

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM No. M-25363 of 2012
Date of Decision: 24.08.2015

Bhag Singh and others

--Petitioners

Vs

Subeg Singh

--Respondent

CRM No. M-20702 of 2013

Bhag Singh and others

--Petitioners

Vs.

Puran Singh

--Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. R.S.Ahluwalia, Advocate,
for the petitioners.

Mr. R.S.Chauhan, Advocate,
for the respondent(s).

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAMESHWAR SINGH MALIK J.

Petitioners, by way of instant petition under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.'), seek quashing of criminal complaint No. 100/1 dated 15.12.2010 (Annexure P-1) and impugned summoning order dated 04.06.2012 (Annexure P-2) as well as further criminal proceedings in **CRM No. M-25363 of 2012** and criminal complaint No. 08 dated 16.03.2012 (Annexure P-1) and impugned summoning order dated 23.05.2013 (Annexure P-2) as well as further criminal proceedings in **CRM No. M-20702 of 2013**. Both these cases are being decided together vide this common order as both had already been ordered to be heard together vide order

dated 03.07.2013 and also vide order dated 27.03.2015 passed by this Court.

Notice of motion was issued and pursuant thereto reply was filed on behalf of the respondent(s) in both the petitions. Interim order was also operating in favour of the petitioners.

Learned counsel for the petitioners submits that impugned complaints amount to glaring misuse of process of law. Civil suits between both the parties are pending decision before the learned Courts of competent jurisdiction. He also refers to the averments taken in para 11 of ***Criminal Misc. No. 20702 of 2013*** to contend that the respondent-complainant Puran Singh filed complaint No. 2-SDM dated 14.10.2011 before the SDM Samrala under Section 133 Cr.P.C., regarding alleged encroachment on the common passage running through the land in dispute. It was found to be without any substance. In fact, earlier complaint was filed by respondent-complainant Subeg Singh in ***CRM No. M-25363 of 2012*** who was none else but son of respondent-complainant Puran Singh in ***CRM No. M-20702 of 2013***, thus, the respondent(s)-complainant (s) in both the petitions had been misusing the process of law. The matter was purely of civil nature. However, since the learned Magistrate fell into serious error of law while ignoring material fact of pendency of civil suits between the parties, regarding this very land in dispute, the impugned summoning orders have resulted into serious miscarriage of justice and the same are liable to be set aside.

In support of his contentions learned counsel for the petitioners places reliance on the following judgments:

Ashok Chaturvedi Vs. Shitul H. Chanchani 1998 SCC (Crl) 1704 (S.C.), G.Sagar Suri Vs. State of U.P. 2000(2)SCC 636 (S.C.), Dhariwal Tobacco Products Ltd. and others Vs. State of Maharashtra and another 2009(1) RCR (Crl.) 677 (S.C.), Kuldip Raj Mahajan Vs. Hukam Chand 2008(1) RCR (Criminal) 370 (P&H), Lt. Colonel Prithvi Singh Chauhan and another Vs. State of Haryana and another 2010 (3) Law Herald 2541 (P&H), Mukesh Aggarwal Vs. Rajinder Kumar Pahwa and another 2012(1) R.C.R. (Civil) 334 (P&H), Anuradha Paudwal Vs. Brij Mohan Bhardwaj 2012 (1) R.C.R. (Criminal) 861 (P&H) and Varinder Kumar Gupta and others Vs. M/s Creative Clothing 2013(3) R.C.R. (Criminal) 330 (P&H). He prays for quashing the impugned complaints, the summoning orders as well as the further criminal proceeding arising therefrom, by allowing both these petitions.

On the other hand learned counsel for the respondent(s) in both the cases, submits that both these petitions are misconceived and liable to be dismissed. He submits that civil as well as criminal proceedings can go side by side. So far as the pendency of civil suits and granting of status quo order therein is concerned, he fairly submits that this is a matter of record. However, learned counsel for the respondents vehemently argued that only because of the pendency of civil litigation, petitioners cannot be absolved from their criminal liability. In support of his contentions, he places reliance on two judgments of the Hon'ble Supreme Court in the case of

Ravindra Kumar Madhanlal Goenka and another Vs. M/s Rugmini Ram Raghav Spinners P. Ltd. 2009 (11) SCC 529 and Vijayander Kumar and others Vs. State of Rajasthan and another 2014(3) SCC 389. He prays for dismissal of both the petitions.

Having heard the counsel for the parties at considerable length and after careful perusal of the record of both cases, this Court is of the considered opinion that in the given fact situation of these cases, both these petitions deserve to be allowed, because these have been found to be fit cases for interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C. To say so reasons are more than one, which are being recorded hereinafter.

It is undisputed on record that civil suits are pending between the parties about the possession of this very land in dispute. It is also not in dispute that while deciding the application of the petitioners under Order 39 Rule 1 and 2 CPC in their suit for permanent injunction, the learned Civil Court vide its detailed order (Annexure P-3), directed the parties to maintain status quo regarding possession over the suit land.

Separate civil suit has been filed by the complainant(s) and in said suit for permanent injunction, again an order of status quo regarding possession had been passed by the learned Court of competent jurisdiction vide order-Annexure P-4. It is not even the argued case on behalf of the respondent(s) in both the cases that civil litigation between the parties qua the land in dispute is not pending. In this view of the matter, filing of repeated complaints by

father and son clearly goes to show that they seem to be fond of litigation, even by misusing the process of law. Having said that this Court feels no hesitation to conclude that the impugned complaints as well as summoning orders cannot be sustained.

