
(2006) 02 P&H CK 0178

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 19319-M of 2005

Mahant Chand Nath Yogi

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 22-02-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 302

Citation : (2006) 3 CriminalCC 486

Hon'ble Judges : Nirmal Yadav, J

Bench : Single Bench

Advocate : J.S. Bedi, for the Appellant; Narender Sura, AAG, Haryana, for the Respondent

Final Decision : Allowed

Judgement

Nirmal Yadav, J.—Through his petition, the petitioner seeks quashing of FIR No 17 dated 24.1.1999, under Sections 302/120-B IPC, P.S.Bawal, District Rewari.

2. The brief facts as set out in the petition are that Shri Shreo Nath was the Mahant and Guru of Gaddi Math, Asthal Bohar. Petitioner as well as one Baba Azad Nath were the Chelas of Mahant Shri Shreo Nath. Mahant Shri Shreo Nath executed a registered Will on 24.5.1984 in favour of petitioner declaring him as successor to his Gaddi. In a civil suit filed at District Courts, Karnal on 30.7.1984, Mahant Shri Shreo Nath, as per statement Annexure A-6 deposed that he had appointed petitioner as his heir by performing all the ceremonies. Mahant Shri Shreo Nath expired on 7.1.1985 and petitioner was declared as successor of Mahant Shri Shreo Nath by performing Chaddar Rasam on 9.1.1985. It may be relevant to mention here that Baba Azad Nath never challenged the Mahantship of the petitioner in any Court of law nor did he challenge the Will executed by Mahant Shri Shreo Nath. Baba Azad Nath started residing in village Asalwas since 1984, which is at a distance of about 100 kilometres from the Math of Baba. Mast Nath at Asthal Bohar (Rohtak). He did not even interfere with the affairs of the Math.

3. It is further pleaded that petitioner incurred wrath of Shri Om Parkash Chautala, respondent No.2 as he refused to meet his demand of paying a sum of Rs.2 crore by 10th March, 2001 and for that he had even received threatening phone calls. Respondent No.2 directed the authorities to create all sorts of hindrances in the functioning of the institutes run by the Trust. The petitioner received several threats to his life at the behest of respondent No.2, petitioner submitted a complaint on 5.2.2001 to Superintendent of Police, Rohtak, whereupon FIR No.42 dated 5.2.2001 u/s 387 IPC was registered at Police Station Sadar Rohtak. However, petitioner's request for providing adequate security was declined. Petitioner, thereafter, submitted a representation to the District & Sessions Judge, Rohtak, who directed the Superintendent of Police, Rohtak to provide adequate security to the petitioner. Despite the aforesaid order, the State Government failed to provide any security to the petitioner. Under the directives of respondent No.2, by getting, disclosure statements of hardened criminals, namely, Krishan Singh, Manjit Singh and Ashok Kumar recorded in the year 2001, the petitioner was falsely implicated with the aid of Section 120-B IPC, in the aforesaid FIR No.17 dated 24.1.1999 relating to murder of Baba Azad Nath by some unidentified persons, who was registered on the basis of statement of one Randhir Singh, a resident of native village of Baba Azad Nath. According to Randhir Singh, on 24.1.1999 at about 5.00 P.M. he had gone to see Baba Azad Nath in Shiv Temple, Village Asalwas. At about 6.30 P.M., Baba Azad Nath came out and was sitting with sewaks including Tej Pal son of Ami Lal, Jaina son of Prabhata and Ombir son of Ram Pal. At that time, a person aged 25/26 years, wearing shirt and pant and muffled in black Loi came there and desired to smoke sulpha, on which Baba replied that he could not offer him sulpha, but he could take meals. When he refused to take meals, Baba told him, if he does not want to take meals he could go from the front gate. Thereafter, the complainant and others started taking meals and Baba went to the back side for urination. About 4.5 minutes thereafter, there was a big noise of Phataka (firework) and Baba gave a call "Bhajio" (run). On hearing noise, complainant and others left their meals and went towards back side and found the Baba lying with his mouth downwards near the tree and bleeding from the right side of the chest. In the FIR, it further finds mention that complainant and others had doubted that the aforesaid visitor, by hiding himself in darkness, had fired at the Baba who died because of firearm shots. It is further stated that if the said person comes before them, he could be identified. Initially, FIR was registered u/s 302 IPC and Section 120-B IPC was added later on. It is further stated that if the said person comes before them, he could be identified. Initially, FIR was registered u/s 302 IPC and Section 120-B IPC was added later on.

