

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-1434 of 2013 (O&M)
Date of decision : May 25, 2015

Prem Chand

..... Petitioner

versus

State of U.T. Chandigarh

...Respondent

CORAM:- HON'BLE MS. JUSTICE ANITA CHAUDHRY

Present: Mr. Nonish Kumar, Advocate
for the petitioner

Mr. Sukant Gupta, Addl. P.P. for U.T. Chandigarh

ANITA CHAUDHRY, J.

This is a petition filed under Section 482 Cr.P.C. for quashing the FIR No. 371 dated 7.10.2011 under Sections 448, 453 IPC at Police Station Sector 39, Chandigarh.

The brief facts give rise to the present petition are that an Industrial Shed was allotted to the petitioner in 1991. The petitioner paid 25% of the amount and possession was delivered to him on 09.07.1992. Subsequently, a complaint was given which led to the registration of FIR No. 3 dated 22.6.1993 under Sections 420, 468, 471 and 120-B IPC. The allegations were that the allotment had been procured by filing a false domicile certificate. The trial ended in conviction, however, in appeal the petitioner was acquitted vide judgment dated 11.6.2009.

The petitioner approached Chandigarh Industrial and Tourism Development Corporation for depositing the remaining amount but then came to know that the allotment had been

cancelled. He then approached the department for restoration of the allotment as he had been acquitted. The case of the petitioner is that he was never dispossessed and after his acquittal he was entitled to restoration of the plot and now he was being accused of illegally trespassing into the property which is an abuse of the process of law and the FIR should be quashed.

In the short reply submitted by the respondent it was pleaded that on a complaint filed by the General Manager of CITCO the FIR was registered. It was pleaded that the allotment in favour of the petitioner had been cancelled and the plot had been resumed and it had been locked and sealed by the Chandigarh Administration. Giving the background, it was pleaded that allegations were made that the allotment of the industrial shed had been obtained on false domicile certificate submitted by various allottees and enquiry was held by the Vigilance Cell. It was pleaded that provisional letter had been issued to the petitioner with respect to Shed No. 19 at village Maloya and it was cancelled on 08.11.1993 with the direction to the petitioner to vacate the shed but the petitioner failed to comply with it and the property was locked and sealed on 04.04.1995. It was pleaded that the trial ended in conviction, however, on appeal the judgment was set aside.

It was pleaded that after the acquittal the petitioner approached the Department for recall of the order but a Committee who had inspected the site on 20.05.2010 reported that shed was lying open and some repair and renovation work were being carried out and it concluded that the locks and seals have been broken and,

therefore, the FIR was lodged. It was submitted that the Chandigarh Administration had preferred an appeal against acquittal bearing Crl. Appeal No. S-1731-SB of 2010. It was pleaded that complainant had not been impleaded as respondent who was a necessary party. It was pleaded that challan under Section 173 Cr.P.C. had been filed and the case for consideration of charge was fixed but the proceedings were stayed.

I have heard both the sides.

Learned counsel for the petitioner submits that admittedly possession of the shop had been delivered to the petitioner and possession was never handed back and after acquittal the petitioner was entitled to allotment and had filed an application Annexure P-5 on 20.04.2010 and the petitioner had specifically mentioned that he was the lawful allottee and possession was with him and the allegations of trespassing have been levelled which is an abuse of process of law and the FIR should be quashed.

Learned counsel representing the State submits that the petition has been filed without impleading the complainant as a party. He submits that allotment was cancelled on 08.11.1993. He further urges that an appeal against the acquittal is pending. He further urged that after the cancellation of the allotment, the petitioner was asked to vacate and hand over possession and he failed to do so and proceedings were initiated by the Administration and possession was taken over. It was further urged that the petitioner forcibly entered the property and started construction and the FIR was registered and matter was investigated and challan has been

submitted.

The question raised by the petitioner is that he was entitled to the allotment and he had never been dispossessed and the FIR was an abuse of process of the Court and the findings given by the criminal Court was in his favour.

As against it the submission is that the allotment had been cancelled in 1993 and possession had been taken over and without any allotment in his favour the petitioner has entered the property and had started renovations and he had thereby illegally trespassed in the property.

It is well settled that in a petition filed under Section 482 Cr.P.C. the Court can interfere unless there are strong reasons to hold that in the interest of justice and to avoid the abuse of process of the Court it is necessary to interfere. The inherent powers can be exercised to secure the ends of justice and to give effect to an order under the Code. The issues which have been raised by the petitioner can not be examined in a petition under Section 482 Cr.P.C. as it contains disputed facts which can only be examined at the trial. The factual aspects are of such magnitude that it can not be examined in a petition under Section 482 Cr.P.C. Undisputedly, charge sheet has been filed. The question of quashing the FIR does not arise. The complaint *prima facie* discloses triable offence. The scope of exercising of powers under Section 482 Cr.P.C. and the category of cases where the High Court can exercise the power to prevent the abuse of process of Court or otherwise to secure the ends of justice were set out in detail in ***State of Haryana and others Vs. Ch.***

Bhajan Lal and others, AIR 1992 SC 604.

The present case does not fall under any of the categories. Consequently, the petition fails and is dismissed.

May 25, 2015

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**(ANITA CHAUDHRY)
JUDGE**