Repeated complaints moved by the complainant(s) before the police authorities have been inquired into more than once. Every time, the allegations levelled by the complainant(s)-respondent(s) have been found to be without any basis. It is interesting to note that father and son both had been filing one after the other similar complaints before the different authorities and then in the Courts also. The dispute is regarding possession as well as demarcation of land in dispute, which is already pending before the Civil Court and status quo has been granted.

It is also not in dispute that the complainant(s)-respondent(s) have filed similar complaints in the year 2008 as well as in the year 2010 wherein inquiries were conducted separately and allegations were found to be purely of civil nature. One such inquiry report dated 11.11.2010 is available on record as Annexure P-5 which was submitted by none else but Superintendent of Police (Headquarter) Khanna. The allegations were found baseless.

No such incident, as alleged in the impugned complaints, was found to have taken place. In such a situation, it can be safely concluded that the continuation of criminal proceedings arising out of the impugned complaints, including the impugned summoning orders against the petitioners, would certainly amount further abuse of process of court, thus, the impugned complaint as well as

summoning orders are liable to be quashed, for this reason also.

Coming to the judgments relied upon by the learned counsel for the respondent(s), there is no dispute by the law laid down therein. However, on a close perusal of the cited judgments, none of them has been found of any help to the respondent(s) in both these cases. It is settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in ***Padmausundra Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.***

A bare perusal of the impugned summoning orders would show that the learned trial Magistrate has committed a serious error of law, while passing the impugned summoning orders. Complainant- Subeg Singh did not step into the witness-box but it was his General Power of Attorney who came into the witness-box on his behalf. No reason, whatsoever, was forthcoming as to why the complainant did not appear in the witness-box. Under these circumstances, the complainant has not been found to be bona fide litigant by this Court.

Earlier, similar complaint was once inquired into by the DSP Samrala. Another complaint was inquired into by the DSP Khanna and the third complaint was inquired into by the Superintendent of Police (Headquarter) Khanna. Every time, complainant failed to substantiate any of their allegations. Since the

learned Magistrate fell into serious error of law, while passing the impugned summoning orders, the same cannot be sustained, for this reason as well.

On a careful perusal of the impugned complaint, this Court is of the view that even if the allegations levelled in the impugned complaints in both the cases, are taken to be true on their face value, still no offence of any kind whatsoever, has been found to be made out against the petitioners. This is the basic principle for quashing the criminal proceedings arising out of either FIR or a criminal complaint, that if after considering the allegations levelled to be true on their face value, without adding anything thereto and without extracting anything therefrom, still no offence is made out against the accused, then he must not be forced to face the agony of criminal trial.

It is equally pertinent to note here that although the powers of this Court under Section 482 Cr.P.C. are wide enough, yet the same are to be exercised sparingly and with circumspection. However, once the Court comes to the conclusion, in any given fact situation, that it is just and expedient to quash the criminal proceedings to prevent the abuse of process of law and/or otherwise to secure the ends of justice, the Court must not hesitate, in exercising its inherent jurisdiction under Section 482, for quashing the criminal proceedings. Again, neither it is possible nor desirable to lay down any straightjacket formula in this regard and each case is to be decided as per its own peculiar facts and circumstances.

The above said view taken by this Court also finds

support from the observations made by the Hon'ble Supreme Court in paras 12 and 13 of the judgment in Dhariwal Tobacco Products Ltd.'s case (supra):-

"We may notice that in G. Sagar Suri v. State of U.P., [2000(1) RCR (Criminal) 707: (2002)2 SCC 636 this Court has held :-

"7. It was submitted by Mr Lalit, learned counsel for the second respondent that the appellants have already filed an application in the Court of Additional Judicial Magistrate for their discharge and that this Court should not interfere in the criminal proceedings which are at the threshold. We do not think that on filing of any application for discharge, the High Court cannot exercise its jurisdiction under Section 482 of the Code. In this connection, reference may be made to two decisions of this Court in Pepsi Foods Ltd. v. Special Judicial Magistrate and Ashok Chaturvedi v. Shitul H. Chanchani wherein it has been specifically held that though the Magistrate trying a case has jurisdiction to discharge the accused at any stage of the trial if he considers the charge to be groundless but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against them when no offence has been made out against them and still why must they undergo the agony of a criminal trial.

8. Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a

criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

This Court therein noticed a large number of decisions to opine that whenever the High Court comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of court and that the ends of justice require that the proceedings should be quashed, it would not hesitate to do so.

We may furthermore notice that in Central Bureau of Investigation v. Ravi Shankar Srivastava, [(2006) 7 SCC 188] this Court while opining that the High Court in exercise of its jurisdiction under Section 482 of the Code does not function either as a court of appeal or revision, held :-

"7. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. The courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression

in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in the course of administration of justice on the principle "quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers the court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

Reverting back to the peculiar facts and circumstances obtaining in the present case and respectfully following the law laid down by the Hon'ble Supreme Court as well as this Court in the cases referred to here-in-above, it is unhesitatingly held that even after treating the allegations levelled in the impugned complaints, in both the cases, to be correct on their face value, since no offence has been found to be made out against the petitioners, the impugned complaints as well as the impugned summoning orders cannot be sustained and the same are liable to be quashed.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of considered opinion that both these cases warrant interference at the hands of this Court, in exercise of its inherent jurisdiction under Section 482 Cr.P.C. Consequently, impugned complaints and the impugned summoning orders as well as the subsequent criminal proceedings arising therefrom, in both the cases, are hereby quashed, so as to prevent any further abuse of process of Court and also to secure the ends of justice.

Resultantly, with the above said observations made, both these petitions stand allowed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

24.08.2015
vandana