4. It is pleaded that petitioner was vigorously interrogated by the police officials including Inspector. CID/Crime, Faridabad. Petitioner's statement u/s 161 Cr.P.C. was also recorded by the police on 24.6.1999 and after thorough investigation, petitioner was found to be innocent. After arrest of accused Krishan, the disclosure statement was obtained from him, under pressure, inducement and

threat, which was found to be false and he was discharged by the Chief Judicial Magistrate, Rewari, on 3.11.1999. The sequence of events leading to false implication of the petitioner, as mentioned in the petition, may be summarized as under:-

(i) Investigating Agency succumbed to the pressure of respondent no.2 and secured statement of Krishan, a hardened criminal, a life convict in various criminal cases, on 10.5.1999, upon his production warrant. The said Krishan named Constable Raj Singh, a security guard attached to the petitioner, saying that petitioner had sent Constable Raj Singh to arrange for murder of some Baba.

(ii) Statement of another hardened criminal Manjit Singh, who was also involved in various cases, was recorded on 11.3.2000.

(iii) Statement of Ashok Kumar, which was recorded on 11.3.2001.

(iv) The investigating agency recorded the statement of Jai Parkash Dahiya on 27.4.2001, who had given an affidavit dated 17.3.2001 to the effect that he had got exchanged currency notes of small denomination with larger denomination, which was paid by the petitioner to the alleged hired killer for committing Murder of Baba Azad Nath.

5. On the basis of the above statements, the petitioner has been accused in the present FIR with the aid of Section 120-B IPC. It is further stated that the matter was investigated by two CIA Inspectors, namely, Kanhaiya Lal and Bansi Lal, who had found the petitioner innocent with regard to murder of Baba Azad Nath. But, to the utter surprise of the petitioner, the matter was got re-investigated and petitioner has been involved, though there is no legal evidence in support of the charge. No plausible explanation has been given by the abovementioned witnesses Manjit Singh and Ashok Kumar, as to why they did not disclose the alleged involvement of the petitioner in the crime till their arrest on 10.3.2001.

6. It is further stated that petitioner filed application for anticipatory bail u/s 438 Cr.P.C. before the Additional Sessions Judge, Rewari on 14.3.2001 and was granted anticipatory bail for six weeks which was subsequently, confirmed vide order dated 5.6.2001. The State filed Criminal Misc. No.27699-M of 2001 on 18.7.2001 for cancellation of anticipatory bail granted to the petitioner. During the pendency of the petition, petitioner sent letters to Incharge, CIA Staff, Sonapat, Superintendent of Police, Sonapat, SHO, Police Station Bawal on 23.7.2001, 21.8.2001 and 15.9.2001 offering to join investigation. Petitioner went to join investigation in response to notice dated 19.9.2001, but nothing was done and he was sent back for being called on some other occasion. Suspecting some evil design, the petitioner moved an application in the Court of Chief Judicial Magistrate, Rewari in which after issuing notice to the State, the matter was fixed for 27.10.2001 for joining investigation by the petitioner at CIA Staff, Police Station Sonapat. Petitioner did appear for investigation and was interrogated on 27.10.2001 and again on 28.10.2001. The Investigating Officer completed the investigation. The anticipatory bail granted to the petitioner was,

however, cancelled by the High Court by setting aside the order of Additional Sessions Judge. Therefore, the petitioner approached the Supreme Court for grant of bail. The Apex Court after taking into consideration the totality of circumstances, set aside the order of the High Court cancelling bail and restored the order of the Additional Sessions Judge granting bail to the petitioner.

