

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-28738 of 2015 (O&M)

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Date of decision:12.10.2015

Jagir Singh and others

...Petitioners

v.

State of Haryana and another

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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

Mr. Arun Kumar and Mr. Brijesh Sharma, Assistant
Advocates General, Haryana for the respondent-State.

Mr. Rajesh Bansal, Advocate for respondent No.2

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Inderjit Singh, J.

This criminal miscellaneous petition has been filed under Section 482 Cr.P.C. for quashing of complaint No.2766/2013 dated 14.3.2013 filed for the offences under Sections 323, 427, 506 and 34 IPC at Police Station Naggal, District Ambala (Annexure-P.7) and the summoning order dated 4.5.2015 (Annexure-P.11), whereby the petitioners have been summoned as accused for the offence under Section 427 read with Section 34 IPC for the dispute, which is already pending before the civil Court i.e. learned Civil Judge (Junior Division), Ambala.

Notice of motion has been issued in this case.

Mr. Arun Kumar and Mr. Brijesh Sharma, learned Assistant Advocates General, Haryana have put in appearance on behalf of the respondent-State and Mr. Rajesh Bansal, learned Advocate has appeared for respondent No.2 and contested this petition.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that in the present case the complaint has been filed by complainant-Dalbir Singh against the present petitioners for the offences under Sections 323, 427, 506 and 34 IPC by stating that the complainant was having his double storey residential house within the vicinity of the village and the house of accused persons is also adjoining his house. The septic tank and water pipes (submersible pipes) of the house of the accused were both dug in their house and which is just near and beneath to the house of the complainant. On 11.6.2012, the complainant along with his family was present at their home and suddenly at once the house of the complainant started cracking at which he and his family at once came out of the house and he was astonished to see that there were big cracks in the left portion of his house, which is adjoining side of the house of the accused. The complainant from many months were requesting the accused persons that there was leakage in the septic tank of their house and the water of the water pipes (submersible pipes) was also leaking due to which the basement of the house of the complainant was deteriorating day by day, but they did not pay any heed to his request and there was always a threat to their life and used to

quarrel with the complainant on the same matter. The accused persons used to throw water intentionally and willfully in the septic tank so that the basement of the house of the complainant becomes weaker.

From the perusal of the complaint as well as the record, I find that for the criminal proceedings *mens rea* being one of the essential ingredients is to be alleged and proved. The mere fact that due to leaking in the septic tank of the house of the accused, the damage had been caused to the house of the complainant will itself not prove the *mens rea* that is the criminal intention of the accused. It is admitted at the time of arguments that the civil suit for damages has already been filed which is pending. The accused have been summoned for the offence under Section 427 read with Section 34 IPC. Three accused persons have been summoned, who are the petitioners before this Court, but nothing has been mentioned regarding specific role in causing the damage to the house of the complainant by these petitioners.

Keeping in view the facts and circumstances of the present case and the fact that the dispute between the parties is of civil nature, therefore, this complaint filed by the complainant is nothing, but an abuse of the process of law.

Learned counsel for the petitioners relied upon the judgment of this Court in Arwinder Singh and others v. State of Punjab, 2014 (8) R.C.R. (Cr.) 1302, wherein it was held that the matter, which essentially involves dispute of civil nature cannot legally be allowed to become subject-matter of criminal proceedings, otherwise, there will be no end of

unwarranted litigation and it will inculcate and perpetuate injustice to appellants in this relevant direction.

In the reply filed by the private respondent/complainant also it is stated that the complainant filed a civil suit regarding the same subject matter, but that suit was filed after more than one year i.e. on 5.8.2013 and the complaint was filed prior to the civil suit. It is stated in the reply by respondent No.2 that in the civil suit the respondent prayed that his suit directing the defendants/present petitioners to repair the residential house of the plaintiff/complainant or in the alternative to pay the damages on account of loss to the residential house of the plaintiff with consequential relief of permanent injunction restraining the defendants/present petitioners or using the septic tank was filed.

Therefore, from the record, I find that the dispute between the parties is of civil nature and filing of criminal proceedings is nothing, but an abuse of the process of law and no criminal offence is made out from the averments made in the complaint due to absence of *mens rea*.

Therefore, the complaint as well as the summoning order and all consequential proceedings arising out of the same are hereby quashed.

October 12, 2015.

(Inderjit Singh)
Judge

hsp