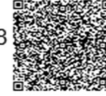
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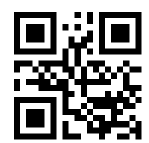
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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

129

CRM-M-20158-2026
Date of Decision: 17.04.2026

Davinder Singh @ Sunny ....**Petitioner**

Versus

State of Punjab and another ....**Respondents**

CORAM: HON'BLE MS. JUSTICE RUPINDERJIT CHAHAL

Present: Mr. Sunil Agnihotri, Advocate
for the petitioner.

*****

<u>RUPINDERJIT CHAHAL, J (ORAL)</u>

1. By way of present petition under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 the petitioner has prayed for quashing of FIR No. 314 dated 29.12.2015 under Sections 342, 323 & 34 of Indian Penal Code, 1860, registered at Police Station Sadar Tanda, District Hoshiarpur.

2. The only ground taken by the learned counsel for petitioner is that having faced trial, the co-accused Surinderjit Singh and Balwinder Kaur have been acquitted by learned trial Court, vide judgment dated 03.01.2023 after appreciation of evidence, while in case of petitioner, the trial is pending, since he was declared proclaimed offender during the trial.

3. Having heard learned counsel for the petitioner and in view of the facts and circumstances of the present case, this Court does not find any merit in the arguments advanced by the counsel for the petitioner.

4. The Hon'ble Apex Court in ***Rajan Rai v. State of Bihar, 2005(4) RCR (Criminal) 885***; relying upon another Three Judges' Bench judgment in ***Karan Singh v. State of Madhya Pradesh, AIR 1965 SC 1037***; has observed that acquittal rendered in the trial of other accused persons is wholly irrelevant and every case has to be decided on the evidence adduced therein. Relevant para from this judgment is reproduced hereunder:-

> *" In view of the foregoing discussion, we are clearly of the view that the judgment of acquittal rendered in the trial of other four accused persons is wholly irrelevant in the appeal arising out of trial of appellant - Rajan Rai as the said judgment was not admissible under the provisions of Sections 40 to 44 of the Evidence Act. Every case has to be decided on the evidence adduced therein. Case of the four acquitted accused persons was decided on the basis of evidence led there while case of the present appellant has to be decided only on the basis of evidence adduced during the course of his trial."*

5. Similarly, a Full Bench of Kerala High court in ***T. Moosa & etc. v. Sub-Inspector of Police, Vadakara Police Station, Ernakulam & etc., 2006(3) RCR (Criminal);*** held that judgment of acquittal of co-accused in a criminal trial is not admissible under Section 40 to 43 of the Evidence Act to bar the subsequent trial of absconding co-accused and cannot be reckoned as a relevant document while considering the prayer to quash the proceedings under Section 482 Cr.P.C. (528 BNSS) and such judgment would be admissible only to show, who were the parties in the earlier proceedings and the factum of acquittal. Relevant paras from this judgment is reproduced hereunder:-

" 50. From the above discussion, it can thus be seen that a judgment to be relevant within the meaning of Sections 40 to 43 of the Evidence Act so as to bar a trial under Section 403 Cr.P.C. should be a judgment inter parties. So however, it does not mean that the judgment is not admissible if it is admissible under any other provisions of the Evidence Act. Thus, in order to prove as to who were the accused in the previous trial or ought to prove the factum of acquittal in those cases it will still be admissible under Section 30 or 35 of the Evidence Act. At the same time, the judgment rendered in the case of a coaccused and the reasoning of the judgment contained therein or appreciation of the evidence therein are not matters to be taken into account for the purpose of granting any relief to quash the proceedings and thus bar the trial itself. It may however, be a case where the very substratum of the case is lost which may be an exception to this rule. However, as held by the apex court it has to be held that even when a coaccused is acquitted in the very same trial, the other accused can be convicted if there are good reasons to do so. In other words, the acquittal of some of the accused by itself is not a reason to bar the trial in the case of the other accused.

52. To quash the proceeding after referring to the overt act of the petitioner with reference to the evidence tendered in the judgment rendered in a case of a coaccused who faced the trial and based on evidence therein case of the accused cannot be done as the judgment in the earlier case is not judgment relevant within the meaning of Sections 40 to 44 of the Evidence Act. To do so will

be in the realm of appreciation of the evidence which has to be done by the trial judge. In the above view, with great respect we cannot agree with the proposition of law thus, stated in Arun Kumar's case. The acquittal of some of the co-accused based on appreciation of evidence in their case is no ground to bar a criminal trial as the appreciation by the concerned judge in a criminal trial is not binding when the latter case is tried in the case of the other co-accused and it is for the learned trial Judge to appreciate the evidence adduced in the latter case. In that regard, possibly a particular witness may or may not be believed and his reliability may also be tested in the light of what he has stated in the earlier case etc. But those are all matters for the trial Judge to do. All that we want to say is that it will not preclude the trial of the case for the mere reason that the co-accused were acquitted. This is the principle that is stated by the Apex Court in ***Megh Singh v. State of Punjab 2004 SCC Crl. 58***, ***Gorle Section Naidu v. State of AP. AIR 2004 SC 1169*** *etc. Further, as held by the apex court in* ***Raju Rai's case 2006 (1) KLT (SC) (SN) 8 : 2005(7) Supreme 459*** *the judgment in the case of the co-accused is not at all a judgment relevant within the meaning of Sections 40 to 44 of the Evidence Act. The Rule of estoppel as held by the Apex Court is a rule of admissibility of evidence and which does not bar the trial as such. Hence it has to be held that the power under Section 482 Cr.P.C. cannot be invoked to prevent the trial of the petitioners/accused solely by referring to the overt act played by the accused as spoken to by*

the witnesses in the case of the co-accused and this Court cannot in exercise of its jurisdiction under Section 482 Cr.P.C. quash the proceedings and prevent the trial. Hence the dictum laid down in Arun Kumar's case to the extent it has taken a contrary view of what is stated above, is not a correct law and the same is overruled.

53. 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

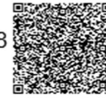
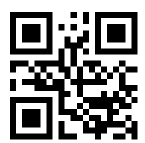
(b) to prevent abuse of process of any Court or

(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,

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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, Criminal Procedure Code

(v) <u>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.</u> 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) <u>The judgment of acquittal of co-accused in a criminal trial</u>

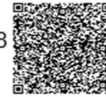
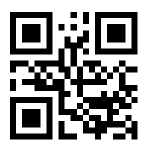
is not admissible under Sections 40 to 43 of the Evidence Act to bar the subsequent trial of the absconding co-accused and cannot, hence, be reckoned as a relevant document while considering the prayer to quash the proceedings under Section 482, Criminal Procedure Code. Such judgments will be admissible 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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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."

………emphasis supplied

6. In the factual position of the present case, the petitioner had not faced the trial and was finally declared proclaimed offender. During the trial no evidence was adduced qua him and as such the petitioner cannot claim parity with the other co-accused who have faced the trial and were acquitted by the learned trial Court. Moreover, it is not the case of the petitioner that his case is covered under the parameters laid down by the Hon'ble Supreme Court in ***State of Haryana and others v. Ch. Bhajan Lal and others, 1991 (1) RCR (Criminal) 383***.

7. In view of the discussion made hereinabove, no ground is made out for quashing of the FIR (supra) and the present petition is accordingly dismissed.

(RUPINDERJIT CHAHAL)
JUDGE

17.04.2026
Mohit….

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