

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M No. 24022 of 2014

Date of decision : January 22, 2015

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Gurmeet Singh and others

.....Petitioners

Versus

State of Haryana and another

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Aman Pal, Advocate for the petitioners.

Mr. C.S Bakshi, Addl.A.G, Haryana.

Mr. Chanakya Pandit, Advocate for respondent no.2.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

RITU BAHRI, J

Present petition has been filed under Section 482 Cr.P.C for quashing of the criminal complaint No. 246 instituted on 13.10.2013 (Annexure P-1) and the summoning order dated 3.5.2014 (Annexure P-2) passed by learned JMIC, Assandh.

Respondent no.2 filed a complaint under Sections 148, 149, 342, 386, 392, 395, 427, 449, 452, 506 IPC in the Court of learned JMIC, Assandh against the petitioners and the same is pending. The respondent no.2 /complainant inter-alia alleged in the complaint that on 3.9.2012, the petitioners threw the clothes and

other articles from the shop and godown/room constructed over the shop of the complainant/respondent and loaded the same in the tractor-trolley in order to take forcible possession of the shop as well as godown/room. The petitioners vide order dated 3.5.2014 (Annexure P-2) have been summoned by the trial Court to face the trial.

Complainant and petitioner no.1 are sons of maternal uncle (Mama) and 'fufa'. The complainant/respondent no.2 was residing with his maternal grandfather Jaswant Singh since his birth. Jaswant Singh had five children consisting of four daughters and one son, Puran Singh. Petitioner no.1 Gurmeet Singh was the son of Puran Singh S/o Jaswant Singh. After the death of father of petitioner no.1, he became owner of land inherited by his father Puran Singh. The grandfather of petitioner no.1 and maternal grandfather of complainant/respondent, Jaswant Singh had 2 ½ marlas land in front of Gurudwara in the market, Assandh. After the death of said Jaswant Singh the land was inherited by his legal heirs in equal shares i.e ½ marls each. The maternal aunts of the complainant/respondent transferred their shares by way of registry/decreed in favour of their nephew i.e petitioner no.1. As such, the petitioner became owner of 2 marlas of land. Respondent no.2/complainant had constructed one shop and one room over the shop in the share of his mother by the consent of his mother and is running a garments shop. The petitioner no.1 has constructed a shop and two rooms over the shop in his share. The shop and one

room has been given on rent by him and one room has been kept by the petitioner for keeping articles. Petitioner no.1 sold one room constructed over the shop to one Harbans Lal S/o Sardari Lal resident of Assandh for the consideration of Rs.10,00,000/-. The complainant/respondent tried to take illegal possession of the said room but he was stopped by petitioner no.1. A dispute arose and an action under Sections 107, 151 Cr.P.C was taken against both the parties. In view of the dispute between the parties, the purchaser Harbans Lal got the Registry executed back in the name of petitioner no.1 and got his money back.

Learned counsel for the petitioners submits that after the complaint was made, a report under Section 202 Cr.P.C (Annexure P-3) was sought by the Judicial Magistrate First Class, Assandh. As per this report, no occurrence had taken place as alleged in the complaint rather than it was observed that the complainant had tried to take illegal possession of the land related to the petitioner no.1. A case under Sections 107 and 151 Cr.P.C was also registered against the parties. Grievance of the petitioners is that this report has been totally ignored by the trial Court while passing the summoning orders. Mother of complainant-respondent no.1 filed a civil suit against petitioner no.1 which was later on withdrawn on 22.1.2013 as the matter had been compromised between the parties (Annexure P-4).

A reply by way of affidavit of Deputy Superintendent of Police, Assandh on behalf of respondent no.1-State of Haryana and a copy of enquiry report under Section 202 Cr.P.C have been filed in

the Court and placed on record as (Annexure R-1).

