

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Criminal Misc. 14399 of 2010

Date of decision: September 8th, 2015

Harkirat Singh Mangat

... Petitioner

Versus

Inderjit Singh & Another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Petitioner in person.

Mr. Shekhar Verma, Amicus Curiae

Mr. K.B.S.Mann, Advocate
for Inderjit Singh-respondent No.1.

AMOL RATTAN SINGH, J.

This petition has been filed by the petitioner, invoking Section 482 of the Code of Criminal Procedure, 1973, seeking quashing of the order of the Additional Chief Judicial Magistrate, Ludhiana, dated 06.04.2004 and the subsequent order of the learned Additional Sessions Judge (*Ad hoc*), Fast Track Court, Ludhiana, dated 05.10.2009, the first, dismissing the application filed under Section 340 Cr.P.C., and the 2nd, dismissing appeal filed thereupon.

2. The said application had been filed by the petitioner, seeking that the four respondents impleaded therein, i.e. S/Sh.Arun Shori, Advocate, Dharambir Sharma, Advocate, Inderjit Singh son of Ram Singh and Balwinder Singh son of Inderjit Singh, be proceeded against for the commission of offences punishable under Sections 191, 192, 193, 199, 200,

196, 467, 468 and 471 of the IPC.

3. This Court, after hearing arguments in this petition, had earlier reserved its judgment and thereafter, as detailed in the order dated 12.11.2014, it was found that due to different statements made at different times, the respondents originally impleaded before this Court, had been shown to be deleted from the array of parties. It was not certain as to who actually remained as a respondent in the petition. Eventually, it was found that of the four persons originally impleaded as respondents before this Court, S/Sh. A.K.Shori, (by then Additional Sessions Judge, Kaithal), Dharamvir Sharma, Advocate, Ludhiana, Inderjit Singh son of Ram Singh and Balwinder Singh son of Inderjit Singh, Inderjit Singh and Balwinder Singh were shown to have been deleted in the original memo of parties (at page 5 of the paper book) but thereafter, again shown to have been respondents no.1 and 4, in the second memo of parties, after deletion of Rohit Thapar, Advocate, who was shown as the first respondent in the second memo of parties, at page 5-A of the paper book.

4. Eventually, after going through the details of the orders passed with regard to deletion of various respondents, this Court had concluded that Rohit Thapar, Advocate, had definitely been deleted as respondent no.1 on the request of the petitioner and of the remaining four respondents, Inderjit Singh, who became respondent no.1 after the deletion of the name of Rohit Thapar, remained unserved of the notice issued in the present petition by this Court, way back on 10.11.2010. Consequently, upon the matter having been put up for re-hearing, notice had been ordered to be issued only to Inderjit Singh on 12.11.2014 and the Registry directed to prepare a fresh memo of parties, presently showing only Inderjit Singh as

the respondent, in view of the fact that because of the statements made and possible errors in deleting the names of various persons, the person against whom the actual allegations were made in the application under Section 340 Cr.P.C., was Inderjit Singh son of Ram Singh. The lawyers of Inderjit Singh (Sarvshri Arun Shori & Dharamvir Sharma, were not issued notices on the matter being put up for re-hearing, Dharamvir Sharma in any case having been shown to be deleted from the array of parties, earlier).

5. The said respondent, Inderjit Singh, not having been served, bailable warrants were ordered to be issued by this Court, upon which he was produced in Court on 03.12.2014 and the matter thereafter, heard again, with this Court, in the interim period, on various dates, taking cognizance of the petitioners' statements that Inderjit Singh was actually a proclaimed offender in various cases at Ludhiana. Therefore, taking judicial notice of that fact and having confirmed with regard to pendency of some cases, he had been ordered to be produced in the concerned Courts at Ludhiana, though with those cases not being different proceedings, the matter was, obviously, left to rest with those Courts, after ensuring his production there.

Thereafter, arguments were heard in this case again and judgment reserved.

6. The facts leading up to the filing of the application by the petitioner, as culled out from the record by the learned Amicus Curiae, assisting this Court (upon orders earlier having been issued, appointing him as such, as the contentions of the petitioner were not fully understandable, due to his advanced age), and as seen by this Court itself from the record, are as given hereinafter.

However, before that, it needs to be stated that the facts have been taken as already given by this Court in its order dated 12.11.2014, almost *ad verbatim*.