7. The petitioner seeks quashing of the FIR and further proceedings taken thereon on the ground that there is no legal evidence against the petitioner, which may even remotely connect the petitioner with any conspiracy having been hatched for committing murder of Baba Azad Nath. The story alleged by the prosecution does not indicate any motive for committing the murder as petitioner had been appointed as successor of Mahant Shri Shreo Nath way back on 30.5.1984 during his life time. Moreover, deceased Baba Azad Nath had never challenged the Mahantship of the petitioner during the 15 years" period from 1984 to 1999. The story that petitioner had got exchanged currency notes of small denomination with larger denomination of Rs.500/- also gets falsified in view of the record of the Bank. The investigating agency has relied mainly on the disclosure statements of Krishan, Manjit Singh and Ashok Kumar, which being recorded in the police custody, are inadmissible in law Manjit and Krishan were having the background of hardened criminals.

8. In the reply filed on behalf of the State by Dr.Chakkirala Sambasiva Rao, IPS, Superintendent of Police, Rewari, it is stated that no right of the petitioner has been infringed so as to invoke the extra ordinary jurisdiction of this Court Most of the averments made in the petition have been denied for want of knowledge. However, it is stated that the complainant had not named anybody in the FIR. The name of the petitioner figured during the course of investigation of FIR No. 17 of 1999 having suspicion with regard to involvement of the petitioner in the crime. The order passed by the Sessions Judge, Rohtak, asking the Superintendent of Police, Rohtak to provide security to the petitioner is not disputed. It is stated that no action was taken by the local police at the behest of respondent No.2 who out of personal vendetta wanted to falsely implicate the petitioner. As per prosecution, S.H.O., Police Station Bawal had received a secret information with regard to suspected involvement of accused Krishan son of Randhir Singh, resident of village Mehandipur, on which, his production warrant was obtained and he was joined in the investigation on 10.5.1999. On interrogation, he made a disclosure statement that he had been contacted by one Raj Singh, his erstwhile colleague, who told him that Baba Azad Nath was to be murdered. He further disclosed that petitioner along with Raj Singh had met him on a date of hearing in the Court of Chief Judicial Magistrate, Rohtak and he had made a demand of Rs. 10 lakhs to murder Baba Azad Nath and was offered Rs. 12 lakhs, but the said money was to be paid after murder of Baba Azad Nath. It is further stated that no such incriminating evidence was found against Krishan during, investigation and he was got discharged by the Court of Chief Judicial Magistrate, Rewari, vide order dated 3.11.1999. It is further stated that during the course of recording statement of said Krishan u/s 164 Cr.P.C, involvement of

Manjit, Constable-Raj Singh, Ashok and one Dheera resident of Pitampura, was revealed.

9. It is stated that no malicious attempt was ever made by the answering respondent to falsely implicate the petitioner. The police acted in a fair and impartial manner by following the laws of the land. It is stated that statement of the petitioner was recorded by the police on 24.6.1999 and the matter, at that time, was investigated by Inspector Kanhaiya Lal. however, no material had surfaced on record against the petitioner in the investigation conducted by Kanhaiya Lal, Inspector. It is further stated that petitioner was a possible suspect in the case from the date of the occurrence because of his strained relations with the deceased. It is admitted that the investigation, at that time, had not got any substantial headway. The material development had taken place only after the statement was made by Krishan Kumar u/s 164 Cr.P.C. and subsequent disclosure statement made by accused Manjit Singh. Thereafter, the angle of the probe was changed and investigation was conducted on entirely different footing. It is stated that Jai Parkash Dahiya was a discharged bank clerk and he was affiliated to the temple Baba Mast Nath at Asthal Bohar because extension counter of Canara Bank was situated in the Math. He was having close connection with the petitioner and was in no manner, inimical to him. The said Jai Parkash Dahiya joined the investigation and his statement u/s 161 Cr.P.C. was recorded. He also filed an affidavit and was willing to spend Rs.20-25 lacs for the same. The petitioner was nursing an old grudge against Baba Azad Nath as he had been a competing claimant of Mahant's seat during the lifetime of Mahant Shri Shreo Nath. It is further stated that Jai Parkash Dahiya had got exchanged a sum of Rs.20 lacs, which was entrusted by the petitioner to Raj Singh for converting into currency notes of Rs.500/- denomination from Rs. 100/- denomination. This fact was got verified from the Oriental Bank of Commerce, Rohtak. On a specific query, the Bank documents were procured by the learned State counsel and it was found that the aforesaid documents do not, in any way, support the prosecution story as would be discussed hereinafter. It is, therefore, stated that petition is devoid of merits and there are no circumstances warranting quashing of the present FIR.

