

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

CRL. MISC. No.M-23311 OF 2013 (O&M)
DATE OF DECISION : 5th MAY, 2015

Davinder Singh & another

.... Petitioners

Versus

State of Punjab & another

.... Respondents

CORAM : HON'BLE MR. JUSTICE SURINDER GUPTA

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Present : Mr. G. S. Brar, Advocate for the petitioners.

Mr. Yogesh Gupta, Assistant Advocate General, Punjab.

Mr. R. K. Singla, Advocate for respondent No.2.

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SURINDER GUPTA, J. (ORAL)

FIR No.40 dated 25.04.2013 was registered at police station Bilga, District Jalandhar on the complaint of respondent No.2-Ram Kishan Singh. He moved the complaint to IG, Jalandhar for restraining petitioners Davinder Singh and Darshan Kaur from entering his land in an illegal manner and also from abusing and threatening him.

As per the complainant he resides in village Nagra, Tehsil Phillaur, District Jalandhar. He purchased some land from the petitioners which is in his possession. The petitioners had been moving application against him in the Police Station and Court and have also taken injunction orders. The Court has decided the matter in favour of the complainant-respondent No.2 holding him owner of the disputed land. Thereafter a written compromise also took place on 19.06.2012 through Panchayat wherein the petitioners clarified that they have no concern with the land

sold to complainant. Now again they are raising dispute about the said land and restraining the complainant from entering his land and to cultivate his crop. They also abused and threatened to kill the complainant.

The text of the above complaint makes it ample clear that while reporting the matter to the police the only grouse of the complainant was that the petitioners were not allowing him to enter and cultivate his land. Respondent No.2 vide sale deed dated 10.02.2012 purchased 3/4th share of Davinder Singh-petitioner No.1 in the land bearing Khata No.97/119, 93/115 Khasra No.9//16/2/2(4-0) 24/2(1-12) 25/1(4-8) 10-11(7-2) 20(4-11) 21(8-0)9//21/2(0-12) measuring 30 kanal 5 marla, situated at village Nagra, Tehsil Phillaur. It was only the share of land which was sold and not any specific number or portion in the joint land.

The petitioner Devinder Singh filed a suit for declaration challenging above sale deed dated 10.02.2012 taking the plea that the sale deed in question was never executed by him rather his signature was obtained on blank papers. The civil suit was filed on 28.09.2012 i.e. before the registration of the FIR No.40 dated 24.04.2013. Chamkaur Singh-respondent No.2 appeared in that suit and filed written statement on 06.11.2012. Vide order dated 19.11.2012 passed by Additional Civil Judge (Senior Division), Phillaur the parties were directed to maintain status quo regarding the possession over the suit property till the decision of the main suit on merits.

The police has presented challan against the petitioners for offences punishable under Sections 427, 447, 341, 511 read with Section 34 IPC.

The relevant facts which emanate from the documents placed on record and on perusal of the police file are as follows:

- (i) Respondent No.2 was sold 3/4th share of the land measuring 30 kanal 5 marla and possession of specific portion was given out of the above land.
- (ii) The litigation between the parties about the sale deed dated 10.02.2012 is pending and the Court has directed the parties to maintain the status quo.
- (iii) In the complaint, on the basis of which FIR was registered, there is no averment that petitioners ever entered into the land owned by the complainant or committed any mischief causing loss or damage to respondent No.2 of the amount of ₹50/- or above or that they have criminally trespassed into or upon the property in possession of respondent No.2. The only grievance of respondent No.2 in the complaint was that the petitioners were not allowing him to enter his land. He even made no reference to the sale deed or made any mention that the possession of the land as per the sale deed dated 10.02.2012 was ever handed over to him.

This FIR was registered after the passing of the order by the Civil Court dated 19.11.2012 (Annexure P- 9) whereby the parties were directed to maintain status quo regarding the possession of the suit land. There is nothing on the police file that the appellant had ever approached the Court or have initiated proceedings for interference by petitioners in his possession over the land which he had purchased vide sale deed dated 10.02.2012. In the absence of any allegation, to even make out prima facie case for offence punishable under Sections 427 and 441 IPC, it is evident that the FIR and the further proceedings by the police to this extent are a sheer misuse of the process of law. This rather reflects that the petitioners have tried to use the police machinery after passing of the order Annexure P- 9 in order to establish his possession over the suit land.

The perusal of the report under Section 173 shows that the police, without referring to the proceedings before the Civil Court or order Annexure P-9, filed the challan just on the basis of the averments made in the complaint. No documentary evidence of delivery of possession of the land purchased vide sale deed dated 10.02.2012 was produced during the investigation, except the mutation, which was sanctioned in routine. In the absence of the evidence, regarding the possession of land which was subject matter of the sale deed dated 10.02.2012 having been delivered to respondent No.2, the recital in the sale deed, that possession of land sold was delivered, was just a formal recital as the complainant had only purchased share in joint land. The copy of the khasra girdawari for the crop Rabi and Kharif 2012 (Annexure P-11) show that possession over the

suit land was of the petitioners. It is evident that respondent No.2 has tried to take police help and put pressure on the petitioners instead of waiting for the outcome of the civil litigation, which is a sheer abuse of process of Court.

Keeping in view the above facts and circumstances, to secure the ends of justice, this petition has merits and is allowed. Consequently, the FIR No.40 dated 25.04.2013 is quashed along with all consequential proceedings thereon, including the challan presented in Court.

5th May, 2015
'raj'

(SURINDER GUPTA)
JUDGE