7. The petitioner is shown to have executed a lease deed in favour of Inderjit Singh son of Ram Singh, in respect of land measuring 24 kanals, comprised in Khewat No.156, Khatoni No.184, Khasra Nos.64//19/1,12/3/2,13,18/1,14 & 17/1, in the revenue estate of village Katani Kalan, Tehsil and District Ludhiana, on 23.12.1999.

As per the petitioner, 4 kanals of land comprised in the above given khasra numbers, was retained by him.

The lease was to commence w.e.f. 01.01.2000 for a period of fifteen years and the purpose of the lease was to set up a brick kiln and hutments.

The consideration amount settled in respect of the lease, is stated to have been Rs.1,12,500/- per annum.

8. On 05.01.2000, respondent No.1 is stated to have issued Cheque No.880889, for a sum of Rs.1,12,500/-, drawn on the Bank of Maharashtra, as consideration amount, in respect of the lease deed. This cheque is stated to have been dishonoured, on 06.01.2000.

9. However, another lease agreement is stated to have been executed by the petitioner in favour of respondent no.1, on 23.12.2000, in respect of 49 kanals and 4 marlas of land comprised in the same Khewat No.156, Khatoni No.184, but in khasra Nos.63//10/2, 11,20/1,64//6/3,7/2,8/2, 9/1/1,15,16/1,64//14 and 17/1 also situate in the same revenue estate.

The lease period for this land is stated to have been four years,

from 01.05.2000 to 30.04.2004.

The consideration amount in respect of this land is stated to have been Rs.12,30,000/- and the purpose thereof was excavation of mud for preparing the bricks.

10. The abovesaid amount of Rs.12,30,000/- was to be paid in two installments, the first on 30.04.2000, for an amount of Rs.6,30,000/- and the second on 30.12.2000, for an amount of Rs.6,00,000/-. (Though the date of the lease deed is given in the plaint as 23.12.2000, the dates of installment and possession are said to be 30.04.2000 and 1.5.2000 respectively).

Consequent upon the alleged non-payment of the above consideration/part of the above consideration, the petitioner approached respondent no.1, claiming damages for violation of the terms and conditions of the lease deed, but with no result.

11. Thereafter, the petitioner filed Civil Suit No.197 on 27.07.2001, in the Court of the Civil Judge, Ludhiana, seeking permanent injunction against respondent-Inderjit Singh, restraining him from interfering in the land measuring 73 kanals and 4 marlas described therein, including the brick-kiln etc. standing on the said land and further seeking a decree of declaration to the effect that both the agreements/lease deeds executed between the petitioner (plaintiff) and respondent-Inderjit Singh (defendant), in respect of the brick-kiln and the land, are "liable to be cancelled" as having been obtained by the defendant by adopting illegal means and cheating and practicing fraud. Still further, issuance of a decree for grant of damages to the tune of Rs.32,34,040/- with future interest, was also prayed for, in the civil suit.

The defendant, Inderjit Singh, filed a written statement thereto,

as also a counter-claim, seeking permanent injunction restraining the petitioner (defendant in the counter-claim) and his agents etc., from interfering in the peaceful possession of the counter-claimant (defendant in the suit of the present petitioner), over the suit land.

12. In the suit filed by the present petitioner, prior to the amendment of the plaint and even thereafter in the amended plaint, it was stated in para-10 thereof, that due to violation of the terms and conditions of the lease deeds, the petitioner approached respondent no.1 on 30.06.2001 to pay damages and the said respondent (defendant in the suit), told him that he had no money to pay the lease consideration and the damages claimed, but he was ready to surrender and deliver back the possession of the entire land and, further, offered to pay damages after about six months when other brick-kilns would start functioning.

In reply to the above contention contained in the plaint, the defendant, while denying the same, stated that it was, as a matter of fact, the plaintiff (present petitioner) who had violated the terms and conditions of the lease deeds and as such no assurance for any damages was made.

