Gurwinder Singh @ Mintu vs State Of Punjab on 2 November, 2011

Author: Rakesh Kumar Jain

Bench: Rakesh Kumar Jain

CRM-M-16892-2011 (O&M) [1]

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-16892-2011 (O&M)
Date of decision:02.11.2011

Gurwinder Singh @ Mintu ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. D.S.Pheruman, Advocate,
for the petitioner.

Mr. A.S.Rai, DAG, Punjab.

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RAKESH KUMAR JAIN, J.

This is a petition for quashing of FIR No.244 dated 25.09.2007, registered under Sections 399, 401, 402 of the Indian Penal Code, 1860 [for short "IPC"] and 25, 54, 59 of the Arms Act, 1959 [for short "the Act"] at Police Station City Rajpura, District Patiala.

The allegations in the FIR are that a secret information was received by the police party that Jagjit Singh @ Billa, Gurcharan Singh, Ranjit Singh @ Kala, Sat Narain, Parmod Kumar and Gurwinder Singh @ Mintu (petitioner herein) have assembled and were preparing for committing dacoity with deadly weapons. A raid was conducted and all the aforesaid persons except the petitioner were apprehended along with their respective weapons. The challan against all the aforesaid persons except the petitioner was presented but Sat Narain and Parmod Kumar were tried in absentia as they were declared proclaimed offenders, for the offence punishable under Sections 399 and 402 of

the IPC read with Section 25 of the Arms Act. The learned Additional Sessions Judge, Patiala, vide his order dated 18.04.2011, acquitted Jagjit Singh @ Billa, Gurcharan Singh and Ranjit Singh, after giving them benefit of doubt and since Sat Narain and Parmod Kumar were declared proclaimed offenders, CRM-M-16892-2011 (O&M) [2] :::::::::

> therefore, it was observed that the prosecution may present the challan against them as and when they are arrested or surrender before the Court. The relevant observation of the learned Trial Court in this regard are reproduced hereasunder:
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> "As a result of the aforesaid discussion, I have arrived at the confirmed and considered conclusion that the prosecution witnesses have failed to inspire confidence in the mind of the court, so as to prove that the occurrence in question took place in the manner as set up in the prosecution version. The prosecution has also failed to prove that five or more persons including the accused were found making preparation to commit dacoity or robbery, for which the accused were making preparation. The witnesses of the prosecution are seriously discrepant to each other with the material aspects of the case. There is not even an iota of evidence on the record to prove that the Investigating Officer or any other officials have over heard conversation amongst the accused, from which it could be inferred that the accused were making preparation to commit dacoity. The mere presence of five or more than five persons, even if armed with weapons, will not automatically make out an offence either under Section 399 or 402 of the Indian Penal Code, unless there was cogent and convincing evidence on the record to the effect that the accused has assembled in the alleged manner for preparation to commit dacoity or robbery. The Investigating Officer seems to have assumed that the accused were making preparation to commit dacoity or robbery merely on the assertion that the accused fled from the spot on seeing the police party. The Investigating Officer did not care to collect any such evidence, which could convince the court, if CRM-M-16892-2011 (O&M) [3] :::::::::
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> the accused had assembled at the spot, they had so done for preparation to commit dacoity or robbery. No such antecedents of the accused have been established on the record suggestive of such an inference that the accused were habitual robbers or dacoits. Looking at such type of evidence adduced by the prosecution, I have come to the conclusion that the prosecution has miserably failed to prove firstly that the accused had formed an unlawful assembly consisting of more than five persons and secondly, that the assembly was so constituted for the purpose of committing dacoity or preparation to commit dacoity. The prosecution has failed to prove that the alleged robbery or dacoity, which allegedly the accused were prepared was to be committed by the five or more persons.
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> So, as a result of aforesaid discussion, the accused cannot be held guilty under Sections 399 and 402 of the Indian Penal Code and they deserve to be acquitted. I accordingly acquit the accused Jagjit Singh, Gurcharan Singh and Ranjit Singh of the

> offence charged, after giving them the benefit of doubt. Since the accused Sat Narain and Parmod Kumar have been declared proclaimed offenders, the prosecution is at liberty to present the challan against them as and when they are arrested by the police or surrender before the court."