10. I have heard learned counsel for the parties and gone through the record of the case.

11. Learned counsel for the petitioner argued that no recovery has been effected from the petitioner or any other person in pursuance of the confessional statements made by Manjit and Ashok. Even no identification has been got done till today and none of the accused as mentioned in the FIR has been got identified by the witnesses, though it was mentioned in the FIR that complainant and other persons could identify the assailant. It is further argued that none of the persons, who were present at the time of occurrence, as mentioned in the FIR, have been joined in the investigation.

12. Before dealing with the case, it is necessary to consider the nature and scope

of the inherent powers conferred on this Court u/s 482 of the Code of Criminal Procedure. It is well settled that provisions of Section 482 of the Code confer inherent power on the High Courts to make such orders as may be necessary to give effect to an order under the Code and to prevent abuse of the process of the Court or otherwise to secure the ends of justice. The inherent jurisdiction of the High Court can be exercised to quash proceeding in a private case either to prevent the abuse of process of law or otherwise to secure the ends of justice. Ordinarily, criminal proceedings initiated against an accused must be tried under the provisions of the Code and High Court would be reluctant to interfere with the proceedings at an interlocutory stage. However, there are some categories of cases where the inherent jurisdiction can or should be exercised for quashing the proceedings. There may be cases where it is possible for the High Court to take the view that initiation or continuation of criminal proceedings against an accused would amount to abuse of process of the Court and quashing of the impugned proceedings would secure the ends of justice. There may also be cases where allegation in the first information report even if taken at their face value and accepted in their entirety, do not constitute the offence alleged. In such cases, no question of appreciating evidence arises. It would be sufficient to look at the complaint or the first information report to decide whether it discloses the offence alleged or not. There may be another category of cases where the allegations made against the accused persons do constitute an offence but there is either no legal evidence in support of the case or evidence adduced clearly or manifestly fails to prove the charge or the evidence is clearly inconsistent with the accusation made. There may be cases where the legal evidence on its appreciation may or may not support the accusation in question. The Apex court in the case reported as *State of Andhra Pradesh Vs. Golconda Linga Swamy and Another*, , while examining the scope of High Courts' powers u/s 482 of the Code, has observed as under:

5. Exercise of power u/s 482 of the Code in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possible arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the Section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of

justice on the principle *quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest* (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the Section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the Section though wide has to be exercised sparingly carefully laid down in the Section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation of continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the Court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

In *R.P.Kapur v. State of Punjab*, AIR 1960 SC 860, the Apex court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings, which are as under:-

- (i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction.
- (ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;
- (iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

In dealing with the last category, it is important to take into consideration the distinction between a case where there is no legal evidence or where there is evidence, which clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusation. Ordinarily, the High Court would not embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. The Court should be circumspect and judicious in exercising discretion, but at the same time, should take all relevant facts and circumstances into consideration before issuing process, lest it should be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. It may be mentioned here that the Apex Court in the case of *State of Haryana v. Bhajan Lal*, 1992 SCC (Cri) 426 added a note of caution that such power should be exercised sparingly and that too in the rarest of rare cases. The illustrative categories indicated by the Apex Court are as follows:

102. (1) 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.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(91) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) 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.

(4) 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 u/s 155(2) of the Code.

(5) Where the allegations made in 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.

