

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Crl. Misc. No. 16990 of 2014(O&M)
Date of decision : 01.09.2015**

Kuldeep Singh & Anr.

..... Petitioners

versus

State of Punjab & Anr.

... Respondents

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment?
Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes/No

**Argued by: Mr. Karan Bhardwaj, Advocate
for the petitioners.**

Mr. K.S. Aulakh, AAG Punjab.

**Mr. G.N. Malik, Advocate
for respondent No.2.**

ANITA CHAUDHRY, J.

The petitioners are seeking quashing of FIR No. 72 dated 01.06.2013 registered at Police Station Ahmedgarh, District Sangrur, under Sections 447, 511, 427, 506 and 34 of Indian Penal Code.

Brief facts of the case essentially necessary for examination of issues raised, need a narration. Pala Singh had two sons Jioun Singh and Jora Singh. Jioun Singh died leaving behind three sons, namely, Gurdev Singh, Bara Singh and Kalatar Singh. Jora Singh was survived by Nachattar Kaur. Bara Singh left behind widow Manjit Kaur and two sons, namely Kuldeep Singh and Gurdeep Singh. Kalatar Singh was stated to be abroad. The

parties owned 24 acres of land and it was claimed that each one of them was in possession of 8 acres of land. It was alleged that the share of Kalatar was on lease with Gurdev Singh complainant

The FIR was registered by Gurdev Singh against his nephews Kuldeep Singh and Gurdeep Singh on the broad allegations that on 29.05.2013 they tried to forcibly cultivate the land falling to the share of Kalatar Singh, upon which *chari* was sown, with a tractor. When he was prevented, the accused criminally intimidated him and on seeing the villagers coming, fled from the spot. The case was registered, investigated and on completion of investigation, final report has been filed against him.

Learned counsel for the petitioners had made two fold submissions. Firstly, the land in dispute was jointly owned and in possession of parties as per jamabandi Annexure P-1 and it had never been partitioned and prosecution of petitioners who are co-sharer for alleged trespass was against the mandate of **Bachan Singh Vs. Swaran Singh 2001 AIR (Punjab 112-2000(3) RCR Civil 70** and secondly, a civil dispute has been given the colour and shape of criminal case.

In the reply filed on behalf of the State, it has been averred that during investigation it was found that Gurdev Singh and Kalatar Singh were living jointly while Bara Singh was residing separately and each brother had 8 acres of land each. During investigation, the witnesses further affirmed that when Kalatar Singh left for American, he had orally given his share of

land to the complainant on lease for cultivation and since then the complainant was in possession of the land falling under the share of Kalatar Singh and used to cultivate it and had sown *chari* crop and the accused forcibly harvested the crop and tried to take possession of the land. It was further pleaded that after submission of challan, the accused have been charged under Sections 447 and 511 IPC.

I have heard learned counsel for the parties and have gone through the paper-book carefully.

Broad guidelines have been framed by the Hon'ble Apex Court for exercise of powers under Section 482 Cr.P.C. in the case of **State of Haryana and others Vs. Ch. Bhajan Lal and others**, AIR 1992 SC 604, which read as under:-

"105. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers Under

Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and

inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- 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 F.I.R. Do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) 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 F.I.R. 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 Under Section 155(2) of the Code.*
- 5. Where the allegations made in the 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.”

The powers under Section 482 Cr.P.C. have to be exercised sparingly and with circumspection, that too in rarest of rare cases, which does not exist in the present case. The land in dispute was falling to the share of Kalatar Singh. Quashing has been sought on the ground that the land has not been partitioned and being a co-sharer, prosecution of the petitioners is bad in law. A counter version has come that the share of Kalatar Singh was in possession of complainant, which fact had been affirmed by the witnesses during investigation. In the considered opinion of this Court, the ground on which the petitioner is seeking the quashing of the FIR involves disputed questions of facts and are subject matter of evidence that would come on record. No finding can be recorded at this stage and any observation made by this Court may affect the rights of the parties.

No ground for quashing is made out. Dismissed.

However, whatever has been said hereinabove is without prejudice to the case on merit. The petitioner will be at liberty to raise all the pleas before the appropriate forum and at the appropriate stage.

September 01, 2015
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(ANITA CHAUDHRY)
JUDGE