

241 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM No.M-15802 of 2014 (O&M)
Date of Decision: February 19, 2015

Amarjeet Singh and others **Petitioners**

VS.

State of Punjab and another Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Sanjiv Gupta, Advocate for the petitioners.

Mr. Ashish Sanghi, Deputy Advocate General, Punjab.

Mr. Vishal Aggarwal, Advocate for respondent No.2.

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Kuldip Singh J.(Oral)

The petitioner has filed this petition under Section 482 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.'), for quashing of preliminary order dated 22.07.2013 (Annexure P-2) passed under Section 133 Cr.P.C. and order dated 07.03.2014 (Annexure P-6) and order dated 03.05.2014 (Annexure P-8), being illegal and contrary to law.

The brief facts, which need to be reproduced for the purpose of the disposal of the petition are that respondent Partap has filed an application 133 Cr.P.C. before the learned Sub Divisional Magistrate (in short 'SDM'), Patiala. The same was decided vide order dated 07.03.2014 (Annexure P-6). There was a dispute regarding encroachment of two karam pahis. The SDM, Patiala, after

going through the report of Kanungo, came to conclusion that the petitioners shall vacate the possession of the land in question.

The said order was upheld by the learned Sessions Judge, Patiala, vide order dated 03.05.2014 (Annexure P-8).

I have heard learned counsel for the parties and have also carefully gone through the case file.

Learned counsel for the petitioners has argued that in this case, the procedure required under Section 133 Cr.P.C. for the disposal of the application was not followed. No opportunity was given to the petitioners to lead the evidence.

Section 138 Cr.P.C. read as under:

“(1) If the person against whom an order under section 133 is made appears and shows cause against the order, the Magistrate shall take evidence in the matter as in a summons-case.

(2) If the Magistrate is satisfied that the order, either as originally made or subject to such modification as he considers necessary, is reasonable and proper, the order shall be made absolute without modification or, as the case may be, with such modification.

(3) If the Magistrate is not so satisfied, no further proceedings shall be taken in the case.”

A perusal of the Section shows that the evidence is to be recorded as done in summon cases. However, in the present case, report of Kanungo was obtained and the matter was decided. Section

138 Cr.P.C. confers a legal right upon the parties to lead evidence and such right cannot be waived. In fact, there is no statement of the parties that they do not want to lead evidence.

It being so, the impugned order, being passed in violation of the procedure, to be followed as laid down under Section 138 Cr.P.C., is liable to be set aside.

Therefore, the preliminary orders dated 22.07.2013 (Annexure P-2), order dated 07.03.2014 (Annexure P-6) passed by SDM, Patiala and order dated 03.05.2014 (Annexure P-8) passed by learned Addl. Sessions Judge, Patiala, are set aside.

Learned SDM, Patiala is directed to decide the application a fresh after recording the evidence as in summon cases and after giving opportunity of hearing to both the parties. However, local inspection as submitted by Revenue Officer can also be taken into consideration, subject to the condition that the other party shall be given an opportunity to rebut the same.

The parties are directed to appear before the SDM, Patiala on 18.03.2015.

Since, the case is quite old, therefore, SDM, Patiala is directed to dispose of the same within six months.

February 19, 2015
sarita

(KULDIP SINGH)
JUDGE