13. More importantly for the purpose of this petition, the bone of contention out of which the present proceedings arise, is with regard to the contention of the petitioner, in the civil suit, on the events that took place after the defendants' alleged agreement to surrender the land leased out, back to the petitioner. In this regard, para 11 of the amended and unamended plaint, runs as follows:-

"That on 02.07.2001 in the morning, the defendant along with Shri Charan Singh, Shopkeeper at Bus Stand, Katani Kalan and Shri Raj Kumar, resident of Indira Colony, Katani Kalan approached the plaintiff at his Farm House in village Katani

Kalan and repeated the above stated detailed offer in their presence and they all persuaded the plaintiff to accept the same as there was no other alternative for the defendant to make the payment claimed from the defendant. Finding no way out, the plaintiff accepted the proposal without prejudice to the rights of the plaintiff. The defendant then surrendered the possession of the entire land under lease, including pukka/kacha bricks, the brick-kiln, Jhugies, engines and other material lying at the kiln, to the plaintiff, as fully detailed in para-10 above voluntarily. He also desired the plaintiff to execute the re-conveyance deeds in respect of both the agreements/and both the lease/deeds and giving necessary affidavit etc., to the Food & Supplies Department for the transfer of the licence in the name of the plaintiff or the person named by the plaintiff."

14. In reply to this contention in the plaint, the written statements filed by the respondent (both, to the original plaint and the amended plaint), stated that he had never met the plaintiff on 02.07.2001, or the above mentioned Charan Singh and Raj Kumar, and as a matter of fact, Charan Singh and Raj Kumar are close associates of the plaintiff, himself.

The reply to para 11 of the amended plaint, runs as under:-

"11. In the reply to para No.11 of the plaint, it is submitted that the defendant never met the plaintiff on 02.07.2001 along with Charan Singh and Raj Kumar. It is submitted that Charan Singh and Raj Kumar are the close associates of the plaintiff. The defendant never repeated any offer in the presence of these persons nor there was any occasion for the same. The question of accepting the alleged proposal by the plaintiff does not arise as no proposal was ever given by the defendant. The defendant never surrendered the possession of the land including the Kutchha Pacca bricks, brick kiln, Jhugies, engine and other material. It may be mentioned here that after the completion of formalities, the defendant received the letter from Licensing Authority on 26.06.2001 and thereafter he deposited the licence fee of Rs.10000/- just recently on 16.07.2001. Licence has been issued by the competent authority in favour of the defendant. Photo state copy of the licence is already on the record. From

this fact, it is apparent and clear that the defendant is running his business in the land taken on lease from the plaintiff peacefully. The plaintiff is, in fact, trying to interfere in the peaceful possession of the defendant though he has no legal rights for the same. It is submitted that on 10.07.2001 at about 6.00 a.m., the plaintiff called the defendant on telephone and the plaintiff at 7.30 a.m. Under coercion, duress and after giving threats to the life of the defendant, got the writing on letter pad of M/s Mangat Gun House as per his choice and with regard to the same, the defendant lodged a complaint against the plaintiff to the DIG, Punjab Police, Ludhiana. The question of giving assurance by the defendant to the plaintiff to execute the alleged reconveyance deed and to given any affidavit does not arise nor there was any occasion for the same."

15. Thus, it is primarily these contentions of respondent no.1, with regard to never having surrendered possession of the suit land and the brick kiln etc. to the petitioner, that the petitioner has alleged to be false averments before the trial Court and as such, the petition/application under Section 340 Cr. P.C. was filed, alleging commission of the offences heretofore above mentioned.

In this regard, para-13 of the civil suit also specifically states that:-

"The defendant has since wrongly dispossessed the plaintiff from the land in suit with the help of the police etc. on 14.08.2001, during the pendency of the suit. He has done so with the object of frustrating the plaintiffs' prayer for permanent injunction and to defeat his claim in the application filed by the plaintiff under Order 39 Rules 1 and 2 CPC."

In reply thereto, Inderjit Singh, stated in his written statement that:-

"It is absolutely incorrect to state that the defendant has wrongfully dispossess the plaintiff from the land in suit with the help of police on 14.08.2001. This story is concocted story on the part of the plaintiff with ulterior motives. As a matter of fact, the possession was never restored to the plaintiff by the

defendant and the question of dispossessing the plaintiff does not arise at all. It is absolutely incorrect to state that the dispossession has been caused by the defendant with the object of frustrating the plaintiff's prayer for permanent injunction or to defeat his claim. Application u/o 39 rules 1 & 2 CPC has already been disposed by this Hon'ble Court."

