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**(2018) 05 P&H CK 0077**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Criminal Miscellaneous (M) No.7486 Of 2016 (O&M)

Rachhpal Singh

APPELLANT

Vs

State of Punjab and another

RESPONDENT

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**Date of Decision:** May 17, 2018

**Acts Referred:**

- Indian Penal Code, 1860 - Section 148, 149, 447, 379, 506

**Hon'ble Judges:** ARVIND SINGH SANGWAN, J

**Bench:** Single Bench

**Advocate:** S.S. Majithia

**Final Decision:** Allowed

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**Judgement**

Prayer in this petition is for quashing the FIR No.15 dated 20.04.2007 registered under Sections 447, 379, 506, 148 and 149 of the Indian Penal Code

(in short 'IPC') at Police Station Kotli Surat Malhi, District Batala.

Counsel for the petitioner has submitted that after registration of the FIR, 05 of the co-accused of the petitioners namely Anoop Singh (since

deceased), Gagandeep Singh, Rachhpal Singh (the present petitioner), Sucha Singh, Karandeep Singh and Harinder Singh @ Buri, had faced the full

length trial and the trial Court has acquitted the co-accused of the petitioner by passing the detailed judgment dated 16.12.2013. Counsel for the

petitioner has further referred to the operative part of the judgment passed by the trial Court to submit that while acquitting the co-accused, the trial

Court has even appreciated the evidence of the prosecution viz-a-viz, the petitioner " Rachhpal Singh, who is arrayed as accused No.3 in the array

of the accused in the judgment of the trial Court. The operative part of the judgment passed by the trial Court is reproduced as below:-

¶11. First of all it is to be seen whether possession over the property has been proved by complainant or not because for criminal trespass

possession is required to be proved. Jamabandi Ex.P1 and PW3/A reveals that it is the Punjab Wakf Board who is owner of land falls in khasra

No.94. Neither pattanama nor rent receipts have been brought on file to prove the fact that they are tenant of Punjab Wakf Board. So for want of

evidence of possession, prosecution failed to prove offence of criminal trespass. Furthermore, the present case was registered on the basis of

statement Ex.PA wherein it has been mentioned that on 20.04.2007 at 2:00 a.m., Anoop Singh accused since deceased was standing near the tractor-

trolley of wheat and combine was harvesting the wheat crop. It is further mentioned that Pal Singh, Gagandeep Singh, Sudah Singh, Karandeep Singh,

Harinder Singh @ Buri were also present along with 4/5 unidentified persons who were already harvesting the crop. It is further mentioned in the

statement that when the accused started to take away wheat crop then trolley get stuck there due to wet land and all accused ran away on seeing

them. When the complainant Sudesh Kumari stepped in the witness box, she deposed that on 20.4.07 on coming in the land she saw that combine was

running in the fields and the accused persons Anoop Singh, Karan Singh, Rachhpal Singh, Gagandeep Singh, Karandeep Singh, Sucha Singh and some

unidentified persons were present and at that time, Anoop Singh was standing near the trolley of wheat and when they started to take away the

trolley, the same get stuck in the fields due to wet land. It is nowhere stated by her in her evidence that accused Gagandeep Singh, Harinder Singh @

Buri, Karandeep Singh and Sucha Singh were harvesting the wheat crop. It is also clear from her evidence that accused persons had not taken away

the wheat crop with themselves. So, the prosecution story that accused committed theft of wheat crop from the land which was in possession of the

complainant has not been proved. It is important to note here that Sudesh Kumari has nowhere mentioned the name of one accused Harinder Singh @

Buri in her first part of evidence although he was also named by the complainant in the latter portion. It also creates a doubt in the version of the

complainant regarding identification of the accused. If harinder Singh @ Buri was not present at the spot then how the statement of the complainant can be relied upon that other persons namely Anoop Singh, Karan Singh, Rachhpal Singh, Gagandeep Singh, Karanadeep Singh and Sucha Singh were present at the spot. Furthermore, prosecution has failed to produce the wheat crop which was alleged to be harvested by the accused with the help of combine. The ownership of the tractor-trolley and combine has also not been proved which also do not connect the accused with the offence for want of proving the fact that the said vehicles are standing in the name of any of the accused. When the complainant was subjected to cross-examination she stated that the accused on seeing them fled away from the spot. If the accused on seeing them fled away from the spot then how the complainant can say that the accused Anoop Singh and others were standing near the tractor-trolley. Therefore, statement of Sudesh Kumari does not prove the presence of the accused persons at the spot.

12. So far as the statement of PW Prem Kumari is concerned, same also does not connect the accused with the offence. She stated that Anoop Singh was standing near the tractor-trolley and wheat crop was harvesting by the combine and other accused were loading the wheat crop. She further stated that accused on seeing them fled away from the spot. If the accused person on seeing them fled away from the spot then how she can state that accused Anoop Singh was standing near the tractor-trolley and other accused were loading the wheat crop.

