

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

**Crl. Misc. No. M-30851 of 2012 (O&M)
Date of decision : 25.02.2015**

Kuldip Singh

...Petitioner

versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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

Present: Mr. J.S. Bedi, Senior Advocate,
with Ms. Diya Sodhi, Advocate,
for the petitioner.

Mr. Gurvir Sidhu, AAG, Punjab.

Mr. Charanjit Singh Bakshi, Advocate,
for respondent No.2.

RITU BAHRI, J.

This petition under Section 482 Cr.P.C., is for quashing of FIR No.90 dated 13.03.2010, under Sections 379/447/511/506/294/427/34 IPC (Annexure P-11), registered at Police Station, Naya Gaon, District Mohali, report under Section 172 (2) Cr.P.C. dated 23.10.2010 (Annexure P-13) and the order dated 23.04.2012 (Annexure P-19), whereby charges have been framed against the accused-petitioner.

Karan Singh and his mother namely Bhateri Devi had purchased land measuring 2 Marlas from Rajinder Kumar, real brother of Karan Singh vide registered sale deed dated 08.09.2005. Said Karan Singh is the husband

of Smt. Parveen Kumar-complainant (respondent No.2.). Rajinder Kumar himself was a power of attorney holder to the extent of 80 Marlas given to him by one Swaran Singh. This General Power of Attorney did not contain any specific khasra number. After purchasing some part of Khasra Nos.194 and 235, Karan Singh and Rajinder Singh etc. moved an application for correction of Girdawari. While moving the said application on 26.08.2009, the khasra numbers were tampered and changed from 194 to 195 and 235 to 253. In the sale deed, 2 Marlas were given in Khasra Nos.194 and 235, however, while moving the aforesaid application for correction of the Girdawari, the applicants claimed possession of 5 Marlas in Khasra No.235.

Kuljinder Kaur wife of the petitioner, who happened to be Municipal Councillor of the ward, in which the property is situated, moved an application to the Tehsildar in the year 2009 to the effect that the Tehsildar had wrongly passed the order dated 13.11.2009. Meanwhile, the complainant filed a civil suit (Annexure P-6) for permanent injunction in respect of Khasra Nos. 195 and 235 against the petitioner and his. She alleged that the petitioner was interfering in her peaceful possession over Khasra No.195. Vide order (Annexure P-7), the parties were directed to maintain status quo regarding possession over the suit property. Thereafter, the complainant made an application before the police against the petitioner, on the basis of which, the present FIR has been registered.

Upon notice, reply on behalf of respondent No.1-State in the shape of affidavit of Deputy Superintendent of Police, City-I, District SAS Nagar, has been filed, wherein it has been stated that the present FIR has been registered on the basis of statement made by Parveen Kumari, alleging that she had a shop (kiosk) near Homeopathic Dispensary, Naya Gaon, in

which she has been running the business of chappals, shoes and garments etc. A civil suit with regard to the land, on which the said kiosk was situated, was pending at Civil Court, Kharar against Kuldeep Singh-petitioner. Stay had been granted in the said suit. Despite the said fact, on the intervening night of 28.02.2010/01.03.2010, Kuldeep Singh along with his accomplices, had committed a theft in the shop/kiosk of the complainant. He misappropriated the articles lying there and tried to take possession of the land where the kiosk was situated. He gave filthy abuses to the complainant and extend threats to her life. On the basis of statement made by the complainant, the present FIR was registered. During investigation, spot inspection was conducted and site plan was prepared. Statements of the witnesses were recorded. Later on, the Superintendent of Police (D), Ropar conducted the investigation and prepared a cancellation report under Section 173 (8) Cr.P.C. The cancellation report dated 23.07.2012 (Annexure P-22) has been presented before the trial Court. An application dated 23.07.2012 (Annexure P-23) for getting the accused-petitioner discharged was also presented before the Court. Detailed enquiry report dated 16.05.2012 submitted by Superintendent of Police (Traffic), SAS Nagar, is annexed as Annexure P-20.

In para No.2 of the reply, it has been stated that Kuldeep Singh-petitioner had made a complaint dated 03.03.2010 (Annexure P-10) to the Senior Superintendent of Police against Parveen Kumar-respondent No.2, Rajinder Kumar, Karan Singh, Batheri Devi and officers of the revenue department, alleging that Parveen Kumari was elected as Member Panchayat of Village Karoran. By misusing her position, she in order to graph some shops of the Gram Panchayat, had fabricated some record of the Gram Panchayat situated in Khasra No.235 of village Karoran. She had procured