16. In support of his contention that the stand taken by respondent-Inderjit Singh in his written statement was a deliberately false one, the petitioner had relied upon documents placed on record in the civil suit by the said respondent himself, including a complaint dated 09.07.2001 made by Inderjit Singh, to the Assistant Superintendent of Police, Sahnewal (District Ludhiana), stated to be exhibited as Ex.P14 in the counter-claim filed by respondent no.1.

In this complaint, a photo copy of which is available on the trial court record (in vernacular), Inderjit Singh stated that he had been running a brick-kiln for about 1¾ years, on the land of the petitioner, and that he is to pay some money to the petitioner, payment of which has been delayed and that he (petitioner) wishes to dispossess him (Inderjit Singh) without notice, and that he has made one of his men "sit" on the land, in order to stop him (Inderjit Singh) from entering it, and further, that about 10 lakh baked bricks are lying on the brick kiln, which the petitioner is not allowing him to pick up. (Emphasis on "wishes to" applied by this Court)

The complaint further states that the complainant (Inderjit Singh) was willing to pay the amounts due to the petitioner, along with interest, and that despite that, the petitioner was threatening to hand him over to the police.

As such, Inderjit Singh sought that he be protected from the

'injustice; being meted out to him.

17. A similar complaint (in English) is also stated to have been made to the DIG, Ludhiana Range, by Inderjit Singh, on 17.07.2001, which was stated to have been relied upon by him as Ex.P7 before the Civil Judge (Sr.Divn.).

In the said complaint, other than referring to the documents of lease etc., it is stated that the petitioner came to the brick kiln along with friends and relatives on 08.07.2001, in the absence of Inderjit Singh and "started quarreling with my labour and office staff and threatened them and compelled them to run away from the brick kiln."

The complaint then further narrates that he had also filed a complaint to the Assistant Superintendent of Police, Sahnewal, on 09.07.2001 and that thereafter, on 10.07.2001, the petitioner came to his house in the early hours of the morning, asking him to come and compromise the matter, upon which he (Inderjit Singh) rung up the Assistant Superintendent of Police to tell him of the said development.

The complaint further states that Inderjit Singh reached the petitioners' house and found two other people there, including the petitioners' son, and thereupon the petitioner (allegedly) put a revolver to his (Inderjit Singhs') head, and made him write on the letter pad of M/s Mangat Gun House (stated to be run by the petitioner). The complaint states that he was forced to write that all the bricks lying in the brick kiln and the adjoining area are in the ownership of the petitioner and that respondent no.1 had divested himself of his rights over the brick kiln and cannot claim it back.

18. It is further stated in the complaint, that one blank cheque of

the Bank of Maharashtra, duly signed by respondent no.1, which he had brought along with, for purposes of compromising the matter, was taken into possession by the petitioner and his companions.

Thereafter, the complaint further states that the complainant remained depressed and tense for two days, after which he spoke to the Assistant Superintendent of Police, Sahnewal, but even after meeting him nothing substantive was done.

As such, he requested the DIG to "help me and possession of brick kiln be handed over to me in a peaceful manner." (Emphasis applied).

19. Another statement by Inderjit Singh, purportedly made before the police and stated to be relied upon before the Civil Judge (Sr. Divn.), has also been relied upon by the petitioner, in which a more detailed version of the brick kiln being taken on lease and dispute having arisen, has been given.

Importantly, in the said statement (exhibited in vernacular as Ex. P-11), it is stated at one stage that "Bhatthey tey issney Major Singh noo bhej ditta attey keha ke bhatthey tey ajj tonn mera kabza hai parr asean phir vee apnaa kam jaari rakhya" (He sent Major Singh to the kiln and said that from today I am in possession of the kiln, but we still continued our work").

The said statement also mentions the (alleged) incident of the petitioner/his son pointing a revolver at the respondents' head, making him write on the letter pad of the Gun House, as described above.

Allegations have also been made in the statement with regard to the SHO showing Inderjit Singh to be "stealing his own bricks" etc.

20. Another part of the statement further goes on to state that work on the brick kiln was going on as usual, but the petitioner, in alleged

connivance with his lawyer, had the title of the case changed and had respondent no.1 proceeded against ex parte and also prayed for a stay, due to which he (Inderjit Singh) made a complaint in the Court, to the effect that no summons were served upon him and that the matter be enquired into as to why/how he was proceeded against ex parte, after which a status quo order was passed (as per the aforesaid statement of Inderjit Singh-Ex.P11).