As per the enquiry report under Section 202 Cr.P.C, the maternal grandfather of the complainant had four daughters and one son namely Puran Singh and Puran Singh had one son namely Gurmeet Singh. After the death of Puran Singh, Gurmeet Singh became the owner of the properties of Puran Singh. Jaswant Singh had 2 ½ marlas of land. Thereafter, maternal grandfather of the complainant, Jaswant Singh died and his land measuring 2 ½ marlas was inherited by his daughters and his grandson namely Gurmeet Singh in equal shares. Maternal aunties of the complainant/respondent no.1 transferred the land qua their shares in the name of their nephew Gurmeet Singh by way of sale deed and civil Court decrees. During the course of enquiry, the complainant produced copy of sale deeds and Civil Court decrees. In this way petitioner no.1 namely, Gurmeet Singh is the owner of land measuring 2 marlas out of 2½ marlas while the mother of the complainant namely, Gurbachan Kaur is the owner of 5th Share i.e ½ marls out of the total land measuring 2½ marlas. She had constructed a shop and one room over the shop and the complainant was running the business of garments in the said shop and the room was being used as a godwon. Gurmeet Sisngh had constructed two rooms and a shop over the shop in his share and this shop had been given on rent to one Harbans Lal who was doing Kiryana business and he had also given on rent one room to a tailor Master and the other room had been kept for keeping the personal articles of

petitioner no.1.. Gurmeet Singh/petitioner no.1 sold his shop and room constructed over the shop to Harbans Lal son of Sardari Lal for a sale consideration of Rs.10,00,000/- and he also got vacated the room constructed over the shop from Tailor Master. Sale deed was executed on 2.7.2012 and registered in favour of wife Satya Rani and daughter-in-law Meena Rani of Harbans Lal. Complainant Amarjeet Singh tried to take illegal possession of the two shops during the night by placing his articles therein. Dispute arose between the parties and on seeing the dispute the vendee of the shop refused to purchase the shop and again got executed and registered the sale deed in the name of Gurmeet Singh. The complainant Amarjeet Singh and respondent no.1 Gurmeet Singh are the cousins and have some dispute regarding ancestral property. On 3.9.2012, both the parties had moved complaints in the police station regarding the aforesaid dispute, upon which the police keeping in view the dispute between the parties had initiated proceedings under Section 107, 151 Cr.P.C. During investigation, it was found that the dispute between Amarjeet Singh and Gurmeet Singh was regarding partition of the ancestral property which is of civil nature as they are in close relations. Amarjeet Singh could not prove ownership of the room constructed over shop and the shop from which the alleged dacoity was stated to have been committed. The allegation in the complaint was found to be false as complainant Amarjeet Singh wanted to put pressure on Gurmeet Singh and wanted to take illegal forcible possession. Complainant Amarjeet Singh had mentioned the names

of number of persons to put pressure upon the panchayat by levelling false allegations. The person whose names were mentioned being relatives or members of the Panchayat used to attend the Panchayat in order to get the matter patched up between the parties. The allegations levelled by Amarjeet Singh were found to be false. Similarly the allegations against ASI Mahavir, Sub Inspector Tek Ram and Head Constable Balwinder Singh of Police Station, Assandh were found baseless. The enquiry report (Annexure R-1) has been totally ignored by the trial Court while summoning the petitioners. The summoning orders have been passed keeping in view the depositions of CW-1, Hardy Singh, CW-2, Gurudev Singh, CW-3, Harpreet Singh. The depositions of all the three witnesses have to be examined in the light of the enquiry report (Annexure R-1). CW-3 Harpreet Singh was an employee of the complainant. Therefore, he has merely corroborated the version of the complainant. All the three witnesses have merely corroborated the version of the complainant as they were interested witnesses. The complainant could not prove the possession of the shop. The shop in question had been inherited by Gurmeet Singh by way of civil decrees from his maternal aunts. Enquiry report (Annexure R-1) further shows that the said shop had been sold by Gurmeet Singh to one Harbans Lal for Rs.10,00,000/- but on account of the dispute between the parties, Harbans Lal returned Rs.10,00,000/- back to Gurmeet Singh after getting the sale deed registered back in his favour and refused to purchase that property. Once the complainant could not prove the ownership of the

shop, the offence of taking away the articles from the shop and dacoity being committed could not be sustained. Moreover, he did not produce any rent deed, sale deed or agreement to sell of the shop in question which was in the ownership of Gurmeet Singh. In the present case, the trial Court has merely summoned the petitioner on the basis of the photographs clicked. The approach of the trial Court has been perverse as without their being any evidence of the ownership of the shop in question, the allegations of the complainant, Amarjeet Singh could not be proved.

In view of all that has been discussed above, this petition is allowed and the criminal complaint No. 246 instituted on 13.10.2013 (Annexure P-1) and the summoning order dated 3.5.2014 (Annexure P-2) are hereby quashed.

January 22, 2015
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(**RITU BAHRI**)
JUDGE