13. PW5 Ramesh Kumar Patwari stated in his cross-examination that he does not know the khasra number and khatauni number. He did not suffer statement to the police in this case. He does not know by whom the land was being cultivated at the time of issuing khasra girdawari, etc., the evidence of the Patwari was material evidence in order to bring the facts upon the file to prove the possession over the property in dispute on the basis of which the present case has been registered by the police. He has simply stated about the Jamabandi and khasra girdawari Ex.PW3/A and Ex.PW3/B.

Ex.PW03/A reveals in the column of ownership, it is Punjab Wakf Board. Thus, his statement also do not connect the accused with offence.

14. So far as the testimony of PW6 " Prem Lal who investigated the present case is concerned also do not connect the accused with the offence.

He has nowhere stated in his evidence that vehicles which were taken in police possession were standing in the name of the accused persons. Thus

for want of said evidence, the prosecution failed to connect the accused with the offence in order to prove their natural presence at the spot. One

independent witness Lubhaya Ram was cited and was examined in the Court, but he did not support the prosecution case and was declared hostile

and he was cross-examined at length by the learned APP for the State, but nothing surfaced on the file from his cross-examination in favour of

prosecution. So the statement of complainant and remaining witnesses are interested one being belonging to the same family and have interested in the

land mentioned in statement Ex.PA which creates doubt to prove the presence of accused at the spot.

15. In view of above referred circumstances of the prosecution case, it stands established that the prosecution has failed to prove its case against the

accused beyond reasonable doubt and as such, by extending the benefit of doubt, accused are acquitted of the charges framed against them. Bail

bonds and surety bonds are discharged. Case property be disposed of after the expiry of the period of limitation or revision if any. File be consigned to

the record room, Batala, after due compilation and same be taken up as and when accused Rachhpal Singh who declared as proclaimed offender is

arrested or himself surrendered in the Court.

Pronounced in open Court Dated: 16.12.2013. (Rachhpal Singh) Judicial Magistrate Ist Class Batala.

Counsel for the petitioner has further submitted that, at one point of time, the petitioner was declared a proclaimed offender, however, later on, he had

challenged the order dated 15.04.2010, vide which the petitioner has been declared as proclaimed offender, by way of filing CRM-M No.37593 of

2015, in which the operation of the impugned order was stayed and, thereafter, the petitioner was granted the concession of anticipatory bail vide

order dated 29.01.2016 passed by the Additional Sessions Judge, Gurdaspur (Annexure P4).

Later on, the said petition became infructuous as the petitioner in pursuance of the order granting him anticipatory bail had appeared before the trial

Court and faced the trial. The petitioner has filed the present petition praying for quashing of FIR No.15 dated 20.04.2007 on the ground that the main

allegation levelled by the complainant in the FIR is that the complainant " Sudesh Kumari was a tenant of Wakf Board and was in possession of the

land in dispute and the common allegations against the petitioner along with other co-accused are that they have forcibly taken away the standing

wheat crop from 13 kanals of Wakf Board land, which was on lease with the complainant.

Counsel for the petitioner has further argued that once a finding has been recorded by the trial Court, in the judgment dated 16.12.2013, that from the

statement of the prosecution witnesses, it could not be proved that the petitioner and other co-accused had committed the offence of removing the

crop from the aforesaid land and, therefore, no purpose will be served for directing the petitioner to face the trial.

Counsel for the petitioner has relied upon the judgment

"Sudo Mandal @ Diwarak Mandal vs State of Punjab", 2011(2) RCR

(Criminal) 453, wherein this Court has held as under:-

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.â€

Counsel for the petitioner has, thus, submitted that no purpose will be served, in case, the petitioner face the trial as the evidence of the prosecution,

which has come against the petitioner in the aforesaid trial, has already been appreciated by the trial Court and the trial Court has recorded a finding

that the prosecution has failed to prove the allegation against the petitioner.

Reply by way of affidavit of the Deputy Superintendent of Police, Dera Baba Nanak, Police District Batala has already been filed and in the reply, it

is stated that the petitioner was declared as proclaimed offender on 15.04.2010, however, when the petitioner filed CRM-M No.37593 of 2015, this

Court vide order dated 03.11.2015 had stayed the operation of the order declaring the petitioner as proclaimed offender with liberty to the petitioner to

avail the remedy of filing an anticipatory bail and later on, the bail was ganted to the petitioner and the petitioner appeared before the trial Court and is

on regular bail. In reply, the other contents of the petition are admitted.

On a query raised by this Court, counsel for the State, on instructions from HC Baldev Singh, has submitted that the prosecution has not filed any

appeal against the judgment of acquittal dated 16.12.2013 and the same has attained finality.

After hearing counsel for the parties, I find merit in the present petition. Since the allegation against the petitioner and the co-accused are common and

identical and role of the petitioner cannot be segregated as the allegations in the FIR pertains to committing of theft of standing wheat crop against all

the accused persons, which could not be proved during the course of trial, faced by the other co-accused, therefore, in the light of judgment of the

Division Bench of this Court in "Sudo Mandal @ Diwarak Mandal's case (supra), this petition is allowed and the FIR No.15 dated 20.04.2007

registered under Sections 447, 379, 506, 148 and 149 IPC at Police Station Kotli Surat Malhi, District Batala and all consequential proceedings pending

against the petitioner are quashed as no purpose will be served, even if, the petitioner is ordered to face trial.