The statement further records that if he (Inderjit Singh) was to surrender possession, "why would he spend Rs.65,00,000/- on setting up the brick kiln".

(The above are extracts taken from the above mentioned statement, as the statement itself runs into many pages).

21. Before this Court, the petitioner also referred to the report of the ASP, Sahnewal, submitted to the Sr. Superintendent of Police, Ludhiana, after enquiry into the matter, in response to the complaint before the DIG Ludhiana Range, by Inderjit Singh, and a complaint by the petitioner to the Senior Superintendent of Police, Ludhiana. Though the date on which this report was submitted is not very clear, however, the same carries the date of 02.08 (presumably 2001) in the hand of the officer next senior to the ASP, and is available on the lower Courts' record as Exhibit P-9.

22. As per the said report, in essence, it is stated that the possession of the land was forcibly taken by the petitioner from Inderjit Singh on 02.07.2001 and that two trucks of bricks were found to have been taken away by him and that on 23.07.2001, on inspecting the site, the factum of the bricks having been taken by the petitioner came to be known, upon which he was told not to take any bricks away thereafter.

In an earlier part of the report of the ASP, it is stated that the allegation of Inderjit Singh, that the statement given by him in writing to the petitioner, (on the letter pad of the petitioners' Gun House on 10.07.2001), was obtained on the petitioner threatening him (Inderjit Singh) at the point of a gun, is also possibly a correct allegation, in view of the fact that approximately Rs.9,70,000/- seems to have been given to the petitioner by Inderjit Singh and, additionally, about 12 lakh bricks were found lying on the premises of the brick-kiln and a lot of money had been spent on the brick-kiln itself and as such, such kind of a compromise was unlikely to have been entered into voluntarily.

The report finally concluded that no offence of fraud was made out against Inderjit Singh and in fact, it was recommended by the ASP that a case be registered against the petitioner and others for (forcibly) taking possession of the brick-kiln and taking away the bricks.

Thus, as per the ASPs' report, the implication was that the petitioner had, in fact, taken forcible possession.

Seen from that aspect, Inderjit Singh's reply in the civil suit, that possession was never taken by the petitioner, would not seem be correct.

23. However, after considering the facts, as also other contentions raised before his Court, the learned Additional Chief Judicial Magistrate, eventually held that presently there is no ground to proceed further on the application under Section 340 Cr. P.C. and as such dismissed it, giving liberty to the petitioner to file a fresh one, "if the occasion so arises at the termination of the trial of his case".

24. In appeal, the learned Additional Sessions Judge, also found

that "without probe" it cannot be decided as who was at fault and whether any amount was paid to the petitioner by the respondent, as lease money, or as return of a loan. The learned judge also stated that though the cheque allegedly issued by Inderjit Singh was stated to have been dishonoured, no complaint under Section 138 of the Negotiable Instruments Act was filed.

It was also held that if a wrong statement has been made in Court, an enquiry is required to be made, after which the Court could record its opinion; and the question of execution of the reconveyance deed on 10.07.2001 (allegedly) at gun point, also cannot be declared to be the truth, as it requires evidence.

25. As regards the role of the Advocates of the respondent, i.e. S/Shri Ashwani Kumar Shori and Dharamvir Sharma, it was held that no proceedings can be launched against them, as they only acted as counsel for their clients (Inderjit Singh and his son) and drafted pleadings at their instance, with no personal interest.

Consequently, the appeal filed by the petitioner was also dismissed.

26. Now, before this Court, the petitioner had, in his own way, despite his advanced age of about 80 years, vehemently contended that Inderjit Singh, as also his lawyers, had deliberately fabricated record in the lower Court and as such, were in any case, liable to be proceeded against under Section 340 Cr. P.C.

Since the petitioner was himself unable to convey exactly what he wished to with regard to the above, learned Amicus Curiae, upon direction of the Court, conferred with the petitioner and submitted that the said contention of the petitioner is with regard to the order dated 18.03.2008, by which the civil suit was disposed of, after recording the

following statement of the petitioner:-

"I have taken physical possession of the suit property as handed over by the defendant to me today. So I withdraw all the proceedings pending in this Court in this case. However, I reserve my right for recovery the amount against the defendant on the same cause of action."

Along with the above statement, the statement of Shri Rohit Thapar, Advocate for respondent no.1 (before the Civil Court), is also stated to have been recorded, that:-

"The defendant has today handed over the vacant possession of the suit property to Shri Harkirat Singh Mangat."