some receipts showing herself and her family members as tenants in the above said shops of the Panchayat. Thereafter, Kuljinder Kaur, wife of Kuldip Singh-petitioner was elected as Member (Ward No.13), Nagar Panchayat, Naya Gaon (Karoran) and the above said shops of the Panchayat are situated in Khasra No.235, which falls in Ward No.13. Earlier, Parveen Kumari and his family members, in order to grab the shops of the Nagar Panchayat, had illegally got the Girdawari of Khasra No.235 changed in their names by making forgery in the order dated 13.11.2009 passed by the Naib Tehsildar, Majri. After getting the order dated 13.11.2009 from the Naib Tehsildar, Majri in their favour qua Khasra Nos. 253 and 194, they altered and changed Khasra Nos. 253 to Khasra No.235 and Khasra No.194 to Khasra No.195. In this background, Parveen Kumari submitted a false complaint against the petitioner. A civil suit was also filed against Kuldip Singh and his wife alleging that Karan Singh, Rajinder Kumar and Batheri Devi were owner in possession of the above said shops of Panchayat, situated in Khasra No.235 of village Karoran. Earlier, they were claiming themselves to be the tenants of three shops of Panchayat, but in the civil suit, they claimed to be owners in possession thereof. Pursuant to the complaint dated 03.03.2010 (Annexure P-10), an enquiry was carried out by the Economic Offences Wing, Mohali and the enquiry officer recommended for registration of a case under Sections 420, 465, 467, 468, 471, 120-B IPC. Legal opinion from DDA (Legal) was sought, who opined that role of Parveen Kumari and Assistant Collector, Grade-II, Majri be also considered. Thereafter, FIR No.2 dated 09.01.2011, under Sections 418, 417, 465, 467, 468, 471, 120-B IPC was registered at Police Station, Naya Gaon and investigation commenced.

During investigation, anticipatory bail was granted to Rajinder Kumar, Karan

Singh and Batheri Devi. Parveen Kumari was arrested on 04.10.2012. Later on, she was released on regular bail.

During further investigation in FIR No.90 dated 13.03.2010, under Sections 379/447/511/506/294/427/34 IPC (Annexure P-11), petitioner-Kuldip Singh was found innocent and cancellation report under Section 173 (8) Cr.P.C. (Annexure P-22) along with an application (Annexure P-23) for his discharge, was filed before the trial Court.

As per status report dated 18.03.2013 submitted by the Deputy Superintendent of Police, City-I, SAS Nagar (Mohali), challan in this case was presented before the Court on 03.11.2010. Thereafter, supplementary cancellation report under Section 173 (8) Cr.P.C. was presented on 23.07.2012. However, vide order dated 06.11.2012 passed by the trial Court, the cancellation report has been rejected and the charges have been framed on 23.04.2012. The trial is fixed for recording of prosecution evidence.

In the written statement filed by respondent No.2, it is stated that out of 20 prosecution witnesses, 8 have been examined. The charges were framed on 23.04.2012 (Annexure P-19) and the petitioner had alternative efficacious remedy of filing a revision under Section 401 Cr.P.C., which he had not availed of.

Heard, counsel for the parties.

After registration of the FIR, challan was finally presented on 03.11.2010. Thereafter, on an application made by the accused-petitioner, further investigation was ordered and supplementary cancellation report, along with an application for his discharge, was presented on 23.07.2012. The said application was rejected by the trial Court vide order dated 06.11.2012 and the charges were, thereafter, framed. After framing of the

charges, the trial has proceeded and as on 19.12.2013, out of 20 prosecution witnesses, 8 had been examined.

Quashing of the FIR and order framing of charges have been sought on the ground that once an application requiring the investigating agency to conduct further investigation had been allowed, the trial Court could not commit the matter to the Special Court, as challan was presented under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Moreover, the report under Section 173 (8) Cr.P.C. has been received in favour of the petitioner.

This argument of learned counsel for the petitioner is liable to be rejected. A perusal of the order dated 06.11.2012 (Annexure P-26) shows that after presentation of challan against Kuldip Singh-petitioner, he was charge sheeted on 23.04.2012. It was during the pendency of the trial, a further investigation was ordered and supplementary challan under Section 173 (8) Cr.P.C. was presented stating that Kuldip Singh was innocent. Vide order dated 06.11.2012, the supplementary challan was ordered to be attached with the main challan and no ground was made out to discharge the accused as the trial had already commenced. This order has not been challenged by the petitioner while seeking quashing of the FIR.

The order dated 06.11.2012 (Annexure P-26) was passed by the Additional Sessions Judge, SAS Nagar (Mohali) after filing of this petition and thereafter, the trial Court had proceeded to record 8 prosecution witnesses out of 20. Since the supplementary challan has been attached with the main file of the trial, the petitioner can take all the pleas at the time of leading his defence evidence before the trial Court. No prejudice will be caused to the petitioner, as the application for his discharge was dismissed on

06.11.2012.

Resultantly, the present petition is dismissed. However, liberty is granted to the petitioner to take all the pleas before the trial Court.

(RITU BAHRI)
JUDGE

25.02.2015
ajp