

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-22582 of 2012

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Date of decision:28.8.2015

Raj Kumar and another

.....Petitioners

v.

State of Punjab and others

.....Respondents

....

Present: Mr. V.K. Sachdeva, Advocate for the petitioners.

Ms. Priyanka Sadar, Assistant Advocate General, Punjab
for respondent-State.

Mr. Harsh Kinra, Advocate for respondents No.3 and 4.

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Inderjit Singh, J.

This petition has been filed under Section 482 Cr.P.C. praying for quashing of FIR No.43 dated 28.6.2012 (Annexure-P.1) registered for the offences under Sections 452, 448, 323, 506, 380, 148 and 149 IPC at Police Station Nayagaon, District S.A.S. Nagar (Mohali) pursuant to a false complaint dated 28.6.2012 filed by respondent No.3-Surinder Bansal against the petitioners and all subsequent proceedings arising therefrom.

The important facts as stated in the petition are that respondent No.5 Parveen Kumar approached petitioner No.1 and represented that he is absolute owner in possession of a shop on the ground floor and one room on the first floor situated at Nayagaon, District S.A.S. Nagar (Mohali) and offered to sell his said property to him. Believing the representation made

by respondent No.5, petitioner No.1 entered into an agreement to sell dated 10.2.2012 with respondent No.5 for purchase of this property for a total consideration of ₹15 Lacs and petitioner No.1 paid a sum of ₹10 Lacs to respondent No.5 and vacant physical possession of the property was handed over to him. The last date for the completion of the bargain was fixed on or before 10.6.2012. As per the agreement to sell, petitioner No.1 is in possession of the said shop. On 21.3.2012, petitioner No.1 sent a notice through registered post to respondent No.5 informing that he is ready with the balance sale consideration of ₹5 Lacs and requested him to fix the date within one week from the receipt of the notice so that sale deed in respect of property could be registered. On 21.3.2012, respondent No.5 along with 3-4 persons came to the shop of the petitioner and tried to take back the possession using illegal means, but due to intervention of the respectable of the locality, respondent No.5 could not succeed in his ill designs. On 22.3.2012, petitioner No.1 filed a complaint against respondent No.5 with the Senior Superintendent of Police, Mohali stating the entire factual position and requesting to take necessary action against respondent No.5. In order to protect his valuable rights in the property and on seeing total inaction on the part of the Police authorities, petitioner No.1 filed civil suit for permanent injunction restraining respondent No.5 from dispossessing petitioner No.1 from the shop by using illegal means. Respondent No.4 Deepak Kumar filed a civil suit on 8.6.2012 for possession under Section 6 of the Specific Relief Act by alleging himself as an absolute owner of the property by making false averments that respondent No.4 has purchased this

property from one Tejinder Kaur on 13.3.2012 vide registered sale deed, who had purchased it from respondent No.5-Parveen Kumar vide registered sale deed on 24.1.2012. He has also made false averment that on 4.4.2012, petitioners No.1 and 2 came to the suit property and threatened respondent No.3-Surinder Bansal, the father of respondent No.4, by asking him to pay ₹15 Lacs otherwise, they will break open the lock and will take forcible possession of the suit property.

Notice of motion was issued in this case. Ms. Priyanka Sadar, learned Assistant Advocate General, Punjab has put in appearance on behalf of the respondent-State and Mr. Harsh Kinra, learned Advocate appeared for respondents No.3 and 4 and contested this petition.

At the time of arguments learned counsel for the petitioners argued that the agreement to sell was executed between the petitioners and respondent No.5 on 10.2.2012. Even civil suit (Annexure-P.4) for permanent injunction has been filed. The complainant has filed civil suit on 8.6.2012 under Section 6 of the Specific Relief Act for possession against the petitioners in which it is stated that the possession was taken on 4.4.2012. The present FIR has been registered on 28.6.2012 alleging that the occurrence took place on 21.3.2012. He argued that there are two different versions one given in the FIR as well as the other in the civil suit. The agreement to sell has already been executed showing that possession had been delivered. Learned counsel for the petitioners further argued that the civil suit has been decided in favour of respondents No.4 and 5, but a revision petition has been filed in which this Court has passed the order of

status quo.

On the other hand, learned counsel for the private respondents argued that respondent No.5 has already given the supplementary statement before the Police in which he had stated that the date has been wrongly mentioned and it is corrected and two versions are not there. He further argued that all these facts are finding of facts which are to be determined by the trial Court on the basis of evidence whether alleged occurrence had taken place or not.

After hearing learned counsel for the parties and after going through the record, I find that in the present case after investigation challan has already been presented. In the complaint, it is also alleged that some of the articles, which were lying in the shop, have been taken away by the present petitioners. The trial Court has already framed the charges in this case and even one witness has already been examined. The trial Court has already taken the cognizance. The disputed facts between the parties whether the occurrence had taken place as alleged by the complainant or not are to be decided by the trial Court on the basis of evidence. The findings of fact are to be given by the trial Court. This Court cannot give finding of fact without any evidence nor from the documents placed on record it can be held that this FIR amounts to misuse of the process of law.

Therefore, from the above discussion, I find that as the trial Court has already taken the cognizance, the charge has already been framed and one witness has already been examined as argued and the findings of fact are to be given by the trial Court on the basis of evidence, therefore, at

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this stage, it cannot be held that this FIR is the result of abuse/misuse of the process of law.

Therefore, finding no merit in this petition, the same is dismissed.

August 28, 2015.

(Inderjit Singh)
Judge

hsp