Learned Amicus Curiae further submitted that as per the petitioners' version, a statement purported to be that of Inderjit Singh, was shown to be recorded by the Civil Court on the same date, i.e. 18.03.2008, but the statement was not actually recorded, as Inderjit Singh was actually not present in Court at that time. The said statement is stated to be as follows:-

"Stated that I have compromised with Harkirat Singh Mangat and as per the compromise arrived at between the parties, I have handed over the possession of the suit land to Harkirat Singh Mangat. He has withdrawn all cases and private complaints against me and he will not pursue the remaining cases against me and against my son."

27. With regard to the above, learned Amicus Curiae has specifically and correctly pointed out, that the order dated 18.03.2008, in which the above statements have been recorded by the learned trial Court, in the suit filed by the petitioner, is not the subject matter of the present petition, as the orders impugned presently, are those dated 06.04.2004

passed by the Additional Chief Judicial Magistrate, Ludhiana, in the application filed under Section 340 Cr. P.C. by the petitioner, and the order passed by the learned Additional Sessions Judge, Ludhiana on 05.10.2009, dismissing the appeal against the aforesaid order.

However, the above has been specifically noted by this Court, only on account of the fact that the petitioner insisted on arguing on the same.

28. Mr. Shekhar Verma, Amicus Curiae, also pointed out that the order dated 18.03.2008 is already subject matter of litigation before this Court in Civil Revision No.544 of 2011, filed by the petitioner himself.

Consequently, in order to determine the connection between the present case and the said civil revision petition, the file of that case was called for by this Court during the course of deciding the present petition, (after it had been reserved), and it was seen that the said petition (CR No.544 of 2011) had earlier been dismissed in default on 18.08.2011, but subsequently, a review application (RA No.134 of 2011), was filed by the petitioner, which is under consideration by a co-ordinate Bench.

In view of the same, obviously, this Court cannot and would not make any comment whatsoever, with regard to the order dated 18.03.2008 and the statements said to have been recorded therein, they being the subject matter of a different petition, before a coordinate Bench.

29. Coming back, therefore, to the issue of there being any ground for initiating proceedings under Section 340 Cr. P.C., either against Inderjit Singh or any other person, de hors the contentions with regard to the orders of the Civil Court, dated 18.03.2008; this Court is to see, primarily, whether Inderjit Singh, or any other person in collusion/connivance with him,

deliberately made a false statement before the Civil Court or not.

The matter, therefore, boils down to whether Inderjit Singh deliberately and falsely stated, either in his written statement, filed in reply to the plaint filed by the petitioner, or in his (Inderjit Singhs') counter-claim, that he was in possession of the suit land, though he was not actually in possession thereof at the relevant time, having actually handed over possession to the petitioner on 02.07.2001.

30. As per the complaint made to the Assistant Superintendent of Police, Sahnewal, Inderjit Singh stated that the petitioner "wished to" dispossess him. (The Punjabi version on record states that "Mainu bagair kisey notice dittey bhattey tey kabza karna chaunhdey hain (othhey ?) ohana apnaa ik aadmi bhi bhitthha ditta hai jo ki saanu uthhey bhattey tey jaan tonn rokda hai." (Emphasis applied by this Court). (This is part reproduction of the entire, about half page, complaint).

In the complaint to the DIG on 17.07.2001 (Ex.P7), it is stated that on 08.07.2001, the petitioner quarreled with the labour and office staff at the brick kiln and compelled them to run away forcibly.

That complaint also alleges that Inderjit Singh was made to write something on the letter pad of the petitioners' Gun House, at gun point, as already noticed.

The said complainant also requests the DIG to help respondent no.1, and that possession of the brick kiln be handed over to him in a peaceful manner.

This line alone seems to show that possession was either given to, or taken by, the petitioner, from Inderjit Singh, at least to some extent, which is also borne out by the report of the ASP, Sahnewal, Exhibit P-9,

already referred to in detail earlier, if such report is correct.

As regards the statement of the respondent, it needs to be noted that the statement said to have been Exhibit P11 before the Civil Court, a copy of which (in Gurmukhi-Punjabi), is available on the trial Court record, carries a date of 10.04.2006, in hand; however, it is not clear as to whether this statement was made before a police officer or elsewhere.