(6) 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 specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) 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. As described above, the powers possessed by the High Court u/s 482 Cr.P.C. are of very wide nature and plentitude. However, it requires great caution in exercise. The Court has to be careful to see that its decision in exercise of this power is based on sound principles and is not exercised to stifle a legitimate prosecution. The Court should refrain from using power in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage. The complaint/FIR has to be read as a whole. In this regard, reference can be had to *The Janata Dal Vs. H.S. Chowdhary and Others*, , *Dr. Raghubir Sharan Vs. The State of Bihar*,

14. Keeping in view the principles of law enunciated by the Apex Court and having examined the scope of inherent jurisdiction, I now proceed to determine

the facts of the present case to consider - Whether the facts of the present case would attract the aforesaid principles of law?

15. In the present case, admittedly, there is no direct evidence with regard to scene of occurrence and it is a case of blind murder. In the FIR nobody has named the assailant who had murdered Baba Azad Nath. It is simply stated that Baba Azad Nath was killed by an unidentified person. The involvement of the petitioner has been made during the course of the investigation. In the reply filed by the State, the motive behind the murder was existing strain regarding enthroning of Mahant of the Bohar Math between the petitioner and the deceased and, therefore, the petitioner wanted to eliminate Baba Azad Nath from his way. However, from the undisputed facts, it would be clear that motive suggested by the respondent is not believable. Both, the petitioner and Baba Azad Nath were Chelas of Mahant Shri Shreo Nath. During his lifetime, Mahant Shri Shreo Nath had executed a registered Will in favour of the petitioner declaring him successor of the Gaddi. Mahant Shri Shreo Nath deposed before the Court of Additional District Judge, Karnal on 30.7.1984 that he had executed a Will for appointment of the petitioner as his successor and all the requisite ceremonies had been performed. Baba Azad Nath was expelled from the governing body of the Trust in the year 1984. Consequently, Baba Azad Nath shifted to village Asalwas in the year 1984 itself. Mahant Shri Shreo Nath expired on 7.1.1985 and petitioner was made Mahanat of the Gaddi on 9.1.1985. There is no documentary evidence indicating that Baba Azad Nath had ever questioned the succession of the petitioner after the death of Mahant Shri Shreo Nath or he had ever challenged the validity of Will dated 24.5.1984. There is nothing on record nor anything has been placed before this Court during the course of hearing of this case, that ever since Baba Azad Nath had shifted to Asalwas or had been expelled from the governing body, he had interfered in the working and functioning of the Trust. There appears to be no motive for the petitioner to hatch a conspiracy for committing murder of Baba Azad Nath. As such, there is nothing on the record to support the motive suggested by the prosecution against the petitioner.

16. Another circumstantial evidence collected by the investigating agency, is in the shape of statement of one hardened criminal Krishan Kumar. The said statement was recorded in police custody. It is pleaded in the reply filed by the State that presence of Krishan Kumar was procured on production warrant on receipt of a secret information with regard to his involvement in the murder of Baba Azad Nath. However, there is nothing on record to show as to what was the source of said secret information. The said Krishan Kumar was discharged by the Chief Judicial Magistrate⁴, Rewari on 3.11.1999 as the investigating agency stated that there was no incriminating evidence against him. After more than 17 months of his discharge, Krishan Kumar got his statement recorded on 24.4.2001 u/s 164 Cr.P.C. A perusal of said statement, which is placed on record, shows that he had met one Manjit Singh who disclosed to him that he had murdered Baba Azad Nath for a consideration of Rs. 1.50 lacs through one Ashok whom he had paid Rs.25,000/-. However, this fact was not disclosed by him

earlier when his presence was secured on production warrant and his statement u/s 161 Cr. P.C. was recorded on 10.5.1999. Such a long time-gap between two statements makes the veracity of his statement doubtful. It is also highly doubtful, that a life convict would voluntarily make a statement u/s 164 Cr.P.C. particularly when he did not disclose the said fact during his custodial interrogation. Another aspect of the controversy, which creates a doubt in the testimony of Krishan, is that the investigating agency had itself got him discharged. It appears that he was used only to involve the petitioner in the blind murder of Baba Azad Nath. As per his statement, Rohtak and he had made a demand of Rs. 10 lacs for the murder of Baba Azad Nath but petitioner had offered a sum of Rs. 12 lacs, which again seems to be quite improbable as no one would pay higher amount of Rs. 12 lacs for a task for which demand of Rs. 10 lacs only has been made. According to him he had agreed for committing murder of Baba Azad Nath but he could not do so. As per his version, another hardened criminal Manjit Singh met him in the Sonapat Jail and disclosed that he had committed the murder of Baba Azad Nath for a sum of Rs. 1.5 lacs only. The factum of Krishans having not disclosed the conversation between him and Manjit in his earlier statement recorded in May 1999 clearly shows that it was only a ploy to implicate the petitioner.

