to be correct on their face value, no offence, whatsoever, is made out against the petitioners and the impugned FIR is liable to be quashed, despite the charge having been framed against the petitioners? (ii), whether the impugned FIR and subsequent proceedings arising therefrom, are liable to be quashed because co-accused of the petitioners have already been acquitted, vide judgment dated 29.10.2010, during the period when the petitioners remained proclaimed offenders ?

(10) Taking the first question first, this Court is of the considered view that treating the allegations levelled in the impugned FIR to be correct on their face value, it cannot be said that no case, whatsoever, has been made out against the petitioners.

(11) The view taken by this Court also finds support from the fact that learned trial court has already framed the charge against the petitioners.

(12) The law, in this regard, had been laid down by the Hon'ble Supreme Court in long series of judgments including in ***State of Haryana versus Bhajan Lal and others (2).*** The relevant observations made by the Hon'ble Supreme Court, laying down seven principles, which can be gainfully followed in the present case, read as under:-

(a) 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;*

(b) 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;

(c) 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;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a

(2) AIR 1992 SC 604

specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge"

(13) Considering the given fact situation of the present case, it is unhesitatingly held that after treating the allegations levelled against the petitioners in the impugned FIR to be true on their face value, it cannot be accepted that no offence is made out against the petitioners. Charge has been framed against the petitioners which is not even under challenge in this petition. Hence, the answer to the first question posed above, has to be emphatic no. Thus, first question is answered, accordingly.

(14) So far as the second question is concerned, this court is of the considered view that simply because co-accused of the petitioners have been acquitted during the period when the petitioners remained proclaimed offenders, the prosecution against the petitioners cannot be quashed. I say so because there is nothing in favour of the petitioners which may entitle them for such a relief. Rather, quashing of the prosecution, under such circumstances, shall encourage the persons like the petitioners who have no respect for the law. Barring exceptions, a person who has been running from the law is not entitled to invoke the inherent jurisdiction of this Court under Section 482 Cr.P.C.

(15) The process of the Court cannot be allowed to be utilised for any oblique purpose. The ends of justice are higher than the needs of some laws, though justice has got to be administered according to laws made by the legislature,. This Court would be slow in quashing the criminal prosecution in the circumstances obtaining in the present case. Since the petitioners were admittedly not party to the judgment of acquittal dated 29.10.2010 (Annexure P-2), it will not be admissible as such, in favour of the petitioners in view of the provisions of Section 40 to 43 of the Indian Evidence Act. Admittedly, it is not the second trial of the petitioners because of which no prejudice is going to be caused to the petitioners. They will be now facing this criminal trial because earlier they had been the proclaimed offenders.

(16) Another equally important question of law is whether this Court would be justified to exercise its inherent jurisdiction under Section 482 Cr.P.C., in the fact situation obtaining in the present case.

(17) So far as the judgment relied upon by the learned counsel for the petitioners is concerned, there is no dispute in that regard. However, in the considered view of this Court, the cited judgment is of no help to the petitioners as the same is distinguishable on facts. It is the settled principle of law that the peculiar facts of each case are to be considered and appreciated first before applying any codified or judgemade law thereto.

(18) On the other hand, the view taken by this Court finds support from the Full Bench judgment of Kerala High Court in ***T. Moosa*** *versus* ***Sub Inspector of Police, Vadakara Police Station, Ernakularm (3).***

(19) The Full Bench judgment in T. Moosa's case (supra), deals with this issue while referring and relying upon the numerous judgments of the Hon'ble Supreme Court. The relevant observations made by the Full Bench in T.Moosa's case (supra), on the scope of inherent jurisdiction under Section 482 Cr.P.C., as well as on the issue whether it would be appropriate to quash the criminal prosecution in favour of the accused persons, who remained proclaimed offenders, on the basis of acquittal of their co-accussed, which can be gainfully followed in the present case, read as under:-

> *"In the light of the above discussions, we may summarise the legal position as follows:-*
>
> *(1) 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-*
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> *(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.*

(3) 2006 (3) RCR (Crl.) 221

(ii) Considering the nature, width and amplitude of the powers, it would be unnecessary, inexpedient and imprudent to prescribe or stipulate any straightjacket 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 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 consideing 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 bonafides – 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.

(20) Reverting back to the facts of the present case, it is an admitted position on record that petitioners remained proclaimed offenders for about 8 years. Further, they did not surrender themselves but were arrested on 11.5.2011 and 15.7.2011, as pointed out in para 8 of the petition. It is also a matter of record that charge has also been framed against the petitioners by the learned court of competent jurisdiction which has not even been challenged by them. Their past conduct is chasing them and the petitioners are facing the trial.

(21) Considering the totality of facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that no case is made out to invoke the inherent jurisdiction of this Court under Section 482 Cr.P.C. in favour of the petitioners. The present petition is wholly misconceived, without any substance and bereft of any merit, thus, it must fail.

(22) Resultantly, the instant petition is ordered to be dismissed.