

(VIA VIDEO-CONFERENCING)

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 28.10.2021

%

Pronounced on : 04.01.2022

+ CRL.M.C. 1571/2021

AMRINDER SINGH @ RAJA THROUGH: SPA HOLDER
SUKHJINDER SINGH

..... Petitioner

Through: Mr. Rajiv Kumar Garg, Advocate

versus

THE STATE OF NCT OF DELHI

.... Respondent

Through: Dr. M.P. Singh, APP for the State
with SI Rajesh Kumar PS IGI Airport.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

CRL.M.A. 10986/2021

1. By way of the present application, permission has been sought by petitioner/accused Amrinder Singh @ Raja to file the petition bearing No. CRL.M.C. 1571/2021 seeking quashing of FIR No. 258/2010 and the charge-sheet and all the proceedings arising therefrom including the proceedings initiated against the petitioner u/s

82/83 of the Code of Criminal Procedure through his S.P.A. holder Sh. Sukhjinder Singh S/o Mohinder Singh aged about 38 years R/o H. No.-489, Street No. 8 Ghuman Nagar, Sarhandh Road, Patiala Punjab who is the brother of the petitioner/accused. The present application under disposal has been signed by the said SPA of the petitioner/accused. The affidavit in support of this application has also been executed by the said SPA holder.

2. The title of the petition bearing No. CRL.M.C. 1571/2021 reads as follows:

Amrinder Singh @ Raja
Through SPA Holder
Brother Shri Sukhjinder Singh
R/o H. No.-489, Street No.-8
Ghuman Nagar, Sarhandh Road,
Patiala Punjab.

Versus

The State of NCT of Delhi.

3. I have heard the Ld. counsel for the petitioner, Ld. APP for the State and perused the records of this case.

4. It is contended by the Ld. counsel for the petitioner/accused that the petitioner/accused has not been named in the FIR and there is no admissible evidence against the petitioner/accused and the petitioner/accused has only been made an accused on the basis of the

disclosure statement of the co-accused. It is further submitted by the Ld. counsel for the petitioner/accused that there is nothing on record to show that the petitioner was a travel agent doing the business of travel agency or was doing any business ancillary to travel agency. He further submitted that the petitioner is a business man and working as a Director of an NRI company, the fact which was thoroughly investigated by the IO in May 2010. It is further submitted by the Ld. counsel for the petitioner/accused that the order dated 05.03.2016 declaring the petitioner/accused as absconder is bad in law and has been passed without following the due procedure.

5. On the other hand, it is submitted by the Ld. APP for the State that there are allegations against the petitioner/accused and it cannot be said that the case is of no evidence. It is further submitted by the Ld. APP that this is not the first time that the petitioner has been declared absconder and he further submitted that the petitioner was previously declared PO vide order dated 20.12.2011 and the said proceedings were dropped vide order dated 11.11.13 when an application in this regard was moved by the petitioner/accused for dropping of the proceedings U/s 82 Cr.P.C. It is further submitted by the Ld. APP that despite this, the petitioner did not mend his ways and again failed to appear before the trial Court and he was again declared absconder vide order dated 05.03.2016.

6. It is vehemently argued by the Ld. APP that the present petition under article 227 of the Constitution of India read with section 482 of the Code of Criminal Procedure is not maintainable as the same has been filed through S.P.A. holder and the present application and petition are liable to be dismissed.

7. In *Amit Ahuja Vs. Gian Parkash Bhambri, 2010(3) R.C.R. (Criminal) 586*; it has been observed as under:-

“9. The plain reading of the ratio of law, laid down, in the aforesaid cases, clearly goes to reveal, that it is only the accused person, against whom, a criminal case, has been registered or a criminal complaint, has been filed, can file a petition, under Section 482 Cr.P.C., in the High Court, for quashing the complaint, the summoning order, and the subsequent proceedings, and no third person, can fight a proxy war, on his behalf, under the garb of public interest litigant. The aggrieved party, which is affected by an order, is required to seek redress of its grievance, by questioning the legal validity or correctness of the same. It is another thing, if the aggrieved party, is suffering from some disability i.e. unless such party is a minor, an insane person, or is suffering from any other disability, which, in law, is recognized as sufficient to permit any other person e.g. next friend, to move the Court, on his behalf. On behalf of minor, or insane person, a guardian or a next friend, initiates proceedings, so as to challenge the legality and validity of the order, passed against him, to seek redressal of the grievance, as under law, such a person having disability, cannot be said to be competent, to

file a petition, except through next friend or guardian. In the instant case, there is nothing, on the record, that Amit Ahuja, petitioner, is suffering from any disability, recognized by the provisions of law. He is an accused, in the aforesaid complaint. It is he, who is aggrieved, against the complaint and the summoning order. It is he, who can challenge the same, on any ground which may be available to him, under the provisions of law. If, in criminal cases, until and unless, a person aggrieved, suffers from some disability, recognized by law, a stranger or some other person, is allowed, to fight the proxy war, then the very purpose of criminal justice system, shall be defeated. In that event, the Courts, would be mushroomed, by public interest litigants. In this view of the matter, the present petition, under Section 482 Cr.P.C., filed by the petitioner, through his attorney, is not maintainable. On this ground alone, the same is liable to be dismissed.”

8. In *T.C. Mathai and another Vs. The District & Sessions Judge, Thiruvananthapuram, Kerala, AIR 1999 SC 1385*; in para 15, it is observed as under:-

“15. Section 2 of the Power of Attorney Act cannot override the specific provision of a statute which requires that a particular act should be done by a party in person. When the Code requires the appearance of an accused in a court it is no compliance with it if a power of attorney holder appears for him. It is a different thing that a party can be permitted to appear through counsel. Chapter XVI of the Code empowers the Magistrate to issue summons or warrant for the appearance of the accused. Section 205 of the Code

empowers the Magistrate to dispense with “the personal attendance of accused, and permit him to appear by his pleader” if he sees reasons to do so. Section 273 of the Code speaks of the powers of the court to record evidence in the presence of the pleader of the accused, in cases when personal attendance of the accused is dispensed with. But in no case can the appearance of the accused be made through a power of attorney holder. So the contention of the appellant based on the instrument of power of attorney is of no avail in this case.”

9. In the instant case as well the petition has been filed through SPA holder which is per se not maintainable. Therefore no permission can be granted to the petitioner to file the present petition bearing No. CRL.M.C. 1571/2021 under article 227 of the Constitution of India read with section 482 of the Code of Criminal Procedure seeking quashing of FIR No. 258/2010 and the charge-sheet and all the proceedings arising therefrom including the proceedings initiated against the petitioner u/s 82/83 of the Code of Criminal Procedure through his SPA holder. Therefore, I find no ground to accept the prayer made in the present application bearing No. Crl. M.A.10986/2021, the same is, therefore, dismissed, consequently, the petition bearing No. CRL.M.C. 1571/2021 is also dismissed. All pending applications (if any) are disposed of.

RAJNISH BHATNAGAR, J

JANUARY 04, 2022

Sumant

CRL.M.C. 1571/2021

Page 6 of 6