17. The other evidence relied upon by the prosecution is disclosure statements of Manjit Singh and Ashok Kumar before the police. Undisputedly, the disclosure statements made before the police in pursuance whereof no recovery is made, are not admissible in evidence. Therefore, such disclosure statements cannot be construed as a clinching legal evidence against the petitioner and as such, the disclosure statements, relied on by the prosecution, do not make out a plausible case against the petitioner, in any way.

18. As per confessional statement (Annexure A-4) of Manjit Singh, recorded on 11.3.2000, one Ashok Kumar son of Nafe Singh, resident of Bakner, P.S.Narela came to him at Sonapat in the month of January 1999. He asked him (Manjit) that he wanted to get one person murdered. Manjit Singh made a demand of Rs.2 lacs, but he was ready to pay Rs. 1.5 lacs. He further stated that Ashok took him to Dera Baba Asalwas to show him the Dera and he himself left that place. He was paid a sum of Rs. 1000/- as expenditure and was promised to pay the balance after completion of work. According to him, he fired a shot from his pistol at Baba and ran away from the spot. Thereafter he informed Ashok Kumar who had given him Rs. 1.5 lacs. According to him, he had thrown the pistol in bushes near Nala. Ashok Kumar, son of Nafe Singh, in his statement (Annexure A-3) states one Randhir Singh @ Dhira had asked him to murder a man and upon this, he contacted Manjit and handed over him an amount of Rs.1.5 lacs. He further stated that Randhir took him to village Asalwas and showed him Baba and the temple. He further states that Manjit. Thereafter, committed murder of Baba Azad Nath and after two days Randhir gave him Rs.2 lacs. He further stated that Baba Azad Nath was murdered by Randhir and Raj Singh at the behest of Baba Chand Nath. However, no recovery has been made from any of these two

witnesses in pursuance of their disclosure statements. Even no identification of alleged murderer Manjit has been got conducted by the investigating agency till date, though in the FIR it is clearly mentioned that Tej Pal, Jaina, Parbhata, Ombir and Parkash were present when the assailant had come to the Dera and that those persons could identify the assailant. Even the statements of aforesaid persons, who were stated to be present on the fateful day, have not been recorded till date. The confessional statements of co-accused which have not led to any recovery cannot be said to be legal evidence present petitioner. Therefore, the chain of events and circumstances is not complete to point the finger of guilt at the accused. Even if, for the sake of argument, it is taken that there are two confessional statements on the record against the petitioner, but in the absence of any corroborative circumstances, none of these two statements can be said to be an incontrovertible or damning evidence, in any way, for coming to a definite conclusion that petitioner had hatched a conspiracy for the murder of Baba Azad Nath.

19. It was argued by the learned State counsel that Constable Raj Singh who was deputed as security guard with the petitioner, had met accused Krishan which supports the version of the investigating agency. Such an argument is fallacious, as there is no supportive evidence to corroborate that Raj Singh had ever met Krishan.

20. Further the statement of Jai Parkash Dahiya that petitioner had asked him to exchange currency notes of small denomination with larger denomination also gets falsified from the certificate of the bank which is annexed as Annexure A-5 with the petition. As per Annexure A-5, it could not be verified whether any amount of Rs.500/-denomination notes had been exchanged for notes of smaller denomination as no such record is in the branch. It is further stated that as per their cash deposit book, the maximum notes of Rs.500/- denomination in the month of December, 1998 were Rs. 1619000/- as on 29.10.1998 out of which Rs. 1350000/- were deposited with currency chest of Reserve Bank of India, Sonapat Road, Rohtak on 30.12.1998. Thus, the statement of Jai Parkash Dahiya that he had got the currency notes of small denomination exchanged with larger denomination gets completely falsified by this certificate.