It is pertinent to mention here that Sat Narain had already died, whereas the petitioner was arrested on 15.06.2011 and was released on bail on 19.08.2011. The present petition has been filed for seeking quashing of the FIR and all the proceedings arising therefrom, inter alia, on the ground that once the co-accused has been acquitted by the learned Trial Court on the ground that the prosecution could not bring on record any evidence to the effect that they had assembled and were CRM-M-16892-2011 (O&M) [4] :::::::::

> preparing for committing the crime of dacoity etc., the proceedings against the present petitioner would be an exercise in futility as no case under Sections 399 and 402 IPC is made out against him as well. It is submitted that Section 399 IPC is a punishing Section for preparation of committing dacoity with rigorous imprisonment for a term which may extend to ten years and also with fine and Section 402 of IPC provides that at any time after the passing of this Act, if one or five persons had assembled for the purpose of committing dacoity, then he/they shall be punished with rigorous imprisonment of a term which may extend to seven years alongwith fine. It is submitted that the dacoity is defined under Section 391 of the IPC according to which when five or more persons conjointly commit or attempt to commit a robbery, then every person so committing, attempting or aiding, is said to commit "dacoity".
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> Learned counsel for the petitioner submits that out of 6 persons, one Sat Narain had already expired and 3 persons have already been acquitted after trial on the ground that the prosecution has failed to prove by cogent evidence that they had assembled in the alleged manner for the purpose of preparation to commit dacoity or robbery. It is further submitted here that in the absence of all other co-accused, the petitioner in particular cannot be tried for the offences under Sections 399 and 402 of the IPC. In this regard, he has relied upon a decision of the Supreme Court in the case of State of Haryana and others v. Ch. Bhajan Lal and others, AIR 1992 Supreme Court 604 to contend 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 said FIR deserves to be quashed. He further relied upon a decision of this Court in the case of Gurpreet Singh alias Khinder v. State of Punjab, 1995(2) R.C.R. (Criminal) 127 and a Division Bench judgment of this Court in the case of Sudo Mandal @ Diwarak Mandal v. State of Punjab, 2011(2) RCR (Criminal) 453 to contend that if two or more persons are tried and acquitted by the Court, then the prosecution against the persons who have surrendered subsequently deserves to be quashed because if the evidence is the same against the said persons as well, then the continuation of the proceedings would result in waste of Court's time and unnecessary expenditure on State exchequer. In

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> 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, acquitted and the proceedings against the absconding accused were also quashed as the evidence produced in the said case was not found to be trustworthy.
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> While contesting the present petition, the respondent/State has filed reply by way of affidavit of Manmohan Kumar, PPS, Superintendent of Police, Rajpura in which it has been mentioned that the petitioner could not be arrested and was declared proclaimed offender. Lateron, he was arrested on 15.06.2011 and a supplementary challan against him was presented on 25.06.2011 and is now on bail. It was admitted that the 3 co-accused, namely, Jagjit Singh @ Billa, Gurcharan Singh and Ranjit Singh, who were charged with the offences under Sections 399 and 402 IPC, had already been acquitted on 18.04.2011 but it is submitted that the petitioner being a proclaimed offender deserves to be prosecuted.

I have heard both the learned counsel for the parties and perused the available record with their able assistance.

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.

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 CRM-M-16892-2011 (O&M) [6] :::::::::

> 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 and 402 IPC. 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 IPC postulates a dacoity which is defined under Section 391 of the IPC 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.

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.

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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 IPC 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.

November 02, 2011 (RAKESH KUMAR JAIN)
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