

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

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Date of decision:- 29.01.2015

CRM M 23372 of 2012 (O&M)

<i>Harjinder Singh</i>	<i>.....Petitioner</i>
<i>Vs.</i>	
<i>Balwinder Singh alias Baljinder Singh</i>	<i>.....Respondent</i>

CRM M 25758 of 2012 (O&M)

<i>Rajinder Singh</i>	<i>.....Petitioner</i>
<i>Vs.</i>	
<i>Balwinder Singh</i>	<i>.....Respondent</i>

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Ms Rupinder Kaur Thind, Advocate
For the petitioner
Mr. Vikram Chaudhri, Senior Advocate with
Mr. Sartaj Singh Gill, Advocate
For the respondent

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

Rekha Mittal, J.

This order shall dispose of aforesaid petitions as these involve identical questions of law and facts for adjudication. However, for the sake of convenience, facts are being taken from CRM M 23372 of 2012.

Balwinder Singh alias Baljinder Singh, respondent/complainant filed complaint No. 133 dated 11.08.2004 for offence punishable under Sections 452, 427, 506, 166, 148, 149, 120-B of the Indian Penal Code (in

short, 'IPC') against illegal and forcible demolition of room of the complainant and taking away the articles lying in the room. As per the allegations set up in the complaint, no directions were issued by this Court in CRM M 51350 of 2003 to demolish construction of the complainant. On 21.07.2004 at 10.00 am, respondent No. 1 along with respondent No. 2 (Harjinder Singh, Block Development and Panchayat Officer, Tarsika, Tehsil Baba Bakala, District Amritsar and Rajinder Singh, Naib Tehsildar, Sub Tehsil Tarsika, Tehsil Baba Bakala, District Amritsar) along with police force accompanied by respondents No. 3 to 13 (accused) came to the spot at about 2.30 pm and ordered demolition of the room by force by using Bulldozer. The complainant showed a copy of order granting status quo by the Civil Court but the respondents/ accused paid no heed to it. By demolishing the room having a common wall with other residential rooms of the complainant, the accused caused damage to the common wall and roof of other adjoining rooms and he suffered financial loss of more than Rs.1,00,000.00. The articles lying in the demolished room, such as three wheat storage drums, three oil drums, a trolley valuing more than Rs.90,000.00 were damaged. While leaving the spot, at the instance of respondents No. 1 and 2, other respondents carried in their trolley two T. Garders, 5000 Bricks, two drums filled with 24 quintals of wheat and three drums of diesel oil of 200 liters each fully filled. When the respondents were loading the articles in their trolley, the complainant, his father Piara Singh, brothers Gurmit Singh, Lakhwinder Singh objected to it. Respondents No. 1 ordered other respondents to teach lesson to the complainant party and they entered their house feeling scared. The respondents forcibly opened the outer main gate, entered the house and

started beating his family including ladies and children.

The sole submission made by counsel for the petitioners is that as the petitioners, in pursuance of the directions issued by this Court while disposing of CRM M 51350 of 2003 had gone to the spot in discharge of their official functions in view of the direction issued by their superior authority, the criminal proceedings initiated against them cannot be allowed to sustain for want of sanction to prosecute as envisaged in section 197 of the Code of Criminal Procedure (in short, Cr.P.C.). Harjinder Singh was working as Block Development and Panchayat Officer, Tarsika, Tehsil Baba Bakala, District Amritsar at the relevant time. The District Magistrate, Amritsar, vide letter (Annexure P7) appointed Rajinder Singh, Naib Tehsildar, Tarsika as Executive Magistrate for execution of work i.e. removal of unauthorized possession at the spot.

Counsel for the respondent/complainant has submitted that no such direction was issued by this Court vide order dated 06.11.2003 for demolition of any construction or removal of any encroachment. It is further submitted that in view of the allegations raised in the complaint, the petitioners along with others carried out demolition of a part of his house despite his having produced the order of status quo granted by competent court of law. They also removed various articles belonging to the complainant which were lying in the room illegally demolished by the accused and the official respondents/accused (petitioners herein) rather instigated others to commit offence complained of. The disputed questions of fact are not amenable to adjudication in proceedings under Section 482 Cr.P.C., therefore, these are left to be decided by the trial Court on the basis of evidence to be adduced by the parties. The petitioners may file an

appropriate application before the trial Court in view of the provisions of Section 197 Cr.P.C and the trial Court would be in a better position to appreciate their plea on the basis of materials on record.

I have heard counsel for the parties and perused the records.

There is no dispute about the settled position of law that disputed questions of fact are not amenable to adjudication under Section 482 Cr.P.C particularly in the circumstances when they require the parties to lead evidence for the said purpose. Kulbir Singh, one of the accused filed CRM M 51350 of 2003 before this Court and said petition was disposed of on 06.11.2003 without notice to the respondents. A relevant extract from order dated 06.11.2003 reads as follows:-

“Without going into the merits of the controversy and after perusing the averments made in the petition and hearing the learned counsel for the petitioner, the SSP, Majitha is directed to examine the grievance of the petitioner made in his representation Annexure P4. If after examination of the grievances of the petitioner, he finds that any cognizable offence has been committed then without being influenced by any pressure, he should proceed against the persons who have violated any of the penal laws. He should also issue necessary directions to respondents 3, 4 and 5 if he considers appropriate. The needful shall be done within period of 4 weeks from the date a copy of this order received by the SSP, Majitha”.

Perusal of the aforesaid extract leaves no manner of doubt that this Court issued directions to the Senior Superintendent of Police, Majitha to examine grievance of the petitioner and in case, it is found that any cognizable offence is committed then he should proceed against the persons who have violated any of the penal law. Another direction is that Senior Superintendent of Police, Majitha should also issue necessary directions to respondents No. 3, 4 and 5 if he considers it appropriate. This Court never

passed any order for removal of any construction/obstruction at the behest of private respondents in the aforesaid proceedings.

It is a matter of evidence to be led before the trial Court if construction which was demolished by the accused constitutes obstruction on a public path or otherwise. This apart, as per allegations in the complaint, the complainant produced order of status quo granted by the Civil Court but the respondents/accused did not bother about the order and demolished a part of his house. These disputed questions of fact require parties to lead evidence for adjudication. The question '*whether the acts complained of form part of official functions of the petitioners also needs to be decided on the basis of evidence*'. In this view of the matter, I find myself unable to accept submissions of the petitioners that criminal proceedings and summoning order are liable to be quashed for want of sanction to prosecute under Section 197 Cr.P.C.

For the reasons aforesaid, finding no merit, the petitions are dismissed. However, nothing stated in this order shall prejudice right of the petitioners to file an appropriate application before the trial Court in view of the provisions of Section 197 Cr.P.C which would be decided by the said Court in accordance with law.

Photocopy of the order be placed on the connected file.

(Rekha Mittal)
Judge

29.01.2014

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