21. In order to prove conspiracy, the prosecution has to prove meeting of minds for commission of offence. Each conspirator need not take an active part in commission of each and every one of the conspiratorial act. However, conspiracy can be proved by circumstantial evidence as well as by direct evidence. Though the conspiracy is always hatched in secrecy, the prosecution must prove some physical manifestation of agreement although it may not be necessary to prove actual meeting of two persons or the words by which the two persons communicated. The only evidence, in the instant case, is confessional statements made before the police, which are hit by the provisions of Section 25 of the Indian Evidence Act. Since no recovery was made following the two disclosure statements, therefore, no part of the statements could be proved even u/s 27 of

the Indian Evidence Act.

To substantiate the charge of conspiracy the prosecution must prove agreement between two or more persons to do an unlawful act, or to do a lawful act by unlawful means. Law requires specific proof against each of the conspirators participating in person to particularly design a particular thing. The object of conspiracy must be proved as laid. It must be proved by positive evidence that there was a positive agreement in the mind of two or more persons or there was a meeting of mind to do an unlawful act. Unless a detailed specific proof against each of the accused who had participated in a particular design to do a particular thing has been established, no charge u/s 120-B IPC can be proved.

22. In the present case, the investigating agency/prosecution has failed to prove any motive which could have inspired the petitioner to hatch a conspiracy to commit murder of Baba Azad Nath. The alleged motive as discussed in the earlier part of the judgment is wholly flimsy. It would be too much to infer that accused would decide to commit murder of Baba Azad Nath particularly when there was no clash of interest between them for the last 15 years. Since the case is based on circumstantial evidence, the motive - assumes relevance and importance. The prosecution has miserably failed to show any prima facie evidence to connect the petitioner with the blind murder of Baba Azad Nath and even the chain of circumstantial evidence as pleaded by the prosecution is not complete. The co-accused who are hardened criminals have made disclosure statements while in police custody and their statements have not led to any recovery. Such an evidence cannot be treated as a firm legal evidence. The statement of Jai Parkash Dahiya with regard to having exchanged the currency notes is also falsified by documentary evidence i.e. certificate of the Bank. The alleged payment of Rs.20 lacs for the murder of Baba Azad Nath is also not proved. The petitioner has been sought to be implicated with the aid of Section 120-B IPC. One of the co-accused Krishan, who stated that he was asked to commit murder of Baba Azad Nath, had further stated that his man could not accomplish the task. He further stated that Manjit, another hardened criminal met him after committing the murder of Baba Azad Nath. Moreover, Krishan was got discharged by the prosecution itself on 3.11.1999.

23. A careful scrutiny of entire evidence on record against the petitioner, indicates that all was not well with the manner in which the investigation was conducted. In order to prove conspiracy, the conduct and surrounding circumstances must bear upon the offences alleged and should not be too remote. There is no connecting or corroborative evidence to prove that Constable Raj Singh and Randhir Singh had met Ashok or that they were even known to said Ashok. There is also nothing on record that Manjit was known to Ashok. As per statement of Ashok, his Aunt's son Pardeep Kumar had introduced him to Manjit. Even that link evidence i.e. Pardeep Kumar has not been examined as a witness. Besides, the most important evidence could be the identification of alleged assailant Manjit by those persons who were stated to be present at the

Dera of Baba Azad Nath when Manjit had allegedly gone there. But, no identification of Manjit, accused, was got done by the investigating agency.

24. In view of the above discussion, this Court is fully satisfied that the facts and circumstances of the present case do constitute a category where this Court must exercise its inherent powers u/s 482 of the Code to prevent an apparent abuse of process of law.

25. Consequently, the petition is allowed and FIRNo.17 dated 24.1.1999, under Sections 302/120-B IPC, Police Station Bawal and all subsequent proceedings taken thereon qua the present petitioner only, are hereby quashed.