However, the said statement of Inderjit Singh does very clearly disclose that the Senior Superintendent of Police, Ludhiana, at one point, directed the Superintendent of Police (one Parmod Ban) to ensure that peace is maintained at the brick kiln, with the presence of police force, if necessary.

31. On 23.07.2001, at the instance of the petitioner, an entry in the Daily Diary Register in the Police Station of Sahnewal is stated to have been made, with respect to the alleged commission of an offence punishable under Section 382 read with Section 34 of the IPC, against Balwinder Singh son of Inderjit Singh and another person.

32. As per the learned Amicus Curiae, during the pendency of the civil suit seeking permanent injunction and declaration, as described herein above, the petitioner is also stated to have filed Civil Suit No.268 of 2001, under Section 6 of the Specific Relief Act, 1963, seeking possession of the suit land. However, no record with regard to the same is apparently available on the record put up to this Court and as such, any admission or non-admission with regard to possession of the suit land (in that suit), can not be commented upon.

33. All the above, especially the application made by Inderjit Singh to the DIG, on 17.07.2001, and the report of the Assistant Superintendent of

Police, Sahnewal, however, definitely seem to show that possession of the suit land, or at least part thereof, was in possession of the petitioner w.e.f. 02.07.2001; however, whether such possession was a result of Inderjit Singh surrendering the land to the petitioner, on account of not able being to pay the lease money, or whether the petitioner himself took forcible possession of the land, or whether, as stated at one place, the petitioner made some of his people “sit on the land”, but the brick kiln continued to work with Inderjit Singhs' people, is not clear; and in view of the fact that the civil suit itself stood disposed of on 18.03.2008, (which order again is subject matter of Civil Revision No.544 of 2011), no finding on that issue/aspect, came to be recorded by the Civil Court.

34. However, from all that has been noticed above, it is, again to repeat, at least prima-facie seen that, qua possession, the statement of Inderjit Singh, in his pleadings before civil court, seem to be contradictory to his own statement made to the police and the report of the police made in response to his complaint.

35. Of course, on the other hand, if possession was forcibly taken by the petitioner and he, certainly, in his plaint filed before the Civil Court, having stated that the said possession was voluntarily surrendered by Inderjit Singh, the petitioner is equally, if not more, guilty of making a false statement in his pleadings before the Civil Court.

36. Having noticed all the above, the question that needs to be now answered is, as to whether any statement made by respondent-Inderjit Singh, in his written statement/counter claim to the suit filed by the petitioner, with regard to possession being with him, i.e. Inderjit Singh, rather than the petitioner as claimed by him in his suit, would constitute

offences punishable under the provisions of the IPC as set out by the petitioner in his application under Section 340 Cr.P.C., before the learned Additional Chief Judicial Magistrate.

37. Though this Court had expressed an opinion in the order dated 12.11.2014, that one or the other party would be guilty, if eventually it is established that who was actually in possession on the relevant date; however, after having heard Mr. K.B.S.Mann, learned counsel for the respondent also, and having reconsidered the matter, I find as is stated hereinafter.

38. In the opinion of this Court, a claim and counter claim with regard to a suit seeking permanent injunction, in the nature of the suit instituted by the petitioner before the Civil Court, necessarily would require one party to make a claim of possession and the other, to deny the same; else there would be no bone of contention in any civil suit of such a nature. The respondent-Inderjit Singh, in reply to para 11 of the petitioners' plaint before the Civil Court, both of which have been reproduced earlier in this judgment, stated that he (Inderjit Singh) had never made any offer of handing over possession to the plaintiff-petitioner and that, in fact, he, i.e. defendant-Inderjit Singh, was in possession and the petitioner-plaintiff was trying to interfere in such peaceful possession.

In the complaint made to the police, the respondents' contention was that the petitioner wishes to dispossess him, though thereafter he also stated that as the petitioner had posted/placed his own man on the spot, possession be handed back to him (Inderjit Singh), by the police, after taking it from the petitioner.

In the opinion of this Court, such a defence taken in a civil suit

for permanent injunction, cannot constitute offences punishable under Sections 191, 192, 193, 199, 200, 196 of the IPC, and not, in any case under Sections 467, 468 and 471 of the IPC, as was contended by the petitioner, in his application under Section 340 Cr.P.C.

If that were so, in every civil proceeding of like nature, the party which is eventually found to have made a statement which is not upheld by the Court in its judgment and decree, whereas the opposite parties contentions is upheld, the loser would be subject to such proceedings under Section 340 Cr.P.C.

That is not to say that blatantly false proceedings should not be taken cognizance of, or judicial notice of. However, where possession at any particular given point of time is in doubt and each party has to lead evidence to prove/disprove the same, the losing party cannot be proceeded against under Section 340 Cr.P.C., unless the Court itself comes to a conclusion that blatantly false and misleading statements were made by any of the parties, so as to justify such proceedings against that person/those persons.

This would especially be so, in view of what was held, to that effect, in the judgment cited by Mr. Mann (for the respondent), in **Chajoo Ram v. Radhey Shyam** (AIR 1971 SC 1367), that where there is deliberate falsehood projected and where the charge is likely to lead to conviction, only there prosecution for perjury should be sanctioned.

39. Further, in the present case, since the suit itself, is alleged to have been compromised alongwith other proceedings, in terms of the statement allegedly made by the petitioner/his counsel dated 18.03.2008 (against which the petitioner has filed Civil Revision No.544 of 2011), no

adjudication took place as to who was actually in possession of the suit land, at any given point of time.

Thus, if the suit eventually came to be decided against the petitioner, then by the reasoning given by the petitioner, in the present proceedings, he can be prosecuted under Section 340 Cr.P.C., with the same allegations with regard to the commission of offences for which he seeks to proceed against respondent Inderjit Singh/ his lawyers.

40. The next aspect on that reasoning would then be, that if any party loses a suit before the trial Court, then at that stage the losing party be proceeded against under Section 340 Cr.P.C., for having made some false statement in the pleadings.

Then, if on appeal, the judgment is reversed, would it mean that the proceedings under Section 340 Cr.P.C., be reversed and the party losing in appeal, be proceeded against? If the petitioners' reasoning is to be accepted, it could actually lead to the above given scenario.

41. No doubt, an ideal situation is that each party should admit the correct position before the Court. If that were so, possibly there would be no need for any dispute redressal mechanism, with the disputes getting settled amongst parties themselves, outside Court. Unfortunately, society has not reached that level of a utopian society and as such, to proceed against every person denying or affirming a fact in pleadings, which is eventually proved or disproved before the Court, would mean never ending criminal litigation.

However, to repeat, if the nature of the denial or affirmation, is of such a nature that calls for proceedings under Section 340 Cr.P.C., obviously the Court would not hesitate in continuing such proceedings.

42. In the present case, with nothing having been proved in the civil suit and further, in view of the nature of the facts to be proved, with regard to possession at a particular point of time, the proceedings initiated by the petitioner, would not be sustainable, in the opinion of this Court, at least at this stage, where the facts pleaded by the parties, in the civil suit, not having adjudicated upon, one way or another, in view of the statement (allegedly) recorded on 18.03.2008.

Thus, having found no material, to proceed against respondent Inderjit Singh, under Section 340 of the Cr.P.C., there would, obviously, be no reason to proceed against his lawyer in the trial Court, who remained as a respondent in the array of parties before this Court, after deletion of the names of Sarvshri Rohit Thapar and Dharamvir Sharma. Further, with no forged document having been specifically shown to this Court, as was contended by the learned counsel for the petitioner, there is no reason to continue the proceedings under Section 340 Cr.P.C. against him.

Yet, it needs to be mentioned again, that the real grievance of the petitioner, as was repeated by him on almost every occasion that he appeared before this Court, was that his litigation was shown to have been wrongly compromised in the order of the Civil Court dated 18.03.2008. That to again repeat, is not the order challenged in these proceedings, it being subject matter of Civil Revision No.544 of 2011; nor, in fact, could it have been the order giving rise to the present proceedings, which were initiated vide an application moved by the petitioner under Section 340 Cr.P.C. on 08.09.2003, i.e. 4 ½ years before the order dated 18.03.2008.

43. In view of the above, I find no reason to reverse the judgments of the learned Additional Chief Judicial Magistrate, or of the learned

appellate Court.

Consequently, this petition is dismissed.

44. The effort and labour put in by Mr. Shekhar Verma, the learned Amicus Curiae, in going through the lower Courts' record, is highly appreciated.

8th September, 2015

vcgarg/dinesh

**(AMOL RATTAN SINGH)
JUDGE**